

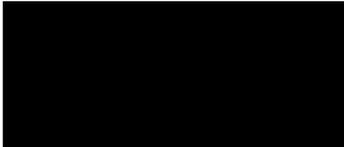
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

**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**



21

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

**FEB 18 2011**

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a 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 a missionary. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation or how it intends to compensate the beneficiary.

On appeal, the petitioner states that the beneficiary is a missionary with the church and fulfills the duties of a missionary. The petitioner further states that the beneficiary receives non-salaried compensation. The petitioner submits a letter and additional documentation in support of the appeal.

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 first issue presented is whether the petitioner has established that the proffered position qualifies as that of a religious occupation. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(5) defines “religious occupation” as an occupation that meets all of the following requirements:

(A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.

(B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

(C) The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible.

(D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

In its August 25, 2008 letter submitted in support of the petition, the petitioner stated that, in addition to her “private time of Bible study and prayer,” the beneficiary is involved in, among other things, visiting the elderly and other members of the community, “relating to and visiting with institutions” such as the senior center, nursing home and hospital, visiting Spanish classes in the public school system, and serving as assistant in the Kids in Christ program. The petitioner stated that the beneficiary’s compensation consists of housing, including all utilities, and a meal allowance.

In a request for evidence (RFE) dated April 15, 2009, the director instructed the petitioner to:

Provide a **detailed description** of the work to be done, including specific job duties, level of responsibility/supervision, and number of hours per week to be spent performing each duty. Include a daily and weekly schedule for the proffered position. List the minimum education, training, and experience necessary to do the job and submit documentary evidence to show that the beneficiary has met such requirements. Further, explain how the duties of the position relate to a traditional religious function. [Emphasis in the original.]

In its attestation submitted in response, the petitioner described the beneficiary’s proposed daily duties as:

[She] will have her own private bible study and prayer time each morning from 8:00 until 9:00 am (Sunday – Saturday). She will check in at the church at 9:00 am each day (Monday – Friday) where she will prepare for a day of ministry. She will be involved in visitation and prayer with the elderly/sick and other immigrants in the area . . . 2 hours each morning and 2 hours each afternoon (Monday – Friday). She will be involved in prayer walking in the community at least an hour each day (Monday – Friday). Additionally, she will help deliver lunches for the Meals on

Wheels and Senior Center as needed. On Mondays, she will attend English classes . . . from 1:30 pm to 3:00 pm and . . . [REDACTED] R-2 School (while school is in session) from 4:00 to 5:00 pm. On Tuesdays, she prepares to help the Hispanics in town and translates for them at the New Life ministry from 6:30 pm to 8:00 pm. One Tuesday a month, she will participate in the Women's Ministry of Believer's Chapel from 6:30 to 8:00 pm. On Wednesdays, she assists in the Kids in Christ classes from 6:00 to 8:00 pm. On Thursdays, she teaches Spanish classes from 7:00 to 8:30 pm to community members who desire to learn Spanish to eventually use on mission trips. On Fridays, she participates in the English classes from 6:30 to 8:00 pm and then has Bible study and outreach to the Hispanics from 8:00 until 10:00 pm. On alternate Saturdays, she is involved in providing Bible study and fellowship with the Hispanics from 5-9 pm. On Sundays, she is involved in teaching the Hispanic Sunday School class and in Hispanic ministry (Bible Study and Discipleship) from 8:00 to 11:15 am and then from 2:00 to 8 PM. Additionally, she is to participate in promoting missions involvement by going to various churches, associations, and women's meetings to share her testimony to share about her culture and how to pray and be involved in reaching other cultures for Christ. Also, she will participate in Baptist Children and Youth camps and retreats to promote missions and cultural understanding. She will be available to accompany Baptist churches in the area on mission trips to Hispanic areas of the U.S. in order to teach the Bible and about Christ.

The petitioner's letter of May 14, 2009 refers to another individual who is apparently a part of the same missionary team as the beneficiary. The letter indicates that each member of the team is a "missionary worker," and we will consider the information in the letter that is pertinent to the instant petition.

The petitioner stated that the missionary worker is "specifically involved in outreach to the growing and changing Hispanic community in addition to serving by visiting homes in the community of widows, elderly, and the sick." The petitioner also stated it is associated with the Southern Baptist Convention. It submitted letters of recommendation for the beneficiary from the International Mission Board of the Southern Baptist Convention.

We find that the petitioner has submitted sufficient documentation to establish that the proffered position qualifies as a religious occupation within the meaning of the regulation and we withdraw this determination by the director.

The second issue is whether the petitioner has established that the petitioner has established how it intends to compensate the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(10) provides that the petitioner must submit:

*Evidence relating to compensation.* Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such

compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

The petitioner stated in its August 25, 2008 letter, "It is understood by the Bolivian Mission Team that the remuneration (food, housing and insurance, utilities, personal needs, medical insurance, transportation, etc.) shall be in exchange for services rendered." The petitioner provided a statement of annual expenses for the three members of the Bolivian mission team which totaled \$16,352.80. The petitioner stated that the three women shared a house owned by the church and church members. The petitioner submitted no documentation to establish the existence of the house or that the beneficiary lived there. Additionally, the petitioner submitted a computer generated statement on which it indicates payments and billings that it stated were "electric bills for [REDACTED]." However, it submitted no documentation of actual billings from the utility companies or other verifiable documentation that the charges applied to expenses for the beneficiary. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Another document indicates that it was for water bills for the green house. Several receipts, some of which were from a grocery store, with handwritten annotations indicating that they were for the "Bolivian girls."

The petitioner also submitted copies of its treasurer's reports for 2006, 2007 and January through June 2008, that contain line items for the [REDACTED] and indicate that the petitioner had budgeted \$9,984 for their mission in 2007 and 2008 and expended \$3,409.26 on their behalf in 2006. On appeal, the petitioner submits a copy of its bank statement for the period June 26, 2009 to August 2, 2009, which reflects that it had an opening balance of approximately \$98,920 and an ending balance of approximately \$100,266. The petitioner also submitted a copy of its treasurer's report for January 2009 through July 2009. However, as this documentation is after the filing date of the petition, it does not establish how the petitioner intended to compensate the beneficiary at the time the petition was filed. The petitioner also submitted documentation that it stated were for the "missionary house," presumably representing the electric and water bills for the house. However, there is nothing in the documents that indicate they are for a specific location and nothing to indicate that they are for the support of the beneficiary.

The petitioner failed to submit verifiable documentation of how it intended to compensate the beneficiary at the time the petition was filed.

Beyond the director's decision, the petitioner failed to establish that the beneficiary worked in a qualifying religious occupation or vocation for two full years immediately preceding the filing date of the petition.

The regulation at 8 C.F.R. § 204.5(m) provides that to be eligible for classification as a special immigrant religious worker, the alien must:

(4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed. A break in the continuity of the work during the preceding two years will not affect eligibility so long as:

(i) The alien was still employed as a religious worker;

(ii) The break did not exceed two years; and

(iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

Therefore, the petitioner must show that the beneficiary worked in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The petition was filed on September 16, 2008. Accordingly, the petitioner must establish that the beneficiary had been continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

The regulation at 8 C.F.R. § 204.5(m)(11) provides:

*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.

As discussed, the petitioner stated that the beneficiary's remuneration would consist of non-salaried compensation. However, as also discussed, the petitioner failed to submit sufficient documentation of the non-salaried compensation that it provided to the beneficiary. Accordingly, the petitioner has failed to establish that the beneficiary worked in a qualifying religious occupation or vocation as required by the above-cited regulation.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial 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 (9<sup>th</sup> 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).

The petition will be denied 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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.