

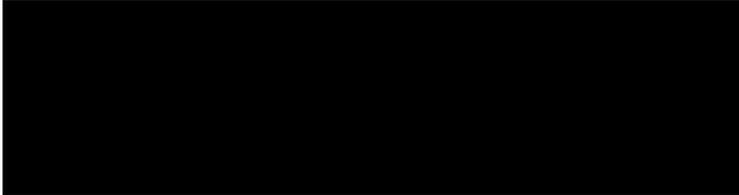
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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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:



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 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 regional conference of a [REDACTED]. 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/evangelist minister. The director determined that the petitioner had not established that the position qualifies as a religious occupation.

We note that the director originally rejected the petitioner's appeal as untimely. The director later determined that the appeal was not untimely, and forwarded the appeal to the AAO for review.

On appeal, the petitioner submits a brief from counsel and copies of supporting 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 only stated ground for denial in the director's decision concerns the question of whether the petitioner seeks to employ the beneficiary in a qualifying occupation. 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 petitioner filed the Form I-360 petition on September 22, 2008. In a letter that accompanied the initial filing, [REDACTED] superintendent of the petitioning conference, described the beneficiary's position:

The beneficiary is carrying a religious worker position as [REDACTED] his current assignment is in the [REDACTED]

He participates in conducting religious worship and performs spiritual aspects for members of the congregation, such as: marriage, women and men's encounters, praying and fasting services, directing cell groups at homes. As a Pastor/Evangelist Minister he provides spiritual and moral guidance and assistance to members and ministers. This includes, but is not limited, to the personal time for devotions. Development and spiritual growth of the church, involving program activities, preparation and preaching at the specially scheduled services. He participates in evangelistic events for community outreach and community needs; visiting hospitals, homeless, personal evangelism, visiting the sick and others who have not been able to attend the worship services. He is also responsible for performing sacraments such as funerals, water baptisms and weddings. He is also responsible for providing instruction in Christian traditions, impart values and beliefs of the Christian religious Faith. Developing missionaries's [*sic*] trips, covering various countries such as: Colombia, Guatemala, Nicaragua, Honduras, Panama, [and] Costa Rica, bringing them donations and support in different areas, and establishing new churches.

[The beneficiary] is in charge of instructing, training, teaching and coordinating various seminars for our church's leaders.

The petitioner submitted copies of the beneficiary's ministerial credentials, including his certificate of ordination dated November 20, 1999. An April 27, 2007 certificate ordaining the beneficiary as an elder indicates that the beneficiary has the authority "to officiate at marriages, and at the burial of the dead, to administer the sacraments of baptism and the Lord's Supper."

While the petition was pending, USCIS published revised regulations for special immigrant religious worker petitions. The new regulations applied to all petitions pending on the publication date. *See* 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). On April 22, 2009, the director advised the petitioner of the new regulations and instructed the petitioner to submit newly required evidence.

The petitioner's response included the following description of the beneficiary's intended duties:

- Responsible for all the Evangelistic outreach of our denomination which involves:
 - Church-planting functions. . . .
 - Programs and activities in order to promote the necessary support for our Evangelistic projects.
 - Organize, plan and coordinate trips to Hispanic countries, like Honduras, Nicaragua, El Salvador etc., and other countries where he has contact with pastors and congregations in need.
 - He develops operation procedures to devise the most efficient methods to accomplish our goals.
 - Report to the Superintendent [on] the Evangelistic program and church planter activities.
 - Direct Worship Service
 - Assist and Direct Prayer meetings
 - Coordinate and participate in personal evangelism
 - Preparing Biblical material to be taught in the home cell-groups
 - Visit members of the congregation who are in need of encouragement/prayer
 - Helps desolate and spiritually lost people to become Christian believers, who will be examples to this society, leading them to the Truth and righteous way of God's love through different events such as: Retreats, Seminars, etc. . . .
 - Organizes weddings, baptisms, and presentation of children when required.
 - Discipling the new member[s] of the planted churches (Miami and West Palm Beach)

The petitioner submitted a copy of its "Alphabetical Pastor & Church Directory," which identified two employees at the conference's headquarters, and identified the beneficiary as an [REDACTED] and at [REDACTED]. A copy of the January-March 2009 issue of [REDACTED] identifies the beneficiary as a "pastor" on page 13, and credits him with "[t]wo churches started in the San Pedro Sula area" of Honduras.

The director denied the petition on June 29, 2009, stating that the petitioner had not established that the beneficiary's "position is recognized as a religious occupation related to a traditional function in this denomination." On appeal, counsel argues that the beneficiary's position has clear religious significance. [REDACTED], overseer of the denomination's Annual Conferences of the Eastern United States, the United Kingdom, and Latin America, repeatedly refers to the beneficiary as a minister and states that "he is habitually engaged in activities relating to a traditional religious function."

The regulation at 8 C.F.R. § 204.5(m)(5) 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, we will withdraw the director's finding and, therefore, the denial decision that rests entirely on that one finding.

Nevertheless, several other issues remain which prevent 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).

