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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

DATE: FEB 2 4 2012 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

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:

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,

Mary Gulnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition and it 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 minister. The director determined that the petitioner had not established that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the petition and that the beneficiary is qualified for the proffered position.

On appeal, the petitioner asserts that the beneficiary has not been paid for his full-time employment with the petitioning organization. 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 on appeal is whether the petitioner has established that the beneficiary worked continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the visa 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.

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 August 28, 2009. Accordingly, the petitioner must establish that the beneficiary was 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.

The petitioner indicated on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, that the beneficiary entered the United States in June 2005 as a border crossing B-2 nonimmigrant visitor. In an August 24, 2009 letter submitted in support of the petition, the petitioner, through its senior pastor , stated that the beneficiary "is working full time minister in the ministry of [the petitioning organization] from the period of time, which began on [sic] October 2006 and is continuing at the present time." The petitioner further stated:

> [The beneficiary's] responsibilities include preaching, conducting worship services, teaching God's Word, establishing cell group[s], doing pastoral counseling, conducting conferences or leadership training and discipleship program.
>
> [The beneficiary] administers all the sacraments of the church including baptism, communion and performing funerals.

The petitioner submitted no other documentation with the petition to establish the beneficiary's qualifying work experience. In a March 4, 2010 request for evidence (RFE), the director instructed the petitioner to submit documentation of the beneficiary's prior work experience in accordance with the above-cited regulation:

> Provide experience letters written by the previous and current employers that include a breakdown of duties performed in the religious occupation for an average week. Include the employer's name, specific dates of employment, specific job duties, number of hours worked per week, form and amount of compensation, and level of responsibility/supervision.

The director also specifically instructed the petitioner to submit evidence of the beneficiary's prior compensation as outlined in the regulation at 8 C.F.R. § 204.5(m)(11).

In response, the petitioner stated that the proffered position was that of youth director and provided a list of the beneficiary's duties, which included pastoral duties of preaching, establishing cell groups, leadership training, baptism, communion, and performing funerals. The petitioner stated that the beneficiary received non-salaried compensation and that from November 2007 to 2009, the petitioner provided him with education benefits and love offerings, and that from November 2009, the petitioner compensated the beneficiary with seminar education and a "modest salary."

The petitioner provided a copy of the beneficiary's border crossing card, issued on August 11, 1999 with an expiration date of August 10, 2009, which indicated that employment was not authorized. The petitioner also provided a copy of the beneficiary's employment authorization card, which is valid from October 15, 2009 to October 14, 2011. The petitioner also submitted copies of unprocessed checks in varying amounts ranging from $300 to $1,800 made payable to the beneficiary in January, February and March 2010. The petitioner also stated that it was submitting documentation to establish that it paid for the beneficiary's education; however, no such evidence appears in the record.

In denying the petition, the director found that the beneficiary had no authorization to work in the United States prior to November 2009, and therefore was not lawfully employed in the United States during the statutory qualifying period.

On appeal, the petitioner asserts that the beneficiary worked full time without salary and received "love offerings as compensation prior to receiving his work permit. Not receiving a salary does not negate the fact that his employment was lawful, full-time employment." The petitioner submits statements from several individuals who state that they are members of the petitioning organization and certify that the beneficiary has been working in the ministry since October 2006 and that "the church compensates him with the right salary."

The petitioner submitted no verifiable documentation of any compensation received by the beneficiary during the qualifying two-year period. None of the checks that the petitioner claims to have issued to the beneficiary in 2010 appear to have been processed. Although the petitioner alleges that the beneficiary received "love offerings" as his compensation, it submitted no documentation to establish the beneficiary's receipt of this money. The petitioner has submitted no documentation to establish the beneficiary's prior employment as outlined by the regulation at 8 C.F.R. § 204.5(m)(11).

Additionally, the petitioner failed to address the beneficiary's work in an unlawful status during the two years immediately preceding the filing of the petition. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.,* 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

The petitioner has failed to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the visa petition.

