

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



C1

FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JAN 11 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:

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.

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 withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further action and consideration.

The petitioner is a nondenominational Christian church.¹ 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 intended position qualifies as a religious occupation.

On appeal, the petitioner submits a letter from a church official and copies of various documents.

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 director cited two grounds for denial, each of which revolves around the question of whether the beneficiary's work constitutes a religious occupation. The first finding was that the beneficiary's past

¹ We note that, while the petitioner's mailing address is in [REDACTED] the church holds biweekly services in members homes and at rented locations elsewhere in Massachusetts, most recently a banquet facility in Hudson.

experience in Brazil was not in a qualifying religious occupation; the second finding was that the beneficiary's intended future work in the United States is not in a qualifying religious occupation. Because both findings involve essentially the same issue (but concerning different time periods), we will consider them together here.

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.

The 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. If the beneficiary was not working in a qualifying religious occupation or vocation during that time, then the beneficiary cannot meet this requirement.

The petitioner filed the Form I-360 petition on April 14, 2008. In a letter accompanying the petition, [REDACTED] of the petitioning church, stated that the beneficiary "is being asked to handle pastoral duties as a full-time (40hrs/week) [REDACTED] . . . Those duties would include, but are not limited to preaching and teaching, the celebration of the [REDACTED] weddings and spiritual counseling."

Regarding the beneficiary's past work, the petitioner submitted a letter dated March 14, 2008, from [REDACTED]

[REDACTED]

His pastoral duties include[] but [are] not . . . limited to: preaching and teaching, celebration of the Lord's Supper, baptisms, wedding and spiritual counseling.

[The beneficiary] is qualified to perform the duties of a Minister as he hold[s] a Bachelor Degree in Theology from the [REDACTED]

The petitioner submitted translated copies of various Brazilian documents, attesting to the beneficiary's theological education and his ordination.

The director denied the petition on June 19, 2009, stating: "The beneficiary's duties do not relate to a traditional religious function. The duties of the position are primarily administrative and secular in nature." On appeal, the petitioner repeats the assertion that the beneficiary is an ordained minister who will lead Sunday services and perform "weddings, baptisms, [and] preaching."

The director does not appear to have considered the regulatory definition of a minister at 8 C.F.R. § 204.5(m)(5). That regulation defines a 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.

Throughout this proceeding, the petitioner has clearly indicated and documented that the beneficiary is an ordained minister, authorized to perform duties usually performed by authorized members of the clergy of its denomination. The beneficiary's duties, as described, appear to have a rational relationship to the religious calling of a minister. The statute and regulations plainly differentiate between a religious occupation and the vocation of a minister, but the director has consistently focused only on the religious occupation issue. The director has not discussed the beneficiary's ordination at all, much less called that ordination into question. Because the record consistently and credibly portrays the beneficiary as a minister, and the director failed to take this into account, we must withdraw the director's finding and, therefore, the denial decision that rests entirely on that one finding.

Nevertheless, another issue remains which prevents the approval of the petition. 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 regulation at 8 C.F.R. § 204.5(m)(7) requires the petitioner to execute a detailed employer attestation, containing information about the petitioner, the beneficiary, and the job offer. The record does not contain this required document. (Other materials in the record address many, but not all, of the points shown on the attestation.) The cited regulation was not yet in effect when the petitioner filed the petition. The director later requested newly required evidence, but that request contained no mention of the attestation requirement.

With respect to the employer attestation, we take particular notice of the regulatory clauses at 8 C.F.R. §§ 204.5(m)(7)(vii) and (viii). Those regulations require the petitioner, respectively, to attest that the alien will be employed at least 35 hours per week, and to identify the specific location(s) of the proposed employment. The petitioner has indicated that it holds services at a rented location every other Sunday. Because the petitioner's use of the rented facility clearly does not approach full-time employment, the petitioner must credibly show how the beneficiary's other activities will amount to full-time employment, and specify where that employment will take place.

The director must allow the petitioner a final opportunity to submit the required employer attestation and address the above concerns. In the event that the petitioner meets these requirements, and no further issues of concern surface, it appears that USCIS may then properly approve the petition.

We note that, on October 8, 2008, a USCIS officer conducted a site inspection and compliance review as described in the regulation at 8 C.F.R. § 204.5(m)(12). The officer concluded that the petitioner had failed the compliance review because the petitioner meets at a secular facility and had provided insufficient information about the size of its congregation. The director notified the petitioner of this adverse information on April 20, 2009. The petitioner answered that notice and provided further documentation. The petitioner's response evidently satisfied the director, because the director did not cite these concerns in the subsequent denial notice. We consider the petitioner to have successfully overcome the issues that led to the failure of the compliance review. This, of course, does not rule out the possibility of a follow-up inspection if the director deems it necessary.

Therefore, the AAO will remand this matter for a new decision. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.