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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

**PUBLIC COPY**

C,

[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JAN 20 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:

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

The petitioner describes itself as "a non-denominational Christian ministry." 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 local youth minister and special projects coordinator. The director determined that the petitioner had not established that had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition.

As required by the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.4(b)(2), the director allowed the petitioner 30 days in which to submit a brief in response to the certified decision. That response period has elapsed, but to date, the record contains no further correspondence from the petitioner or from counsel. The AAO therefore considers the record of proceeding to be complete, and will base its decision on the record as it now stands.

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 November 6, 2008. The director initially denied the petition on May 11, 2009, because the director determined that the petitioner had not submitted sufficient evidence of qualifying tax-exempt status as required by the USCIS regulation at 8 C.F.R. § 204.5(m)(8). The AAO withdrew that decision on July 20, 2010, and remanded the petition to the director for a new decision.

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.

The USCIS regulation at 8 C.F.R. § 204.5(m)(11) reads, in pertinent part:

*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.

In addition, the beneficiary's prior experience must be as a minister or in a qualifying religious occupation or vocation. The USCIS regulation at 8 C.F.R. § 204.5(m)(5) defines the relevant terms:

*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's work amounts to a religious vocation. [REDACTED] president of the petitioning entity, had previously described the beneficiary as an ordained minister in an October 26, 2008 letter. The petitioner had previously submitted a copy of the beneficiary's Certificate of Ordination from [REDACTED] Colombia, dated January 21, 2003.

The petitioner's initial submission also included IRS Form W-2 Wage and Tax Statements indicating that the petitioner paid the beneficiary \$6,440.18 in 2006 and \$17,000.00 in 2007. The petitioner submitted an unsigned, uncertified copy of the beneficiary's 2006 return and information that the beneficiary had electronically filed his 2007 return. The petitioner has claimed that it will pay the beneficiary \$24,000 per year. The petitioner did not explain why the amounts paid in earlier years were so much lower than that figure.

Photocopies of processed paychecks show that, at the beginning of 2008, the petitioner paid the beneficiary \$631.62 twice a month and then, after a one-time mid-March payment of \$843.50, increased the payments to \$738.06 each. The most recent paycheck in that submission dates from early September 2008.

The petitioner also submitted tax documents from 2004 through 2006 reporting income from [REDACTED] Laredo, Texas. We note that [REDACTED] paid the beneficiary \$6,325.00 in 2006, which is roughly the same amount that the petitioner paid the beneficiary that year. This is consistent with [REDACTED]'s assertion that the petitioner hired the beneficiary in June 2006, before the qualifying period began in early November. Because the beneficiary's work with [REDACTED] ended before the qualifying period, we will not discuss that employment in detail.

The record shows that the United States Consulate in Bogotá issued an R-1 nonimmigrant religious worker visa to the beneficiary on January 24, 2007, valid for two years. That visa permitted the beneficiary to work exclusively for the petitioner. (The record does not reveal when the beneficiary first obtained R-1 status allowing him to work for the petitioner, rather than for [REDACTED].) The beneficiary later re-entered the United States on August 31, 2008, and the admitting officer wrote that the beneficiary's R-1 nonimmigrant status would be valid until August 31, 2011. It is not clear that this three-year admission took the beneficiary's prior admissions into account. Under the regulations in effect in August 2008, an R-1 nonimmigrant was eligible for an initial three-year admission, renewable for another two years. *See* 8 C.F.R. §§ 214.2(r)(4) and (5) (2008).

On August 17, 2010, the director instructed the petitioner to submit evidence including "signed and complete copies . . . of the beneficiary's federal income tax returns which were filed with IRS" during the relevant years, and "a history and a breakdown of duties performed by the beneficiary" during the two-year qualifying period (director's emphasis).

