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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: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 24 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:

SELF-REPRESENTED

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 Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a church of the Roman Catholic denomination. 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 youth and young adult leader. 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.

On appeal, the petitioner submits a statement from its pastor, other witness letters, and various exhibits.

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 U.S. Citizenship and Immigration Services (USCIS) 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, continuously for at least the two-year period immediately preceding the filing of the petition. The USCIS regulation at 8 C.F.R. § 204.5(m)(11) 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 [Internal Revenue Service] 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 petitioner filed the Form I-360 petition on April 6, 2009. (The director's receipt stamp is dated April 6, 2001, but that date is clearly in error as the petitioner used the November 26, 2008 revision of the petition form.) The Form I-360 includes the following information:

[The beneficiary's] Date of Arrival: 9/29/1991
Current Nonimmigrant Status: [blank]
Expires on: [blank]

Has the [beneficiary] ever worked in the U.S. without permission? [not answered]

In an accompanying letter, the beneficiary stated that he qualified as a grandfathered alien for relief under section 245(i) of the Act, 8 U.S.C. § 1255(i), because his sister filed a Form I-130 relative petition on his behalf in 2001. Section 245(i) of the Act states, in pertinent part:

Adjustment of Status for Aliens Physically Present in the United States

- (1) Notwithstanding the provisions of subsections (a) and (c) of this section, an alien physically present in the United States –

(A) who –

- (i) entered the United States without inspection ; or
- (ii) is within one of the classes enumerated in subsection (c) of this section;

(B) who is the beneficiary . . . of –

- (i) a petition for classification under section 204 that was filed with the Attorney General on or before April 30, 2001

* * *

(C) who, in the case of a beneficiary of a petition for classification . . . that was filed after January 14, 1998, is physically present in the United States on the date of the enactment of the LIFE Act Amendments of 2000 [enacted December 21, 2000];

may apply to the Attorney General for the adjustment of his or her status to that of an alien lawfully admitted for permanent residence. The Attorney General may accept such application only if the alien remits with such application a sum equaling \$1,000 as of the date of receipt of the application

Section 245(i) of the Act permitted certain aliens who were physically present in the United States on December 21, 2000, and who were otherwise ineligible to adjust their status, such as aliens who entered the United States without inspection or failed to maintain lawful nonimmigrant status, to pay a penalty and have their status adjusted without having to leave the United States. Section 245(i) of the Act expired as of April 30, 2001, except for those aliens who are “grandfathered.” “Grandfathered alien” is defined in 8 C.F.R. § 245.10(a) to include “an alien who is the beneficiary . . . of . . . [a] petition for classification,” such as a Form I-360 petition, “which was properly filed with the Attorney General on or before April 30, 2001, and which was approvable when filed.”¹

The regulation at 8 C.F.R. § 245.10(a)(3) states:

Approvable when filed means that, as of the date of the filing of the qualifying immigrant visa petition under section 204 of the Act . . . , the qualifying petition . . . was properly filed, meritorious in fact, and non-frivolous (“frivolous” being defined herein as patently without substance). This determination will be made based on the circumstances that existed at the time the qualifying petition or application was filed.

¹ The regulation at 8 C.F.R. § 245.10(a)(2) defines “properly filed” to mean that “the application was physically received by the Service on or before April 30, 2001, or if mailed, was postmarked on or before April 30, 2001, and accepted for filing as provided in § 103.2(a)(1) and (a)(2) of [8 C.F.R.]”

However, section 245(i) relief applies to adjudication of a Form I-485 adjustment application, not to adjudication of the underlying immigrant petition. Specifically, section 245(i)(2)(A) of the Act mandates that an alien seeking section 245(i) relief be “eligible to receive an immigrant visa.” See *INS v. Bagamasbad*, 429 U.S. 24, 25 n. (1976) (per curiam); *Lee v. U.S. Citizenship & Immigration Servs.*, 592 F.3d 612, 614 (4th Cir. 2010) (describing the legislative history of 8 U.S.C. § 1255(i)).

The law does not require aliens to adjust their status on every grandfathered immigrant petition, nor does the law require every grandfathered immigrant petition to be approved. However, in order to seek relief under section 245(i) of the Act based on classification under section 204 of the Act, the alien in this case must first have an approved immigrant petition and an approvable when filed immigrant petition or labor certification application filed on or before April 30, 2001.

The law does not affect the adjudication of the petition in this proceeding. Rather, section 245(i) relief applies at the adjustment stage, not the petition stage, and generally presupposes an already-approved immigrant petition. This proceeding is not an adjustment proceeding, and we need not discuss in detail the beneficiary’s claim to be eligible for a benefit that applies only at the adjustment stage.

The petitioner submitted copies of various letters and certificates, showing that the beneficiary has been an active member of the Roman Catholic church. The documents do not show that the beneficiary has ever performed qualifying religious work, either abroad or in lawful immigration status in the United States.

██████████ pastor of the petitioning church, stated that the beneficiary “has been with us for the past two years and active in serving the [n]eeds of our parish community whenever needed.” ██████████ did not specify that the petitioner had employed the beneficiary in a compensated or qualifying self-supporting capacity, and the petitioner did not submit any of the required documentation of compensation or self-support as listed in the regulation at 8 C.F.R. § 204.5(m)(11).

The director denied the petition on July 14, 2009, because the petitioner had not submitted evidence of qualifying, authorized employment and “it appears that the beneficiary is present in the U.S. without a valid immigration status.”