ATTESTATION

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. Certain subclauses of that regulation require the petitioner to identify (ii) the number of members of the

prospective employer's organization; (viii) the specific location(s) of the proposed employment; and (iii) the number of employees who work at the same location where the beneficiary will be employed. In its employer attestation, the petitioner stated:

South Atlantic Conference: The number of members is 3,342 congregated in 44 churches. . . .

There are 3 employees for the South Atlantic Conference. The Full Time Superintendent . . . Administrative Assistant & Evangelist Minister.

The petitioner indicated that the beneficiary would work at the conference's headquarters "and [REDACTED]" The petitioner's attestation did not include specific addresses for the two "planted churches." Therefore, the petitioner did not provide all of the specific locations of the proposed employment. This information is necessary because USCIS reserves the right to inspect the site(s) of proposed employment. *See* 8 C.F.R. § 204.5(m)(12). If the petitioner does not disclose the physical locations of the intended employment, then USCIS is unable to verify the petitioner's claims.

COMPENSATION

The regulation at 8 C.F.R. § 204.5(m)(10) reads:

Evidence relating to compensation. Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS [Internal Revenue Service] documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

The petitioner has stated that the beneficiary would earn \$27,600 per year. The petitioner has submitted budgets and other financial documents from the regional conference. These documents do not show that the conference has paid the beneficiary's salary in the past. The beneficiary's paychecks and income tax returns identify [REDACTED] – not the conference – as the employer who compensates the beneficiary. (We will revisit this issue below.) Also, the conference's financial documents show net annual income (after expenses) of less than \$1,000. If the petitioner is not already paying the beneficiary's salary, and does not have enough surplus income to begin covering that salary in the future, then it is not clear how the petitioner will compensate the beneficiary.

We note that the petitioner stated that IRS Forms W-2 and W-3 accompanied the petitioner's response to a request for evidence, but we can find no such materials in the record.

PAST EXPERIENCE

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:

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 submitted copies of ten checks from [REDACTED] to the beneficiary. Eight of the checks show an uninterrupted sequence of payments from mid-February to late May 2006. The other two checks show dates in January 2007 and February 2008, respectively. All of the checks are in the amount of \$1,000, except for the May 15, 2006 check, which shows \$1,300 (the petitioner did not explain the change in amount). The photocopied checks show no sign of processing for payment. Markings on the checks refer to semimonthly pay periods. That pay schedule, at \$1,000 per paycheck, extrapolates to \$24,000 per year.

Photocopies of the beneficiary's income tax returns (not certified by the IRS) indicate that [REDACTED] paid the beneficiary \$8,125 in 2005, \$14,000 in 2006 and \$24,000 in 2007. The beneficiary's 2008 income tax return indicates that the petitioning conference paid him \$38,000 that year. These widely varying amounts do not readily suggest continuous employment throughout the two-year period ending September 22, 2008.

The petitioner has not submitted sufficient evidence of the beneficiary's continuous employment during the two-year qualifying period. Furthermore, the regulations at 8 C.F.R. §§ 204.5(m)(4) and (11) require the qualifying employment to have been authorized under U.S. immigration law.

The record shows that [REDACTED] filed a Form I-129 petition, with receipt number [REDACTED], to classify the beneficiary as an R-1 nonimmigrant religious worker. USCIS approved that petition, and granted the beneficiary R-1 nonimmigrant status valid from September 8, 2005 to September 7, 2008.

A petition is not properly filed until USCIS receives the petition at the proper location. See 8 C.F.R. §§ 103.2(a)(1) and (7)(i). The record shows that the petitioner attempted to file the petition at another USCIS office on September 4, 2008, but the director did not receive Form I-360 until September 22, 2008. Therefore, the beneficiary was not continually in lawful immigration status throughout the two years immediately prior to the filing date.

Also, the regulation at 8 C.F.R. § 274a.12(b)(16) allows an R-1 nonimmigrant to work only for the religious organization that obtained R-1 status for the alien. The former regulation at 8 C.F.R. § 214.2(r)(6), in effect prior to November 26, 2008, stated:

Change of employers. A different or additional organizational unit of the religious denomination seeking to employ or engage the services of a religious worker admitted under this section shall file Form I-129 with the appropriate fee. . . . Any unauthorized change to a new religious organizational unit will constitute a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act.

Similar provisions now exist at 8 C.F.R. § 214.2(r)(13). More generally, under 8 C.F.R. § 214.1(e) a nonimmigrant may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status.

In this instance, the R-1 petitioner was [REDACTED]. Therefore, the beneficiary had no authorization to work for any "different or additional organizational unit" of the petitioner's denomination. On his 2008 income tax return, however, the beneficiary identified the petitioning conference as his source of compensation. If true, this would have violated the beneficiary's R-1 status. His R-1 status permitted him to work for [REDACTED] but not for any other religious organization in the United States, whether or not that organization was affiliated with [REDACTED]. Therefore, the record does not show that the beneficiary maintained lawful nonimmigrant status throughout the two-year period immediately preceding September 22, 2008.

As explained above, there are several evident or potential disqualifying factors in the record. The director, however, did not cite these factors in the denial notice, and therefore the petitioner has not had the opportunity to address them. For this reason, we cannot dismiss the appeal outright. Instead, we instruct the director to issue a new decision to take the above information into account.

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.