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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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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.

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,

U. Deadend
Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the matter to the Director, California Service Center for consideration and action pursuant to new regulations promulgated on November 26, 2008. The director again denied the petition and the matter is now before the AAO on certification. The AAO will affirm the director's decision.

The petitioner seeks classification 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 in an unspecified religious capacity. On certification, the director determined that the petitioner had failed to establish that he worked continuously in a qualifying religious occupation or vocation for two full years prior to the date the petition was filed. The petitioner submitted no further argument or evidence on certification.

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 issue presented is whether the petitioner has established that he 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.

Therefore, the petitioner must show that he 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 December 2, 2005. Accordingly, the petitioner must establish that he 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 [Internal Revenue Service] 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 [U.S. Citizenship and Immigration Services].

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 he entered the United States on March 4, 1992 and that his current nonimmigrant status was "N/A." In an undated letter submitted in support of the petition, [REDACTED] the president and [REDACTED] the petitioner's prospective employer, stated that the petitioner "has volunteered his time and efforts to the jamaat." He stated that some of the petitioner's "every day" volunteer duties included educating and motivating youths and the Islamic community, organizing and leading trips and outings to such places as Coney Island, organizing and leading food drives, and organizing donations of clothing for the needy. [REDACTED] stated that the beneficiary's duties "other than that performed routinely be other church members" included religious baptism, Islamic marriages, experience in conducting Islamic funerals and burials, conducting religious services in the absence of the priest, conducting volunteer programs for the youth in auto mechanics and religious counseling. [REDACTED] stated that the petitioner "volunteers to the jamaat and will be employed full time as an active worker."

The petitioner submitted letters from five individuals who attested to his volunteer work in the community and mosque. However, the petitioner submitted no verifiable documentation of his religious work during the qualifying period. In an unsigned statement dated July 25, 2006, the petitioner stated that he had supported himself through his employment at Dundy Glass and Mirror Corporation.

In denying the petition, the director stated that immigration records do not reflect that the petitioner had been approved for any immigration employment status within the United States and that the petitioner had submitted no documentation to establish that he worked in a religious occupation throughout the two-year qualifying period. The director also stated that immigration records indicate that the petitioner entered the United States in a B-2 nonimmigrant visitor for pleasure status in March 1992 and had not departed since his entry and had therefore violated the terms of his visa.

On appeal, the petitioner stated that he has volunteered as a religious teacher since 1998 and therefore has more than the two years experience necessary to qualify for this visa preference petition. The petitioner also took issue with the director's conclusion that he has not left the United States since 1992, stating that he departed in 1993, 1994, 1995, 1996 and 1998. The petitioner submitted a copy of his visa indicating that he received a B1/B2 visa on August 3, 1995 that was valid until May 31, 1999. The petitioner also submitted copies of Form I-94 Departure Record and

his passport reflecting that he had entered and left the United States several times from 1993 to 1999. The petitioner submitted no documentation of any other nonimmigrant status and that he was authorized to work in the United States at any time. A nonimmigrant admitted to the United States as a temporary visitor for pleasure (B2) may not engage in any employment. 8 C.F.R. § 214.1(e).

While the petitioner stated that he supported himself through his work at Dundy Glass and Mirror Corporation, he provided no verifiable documentation, such as evidence of compensation, of his religious work during the qualifying period. Regarding the petitioner's volunteer work, we note that in supplementary information published with the proposed rule in 2007, USCIS stated:

The revised requirements for immigrant petitions and nonimmigrant status require that the alien's work be compensated by the employer because that provides an objective means of confirming the legitimacy of and commitment to the religious work, as opposed to lay work, and of the employment relationship. Unless the alien has taken a vow of poverty or similarly made a formal lifetime commitment to a religious way of life, this rule requires that the alien be compensated in the form of a salary or in the form of a stipend, room and board, or other support so long as it can be reflected in a W-2, wage transmittal statements, income tax returns, or other verifiable IRS documents. USCIS recognizes that legitimate religious work is sometimes performed on a voluntary basis, but allowing such work to be the basis for an R-1 nonimmigrant visa or special immigrant religious worker classification opens the door to an unacceptable amount of fraud and increased risk to the integrity of the program. In this rule, USCIS is proposing to implement bright lines that will ease the verification of petitioner's claims in the instances where documentary evidence is required. 72 Fed. Reg. 20442, 20446 (April 25, 2007).

Furthermore, as specifically provided for in the final rule, the only religious workers who may rely on self-support rather than actual salary or in-kind support as evidence of their prior employment are those workers in an established missionary program under an R-1 or B-1 nonimmigrant visa. In this instance, the record does not establish that the petitioner was in a missionary program or that he was an R-1 or B-1 nonimmigrant. Instead, the record indicates that the petitioner last entered the United States on May 16, 1999 as a B-2 nonimmigrant visitor. The petitioner's voluntary work in the United States is not qualifying.

The record reflects that the petitioner was not in a lawful immigration status during the two years immediately preceding the filing of the visa petition. Any work performed by the petitioner in the United States while in an unlawful immigration status interrupts the continuity of his work experience for the purpose of this visa petition.

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

Beyond the decision of the director, we note that the record does not contain the attestation required by regulation at 8 C.F.R. § 204.5(m)(7) and fails to establish how the petitioner's prospective employer intends to compensate him as required by the regulation at regulation at 8 C.F.R. § 204.5(m)(10).

The AAO will affirm the certified denial 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. The petitioner has not sustained that burden.

ORDER: The director's decision of May 28, 2009 is affirmed. The petition is denied.