On appeal, ██████████ states:

[The beneficiary] has achieved the qualifying prior experience during the past five years immediately preceding the [filing of the] petition. . . . [The beneficiary] has received no salary for his prior experience. He has been performing volunteer services for the Roman Catholic Church regularly and consistently over the past five years. . . . In exchange for [the beneficiary’s] work for the Roman Catholic Church over the past five years, he has received room and board and has been compensated solely through donations of members of the Roman Catholic Church.

The regulation at 8 C.F.R. § 204.5(m)(11) specifies the type of documentary evidence required to establish qualifying past experience. The petitioner does not claim to have submitted evidence of that caliber.

The petitioner does not, on appeal, address the director's crucial finding that the beneficiary lacked employment authorization and lawful immigration status during the qualifying period. This, by itself, is a facially disqualifying finding. We note the petitioner's claim that the beneficiary worked in exchange for "room and board" and "donations," but this does not show that USCIS had authorized the beneficiary to work for the petitioner during the two-year qualifying period. The record contains no evidence that the beneficiary received room, board, and donations as claimed. Even if this were not the case, the Board of Immigration Appeals ruled that an alien who "receives compensation in return for his efforts on behalf of the Church" is "employed" for immigration purposes, even if that compensation takes the form of material support rather than a cash wage. *See Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982).

For the reasons discussed above, we agree with the director's essentially uncontested finding that the beneficiary had no lawful immigration status or employment authorization during the two-year qualifying period, and that the petitioner has not submitted sufficient evidence of prior experience.

The record reveals deficiencies beyond the above finding. 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).

The USCIS regulation at 8 C.F.R. § 204.5(m)(2) requires that the beneficiary must be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position in one of the following occupations as they are defined at 8 C.F.R. § 204.5(m)(5):

- (i) Solely in the vocation of a minister . . . ;
- (ii) A religious vocation either in a professional or nonprofessional capacity; or
- (iii) A religious occupation either in a professional or nonprofessional capacity.

The regulation at 8 C.F.R. § 204.5(m)(10) describes the evidence that the petitioner must submit to establish how it will compensate the beneficiary:

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.

In the employer attestation that accompanied the initial filing of the petition, asked to describe the beneficiary's proposed compensation, the petitioner stated "volunteer position."

executed a Form I-864 Affidavit of Support, pledging to provide for the beneficiary's material support. This affidavit is not an offer of compensated employment, and it does not satisfy the evidentiary requirements at 8 C.F.R. § 204.5(m)(10).

On appeal, stated that the beneficiary will work "for compensation." He provides no details about the claimed compensation. Furthermore, this new claim contradicts the previous claim that the beneficiary would work in a "volunteer position." It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, *Id.* at 582, 591-92 (BIA 1988).

Because the petitioner has provided no evidence relating to compensation, and has made contradictory claims that the beneficiary will work in a "volunteer position" and "for compensation," we must find that the petitioner has not set forth a qualifying offer of compensated employment.

On a related note, with regard to the requirement that the beneficiary must seek to work as a minister, or in a religious vocation or religious occupation, these are the definitions of those terms, as found in the regulation at 8 C.F.R. § 204.5(m)(5):

Minister means an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct such religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and
- (D) Works solely as a minister in the United States, which may include administrative duties incidental to the duties of a minister.

Religious occupation means 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.

Religious vocation means a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life. The religious denomination must have a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. Examples of individuals practicing religious vocations include nuns, monks, and religious brothers and sisters.

The petitioner has not claimed that the beneficiary has engaged or will engage in a religious vocation.

In the attestation accompanying the initial filing of the petition, the petitioner provided the following information:

Title of position offered:
Youth and Young Adult Leader

Detailed description of the alien's proposed daily duties:
co-ordi[n]ate and help plan activities and programs for the youth and young adults within the Hispanic community. Provide support and training to all the youth and young adults. Plan activities around the church calendar year with the parish staff.

Description of the alien's qualifications for the position offered:
knowledge and experience of the Hispanic culture

An August 3, 2001 letter from Provincial [REDACTED] informed the beneficiary of his acceptance "as a novice of the California Province of the Society of Jesus. The next class of novices

will begin novitiate . . . on Sunday, August 19, 2001.” In a subsequent letter dated August 23, 2009, Fr. Smolich (now identified as president of the Jesuit Conference) indicated that the beneficiary “left the Novitiate without taking vows as a Jesuit.”

On appeal from the director’s decision, [REDACTED] changes the beneficiary’s intended job title to “Minister of the Hispanic Community” and states that the petitioner seeks to employ the beneficiary “in a religious occupation in a non-professional capacity.” In the same letter, [REDACTED] states that the beneficiary “will work solely as a minister.” These two claims contradict one another. The record contains no evidence that the Roman Catholic Church has ordained the beneficiary as a minister. [REDACTED] refers to the beneficiary as “a former Jesuit Novice [and] a member of the Society of Jesus California Province,” but the record does not show the beneficiary’s successful completion of his novitiate. Certificates issued after the beneficiary began his novitiate show only that he has taken classes and volunteered with various church-related programs.

The record does not show that the beneficiary meets the regulatory definition of a minister. Also, the record contains no evidence that the Roman Catholic Church traditionally recognizes the beneficiary’s intended position as a religious occupation, rather than as a function ordinarily performed by an uncompensated volunteer. Therefore, the petitioner has not shown that the beneficiary will work in a religious occupation or in the vocation of a minister as the regulation at 8 C.F.R. § 204.5(m)(5) defines those terms.

The AAO will dismiss the appeal for the above stated reasons, with each considered as an independent and alternative basis for dismissal. 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, the petitioner has not met that burden.

ORDER: The appeal is dismissed.