The director also determined that the petitioner had not established that the beneficiary was qualified for the proffered position.

The regulation at 8 C.F.R. § 204.5(m)(5) defines religious worker as "an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation,

whether or not in a professional capacity, or as a minister." The regulation also defines minister as 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.

Finally, the regulation at 8 C.F.R. § 204.5(m)(9) provides:

> *Evidence relating to the qualifications of a minister.* If the alien is a minister, the petitioner must submit the following:
>
> > (i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and
> >
> > (ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological institution is accredited by the denomination, or
> >
> > (iii) For denominations that do not require a prescribed theological education, evidence of:
> >
> > > (A) The denomination's requirements for ordination to minister;
> > >
> > > (B) The duties allowed to be performed by virtue of ordination;
> > >
> > > (C) The denomination's levels of ordination, if any; and

> (D) The alien's completion of the denomination's requirements for ordination.

In an August 24, 2009 letter submitted with the petition, the petitioner stated:

> [The beneficiary] was license[d] to the Ministry by the church in the Baptist denomination in 2007[.]
>
> In addition[, the beneficiary] has received specialized training in leadership and counseling by the . He also is attending the biblical seminary to accomplish his studies in Theology. Besides his educational background, [the beneficiary] also has had years of minister and ministerial experiences. From 1995 to the present, [he] is dedicated and has served our Hispanic community well in Mexico and U.S.A.

The petitioner also submitted a copy of the beneficiary's May 6, 2007 "certificate of license," certifying the beneficiary "to preach the Gospel . . . and to exercise his gifts in work of the ministry." The petitioner submitted an August 4, 2009 letter from the certifying that the beneficiary attended the school from the fall of 2005 to the fall of 2007. The petitioner also provided a copy of the beneficiary's academic transcript from the school.

In her RFE, the director instructed the petitioner to:

> **Beneficiary Qualifications:** Submit evidence to show that the beneficiary has been ordained. If the petitioner's religion or organization does not have formal ordination procedures, provide other evidence that the beneficiary has been authorized to conduct religious worship and perform other services usually performed by members of the clergy such as marriages and funerals.
>
> **Requirements for Ordination:** If the petitioner's religious or organization does have formal ordination procedures, provide a detailed description of the religious denomination's or organization's requirements for ordination.

In response, the petitioner advised to "Please see the petitioner's requirements letter." However, no document was submitted that appears to contain the information requested by the director. In denying the petition, the director stated:

> The certificate [of license] does not establish that the beneficiary has been ordained or otherwise authorized to perform religious services commonly performed by the clergy . . . .
>
> It is also noted that the certificate was issued by the petitioner. Consequently, the reliability of the document is questioned, as the temptation exists to produce such a document for the purpose of establishing eligibility to convey immigration benefits. Because the petitioner failed to submit denominational literature that

> clearly demonstrates that individual churches are authorized to independently ordain their own ministers, this certificate is deemed to be insufficient without additional evidence.

On appeal, stated:

> There is no standard process or policy concerning ordination in . In fact the cannot ordain anyone. The matter of ordination is address strictly on a local church level. Ever is autonomous and decides individually whether or not to ordain. When a church senses that God has led a person into pastoral ministry, it is a common practice for the Senior Pastor to review the individual testimony of salvation, his pastoral calling from the Lord, and his qualifications. Based upon that review the church typically decides whether or not ordination would be appropriate.
>
> After prayer and careful review of [the beneficiary's] testimony of salvation, his pastoral calling from the Lord, his personal character and his dedication to the ministry, I as Senior Pastor . . . decided that [the beneficiary] was qualified to be ordained as a Minister of the Gospel. [He] was officially ordained on May 6, 2007.

The petitioner submitted a copy of an e-mail from " (no further information) confirming the role in pastoral ordinations.

The petitioner has submitted sufficient documentation on appeal to establish that the beneficiary is qualified for the proffered position according to the petitioner's standards. Therefore, the director's decision to the contrary is withdrawn.

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.