

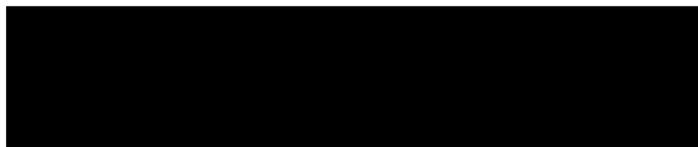
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



C1

FILE:



Office: CALIFORNIA SERVICE CENTER

FEB 16 2011

IN RE:

Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO subsequently remanded the petition to the director for a new decision based on revised regulations. The director determined that the petitioner had failed to submit required evidence, and therefore the director again denied the petition and certified the decision to the AAO. The AAO will affirm the director's decision.

The petitioner is a Pentecostal Christian church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as an assistant pastor (youth). The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition.

As required by 8 C.F.R. § 103.4(b)(2), the director allowed the petitioner 30 days in which to submit a brief in response to the certified decision. To date, the record contains no further correspondence from the petitioner. We will therefore consider the record to be complete as it now stands.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before September 30, 2012, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before September 30, 2012, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner filed the Form I-360 petition on July 26, 2007. At that time, the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(1) required that the “religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.” The regulation at 8 C.F.R. § 204.5(m)(3)(ii)(A) required the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work.

On Form I-360, the petitioner indicated that the beneficiary entered the United States on April 11, 2007, indicating that the beneficiary was outside the United States for at least some, and possibly most, of the two-year qualifying period. The petitioner’s initial submission, which consisted only of the Form I-360 and a letter from the petitioner’s [REDACTED], [REDACTED] included no evidence relating to the beneficiary’s past work. [REDACTED] stated that the beneficiary “has more than two years of prior experience as [a] pastor,” but he provided no further details.

On October 3, 2007, the director instructed the petitioner to submit additional evidence, including evidence of the beneficiary’s work history and IRS Form W-2 Wage and Tax Statements to show past compensation. The petitioner’s response included a letter from an official of [REDACTED], [REDACTED], indicating that the beneficiary “was a volunteer within our Teens Ministry from 1999 to 2004.” This volunteer work was not employment and fell entirely outside the July 2005-July 2007 qualifying period.

In a letter dated December 21, 2007, [REDACTED] stated that the beneficiary

left paid employment in 2003 to become an itinerant minister, serving different ministries . . . without being a charge to any of them, he led evangelical campaigns in Nigeria, India and Brazil. Since 2004 he has served petitioner’s ministry for two to three month blocks, paying his way from the U.K., serving without a salary.

Counsel stated that the director’s request for the beneficiary’s tax documents is “[n]ot applicable. The beneficiary has not been authorized to work in the United States as of the filing date of this [petition].”

The petitioner submitted copies of payroll documents showing the beneficiary’s spouse’s salary (as a government employee), but no documentation of the beneficiary’s earnings. United Kingdom tax documents acknowledge the beneficiary’s spouse’s salary and that she “work[ed] 35 hours a week,” but indicate that the beneficiary earned no income in 2006 or 2007.

The director denied the petition on January 30, 2008, stating that the petitioner failed to establish the beneficiary’s continuous employment in qualifying religious work throughout the 2005-2007 qualifying period. On appeal, counsel stated: “In a decision dated February 3, 2005, the Administrative Appeals Unit found that there are cases in which volunteer work might constitute prior qualifying experience,” if the beneficiary “was self-sufficient or . . . his or her financial well being was clearly maintained by means other than secular employment.” Counsel asserted that the beneficiary had established these conditions, and claimed that the petitioner “will be submitting additional

evidence and a brief within thirty days, showing that the Beneficiary's financial well being was clearly maintained by means other than secular employment."