In response, the petitioner stated the beneficiary's title as "Media Director/Minister," with the following duties:

- Website Development
- Production of Newsletters and Press Releases
- Plan and distribute spiritual messages and interactive media training-webinars
- Audio-Visual Production Recording and editing of Biblical and spiritual visual graphics for use by online youth ministry groups
- [REDACTED] develop creative multicultural and cross-cultural spiritual outreach in Spanish and English language
- Promote The Gathering Youth Local Outreach by recruiting new members and converts with spiritual invitation to worship
- Latin America Outreaches (logistics Coordination) Drafting and developing online programming with cross-cultural spiritual messages
- Conferences and Translation-communications to diverse outreach communities to bring them to Spiritual and Biblical conferences

Asked whether the position requires at least 35 hours of work per week, the petitioner answered “yes.”

The petitioner also submitted a copy of an IRS Form W-2, showing that the petitioner paid the beneficiary \$24,000 in 2009, and an IRS Form 1099-MISC Miscellaneous Income statement showing that [REDACTED], paid the beneficiary \$3,416.85 in “Nonemployee compensation” the same year.

The director denied the petition on November 17, 2010, in part because the petitioner did not specify “the number of hours worked each week,” and “it appears that [the] majority of the beneficiary’s job [duties] are secular in nature.” The director also found that the petitioner did not submit all of the requested IRS documentation for 2006-2008. Finally, the director noted that the beneficiary’s reported income from [REDACTED] implies unauthorized employment for that entity.

With respect to “the number of hours worked each week,” the petitioner had attested that the position is full-time. The director cited no evidence that would diminish the weight or credibility of the petitioner’s claims in this regard.

More persuasive is the director’s observation that many of the beneficiary’s stated duties appear to involve multimedia production work rather than traditional religious functions. The petitioner has not shown that its religious denomination – not just the petitioning organization itself – recognizes the beneficiary’s position as a religious occupation.

The requirements of a religious occupation do not apply to the vocation of a minister. We acknowledge the evidence of the beneficiary’s 2003 ordination, but this ordination does not permanently entitle the beneficiary to immigration benefits without consideration for his present or intended future duties. Under the regulation at 8 C.F.R. § 204.5(m)(5), we will only consider the beneficiary to be a minister if he performs activities with a rational relationship to the religious calling of the minister. The petitioner has not demonstrated that the beneficiary’s duties generally conform to those of ministers within the same religious denomination. Activities such as web design do not take on a rational relationship to a minister’s calling simply because the web designer was ordained.

If the beneficiary’s past work was not primarily religious or ministerial in nature, then that experience cannot qualify the beneficiary for the classification sought. The petitioner has not contested the director’s conclusions in this regard.

The petitioner has also failed to contest the director’s finding that the petitioner submitted some, but not all, of the required IRS documentation of the beneficiary’s past employment. After the director requested copies of the beneficiary’s 2006-2008 income tax returns as submitted to the IRS, the petitioner submitted IRS documentation from 2009. Neither the petitioner nor counsel explained the omission of the 2006-2008 documentation that the director had specifically requested.

Regarding the IRS Form 1099-MISC from [REDACTED] the record does not reveal what the beneficiary did in exchange for "nonemployee compensation" from that corporation. If the beneficiary performed any sort of compensated service for [REDACTED], then such work would appear to violate his R-1 nonimmigrant status, as the director has stated. Nevertheless, this violation would have taken place in 2009, after the November 2008 filing date, and therefore it would not show that the beneficiary worked without authorization during the two-year qualifying period before the filing date. A violation of status would have important consequences for his ongoing status, as well as his intended future admissibility as an immigrant, but it does not concern the beneficiary's past qualifying employment. The only significance it has for the present proceeding is that section 101(a)(27)(C)(ii)(I) of the Act and the regulation at 8 C.F.R. § 204.5(m)(2)(i) require the beneficiary to intend to work solely in the vocation of a minister. If we accept the petitioner's assertion that the beneficiary is a minister, then secular work for an outside employer casts doubt on the claim that the ministry is the beneficiary's sole intended work in the United States.

Some of the director's findings are stronger than others. Still, the petitioner has not contested the director's latest decision. Because the petitioner has left key questions unanswered, we agree with the director that the petitioner has not met its burden of proof in this proceeding. We will, therefore, affirm the director's decision to deny the petition.

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 denial of the petition.

**ORDER:** The director's decision of November 17, 2010 is affirmed. The petition is denied.