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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

[REDACTED]

C1

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

FEB 24 2011

IN RE:

Petitioner:

[REDACTED]

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:

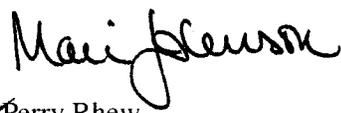
[REDACTED]

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 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 again denied the petition and certified the decision to the AAO. The AAO will affirm the director's decision.

The petitioner is a Conservative Baptist 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 pastor. The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

In response to the certified decision, the petitioner submits a brief from counsel and copies of materials already in the record.

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 April 5, 2007. At that time, the U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. §§ 204.5(m)(1) and (3)(ii)(A) required the petitioner to show that the beneficiary possessed the two years of experience required by the statute.

On Form I-360, the petitioner indicated that the beneficiary had arrived in the United States on October 6, 2005, and held an R-1 nonimmigrant religious worker visa. Asked if the beneficiary had ever worked in the United States without authorization, the petitioner answered "No." The record shows that the beneficiary entered the United States as a B-2 nonimmigrant visitor for pleasure, and that the petitioner filed an I-129 petition on March 16, 2006 to change the beneficiary's classification to that of an R-1 nonimmigrant religious worker. USCIS approved the petition, granting the beneficiary R-1 nonimmigrant status from May 15, 2006 to April 1, 2008.

To establish the beneficiary's prior experience, the petitioner submitted a copy of a letter jointly signed by seven members of the board of elders [REDACTED] indicating that the beneficiary was the senior pastor of that church from October 1995 to September 2005. The treasurer of that church, [REDACTED] provided a "Certificate of Earnings" listing the salary, housing allowance, and transportation allowance that the beneficiary purportedly received between October 1995 and September 30, 2005.

[REDACTED] chairman of the petitioner's board of trustees, stated that the beneficiary began working at the petitioning church "in May, 2006 and has been receiving a monthly remuneration amounting to three thousand dollars (\$3000.00) including parsonage (housing), medical insurance, and allowances for ministerial works."

On July 17, 2007, the director instructed the petitioner to submit additional information and evidence regarding the beneficiary's past work and compensation. In response, counsel stated that the beneficiary "receives compensation, stipend, and allowances at approximately \$2000 a month," an amount significantly less than [REDACTED] had earlier claimed. A financial statement in the record indicated that the petitioner paid the beneficiary \$24,000 in 2006, whereas the beneficiary's tax documents for that year, including Internal Revenue Service (IRS) Form 1099-MISC, show only \$15,000.

On April 15, 2008, the director denied the petition, based on a finding that the petitioner had not submitted sufficient documentation of the beneficiary's claimed prior employment. On appeal, [REDACTED] stated: "When [the beneficiary] first came to the United States, he served in the capacity of traveling pastor with the Conservative Baptists."

[REDACTED] stated that the beneficiary "last arrived in the U.S. [in] October 2005 for a Preaching Tour," and that the beneficiary happened to arrive at the petitioning church just as the church was seeking a new pastor. [REDACTED] stated: "We invited [the beneficiary] to conduct our worship services and preach during his stay in the US with the mutual intention to get to know each other. . . ."

We offered [the beneficiary] the free use of our parsonage and other utilities and facilities of our congregation.” The record shows that the petitioner made this offer on October 31, 2005.

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. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information.” 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

The revised USCIS regulation at 8 C.F.R. § 204.5(m)(4) states that the beneficiary must:

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.

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 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.

On December 12, 2008, the AAO remanded the petition to the director, for a new decision under the revised regulations. On February 4, 2009, the director instructed the petitioner to submit newly-required evidence, and emphasized the requirement at 8 C.F.R. § 204.5(m)(11) that qualifying prior experience in the United States “must have been authorized under United States immigration law.”

In response, the petitioner submitted various documents, including a copy of an IRS Form W-2 Wage and Tax Statement showing that the petitioner paid the beneficiary \$24,000 in salary in 2008, plus the use of property worth \$9,180 and \$1,800 for utilities. These amounts add up to \$34,980, an amount more than the petitioner’s revised figure of \$2,000 per month, but lower than the original claim of \$3,000 per month.

The director denied the petition on April 29, 2009, stating that the beneficiary cannot have worked lawfully in the United States between October 2005 and May 2006. Under the regulation at 8 C.F.R. § 214.1(e), a B-2 nonimmigrant may not engage in any employment in the United States. Furthermore, the director noted that the petitioner had not submitted sufficient documentation of the beneficiary’s claimed continuous employment from April 2005 to April 2007.

In response to the certified decision, counsel asserts that the director’s 2009 decision appears to contradict the 2008 decision (in which the director did not contest the sufficiency of the petitioner’s 2005 documentation). The two decisions reflect two different versions of the controlling regulations. The revised regulations require specific evidence (such as IRS documentation) that the previous regulations did not require.

Counsel quotes the revised regulation at 8 C.F.R. § 204.5(m)(4), which permits a break in the continuity of the beneficiary’s work under certain conditions. Counsel claims that the beneficiary’s travels from October 2005 to May 2006 amount to such a break. The petitioner, however, had never claimed a break in the continuity of the beneficiary’s work during that time. Rather, the petitioner stated that the beneficiary actively worked as a traveling pastor during that time – a claim that counsel repeats in the latest submission. The regulations require the petitioner to document the beneficiary’s work during the two-year qualifying period. The petitioner cannot evade this requirement by labeling the beneficiary’s continuing work as a “break.”

Under the regulation at 8 C.F.R. § 204.5(m)(4)(iii), the petitioner must establish that the nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. The petitioner has not shown this to be the case. Traveling from church to church as a pastor is neither religious training nor sabbatical. Furthermore, the petitioner claims to have provided the beneficiary with housing and other amenities beginning around October 31, 2005, more than six months before the beneficiary received R-1 nonimmigrant status. Therefore, according to the petitioner's version of events, the beneficiary engaged in unauthorized employment in late 2005 and early 2006. 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. *Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982).

For the above reasons, we reject counsel's contention that the beneficiary's travel period from late 2005 to early 2006 constitutes a break that did not involve unauthorized work in the United States. We find that the beneficiary appears to have engaged in unauthorized employment from October 2005 to May 2006. Furthermore, the petitioner has provided only partial IRS documentation of the beneficiary's employment after that time, and no evidence comparable to IRS documentation relative to the beneficiary's earlier claimed work in the Philippines. We agree with the director's finding that the petitioner has not shown that the beneficiary meets the requirement for two years of continuous, lawful employment immediately preceding the petition's filing date.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the AAO will affirm the director's certified decision.

ORDER: The director's decision of April 29, 2009 is affirmed. The petition is denied.