Subsequently, the petitioner did submit a brief, but no additional evidence accompanied it. Counsel argued that "the Beneficiary was able to support himself to a large measure" through his wife's income, which was "approximately \$2300 [per month] in U.S. dollars." We note that the beneficiary has three minor children, and therefore the beneficiary's spouse's \$2,300 monthly income needed to support a family of five and also, evidently, finance the beneficiary's extensive international travel for which, the petitioner has claimed, the beneficiary received no compensation from host churches.

While the appeal was pending, USCIS published new regulations for special immigrant religious worker petitions. Supplementary information published with the new rule specified: "All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

On December 15, 2008, the AAO remanded the petition to the director for a new decision based on the revised regulations. On June 4, 2009, the director issued a new, certified decision. In that decision, the director claimed to have issued a "notice [on] May 18, 2009, proposing to deny the . . . petition." The record does not contain a copy of a May 18, 2009 notice. Nevertheless, the director's certified decision of June 4, 2009, quoted extensively from the revised regulations. Therefore, the petitioner has had an opportunity to review the new evidentiary requirements. As we have already noted, the record contains no response from the petitioner to the certified decision.

The certified denial notice quoted the revised regulation at 8 C.F.R. § 204.5(m)(11), which reads:

Evidence relating to the alien's prior employment. Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14, and if acquired in the United States, must have been authorized under United States immigration law. If the alien was employed in the United States during the two years immediately preceding the filing of the application and:

- (i) Received salaried compensation, the petitioner must submit IRS documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of income tax returns.
- (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.
- (iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account

statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.

If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

The director, in quoting the above regulation, emphasized (with bold type) the requirement that experience in the United States “must have been authorized under United States immigration law.” Similarly, the regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working as a minister or in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States.

The petitioner has indicated that the beneficiary was in the United States for at least some of the two-year qualifying period. The petitioner, however, has submitted no evidence that USCIS ever authorized the beneficiary to perform religious work in the United States. Also, the petitioner has asserted that the beneficiary received no compensation for his religious work in 2005-2007, but the petitioner has not submitted sufficient evidence of self-support. The regulation at 8 C.F.R. § 214.2(r)(11)(ii) describes the permissible circumstances under which we would accept claims of self-support:

(A) If the alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.

(B) An established program for temporary, uncompensated work is defined to be a missionary program in which:

- (1) Foreign workers, whether compensated or uncompensated, have previously participated in R-1 status;
- (2) Missionary workers are traditionally uncompensated;
- (3) The organization provides formal training for missionaries; and
- (4) Participation in such missionary work is an established element of religious development in that denomination.

(C) The petitioner must submit evidence demonstrating:

- (1) That the organization has an established program for temporary, uncompensated missionary work;

- (2) That the denomination maintains missionary programs both in the United States and abroad;
- (3) The religious worker's acceptance into the missionary program;
- (4) The religious duties and responsibilities associated with the traditionally uncompensated missionary work; and
- (5) Copies of the alien's bank records, budgets documenting the sources of self-support (including personal or family savings, room and board with host families in the United States, donations from the denomination's churches), or other verifiable evidence acceptable to USCIS.

The petitioner cannot meet these requirements simply by declaring the beneficiary to be an "itinerant minister."

The petitioner has claimed that the beneficiary has traveled to several countries without any compensation from host churches, but the petitioner has provided no documentary evidence or verifiable details about the beneficiary's claimed past work. The petitioner has simply claimed that the beneficiary traveled to unidentified churches on unspecified dates, and that the beneficiary was able to support himself because his spouse earns about \$27,600 a year to support a family of five and pay for frequent international travel. We agree with the director that the petitioner has not met its burden of proof as defined by the relevant regulations. We will affirm the director's certified (and apparently uncontested) decision.

The AAO may identify additional grounds for denial beyond what the Service Center identified in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis). In this instance, we note that the petitioner has not submitted an employer attestation. The director, in the certified denial notice, quoted in full the regulation at 8 C.F.R. § 204.5(m)(7) that requires the petitioner to submit this attestation.

The AAO will affirm the certified decision for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The director's decision of June 4, 2009 is affirmed. The petition is denied.