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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

C1

FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

JAN 25 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. On December 8, 2008, the Administrative Appeals Office (AAO) remanded the matter for consideration under new regulations. The director again denied the petition and, following the AAO's instructions, certified the decision to the AAO for review. The AAO will affirm the director's decision.

The self-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 as an instructor. The director determined that the petitioner had failed to submit the required attestation, had failed to establish that there is a valid job offer from a prospective employer, that the proffered position qualifies as that of a religious occupation, and that the petitioner worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the petition.

The petitioner submits no additional documentation 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 first issue presented is whether the petitioner has submitted the required attestation.

The petition was filed on October 26, 2007. On November 26, 2008, the U.S. Citizenship and Immigration Services (USCIS) issued new regulations for special immigrant religious worker petitions. Supplementary information published with the new rule specified:

All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information. 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

In keeping with this requirement, the AAO remanded the petition to the director on December 8, 2008, to give the petitioner an opportunity to meet the new requirements.

The new regulation at 8 C.F.R. § 204.5(m)(7) requires the petitioner to submit an attestation with details regarding the prospective employer, the self-petitioner, the job offer, and other aspects of the petition. In a December 22, 2008 request for evidence (RFE), the director notified the petitioner of the requirements of the new regulation and instructed the petitioner to have her prospective employer complete the attestation.

In her January 10, 2009 response, the petitioner stated that she was again in the Philippines, no longer working for [REDACTED] her employer at the time the petition was filed, and would be working at [REDACTED] another of the schools of the [REDACTED]. The petitioner failed to submit an attestation from an authorized official of either of the organizations. Accordingly, the petitioner failed to submit the attestation required by 8 C.F.R. § 204.5(m)(7).

The second issue is whether the petitioner has received a valid job offer from a prospective employer.

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 (either abroad or in the United States) must :

- (1) For at least the two years immediately preceding the filing of the petition have been a member of a religious denomination that has a bona fide non-profit religious organization in the United States.
- (2) Be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position in one of the following occupations as they are defined in paragraph (m)(5) of this section:
 - (i) Solely in the vocation of a minister of that religious denomination;

(ii) A religious vocation either in a professional or nonprofessional capacity; or

(iii) A religious occupation either in a professional or nonprofessional capacity.

(3) Be coming to work for a bona fide non-profit religious organization in the United States, or a bona fide organization which is affiliated with the religious denomination in the United States.

With the petition, the petitioner submitted an October 23, 2007 letter from [REDACTED] that provided a detailed description of the self-petitioner's duties.

However, in her letter of January 10, 2009, the petitioner stated that [REDACTED] encountered financial difficulties and that, as a result, [REDACTED] became interested in her services and she would begin work for that organization upon approval of a Form I-129, Petitioner for an Alien Worker, to be submitted by the [REDACTED]. The petitioner submitted no documentation of a job offer from [REDACTED], or any documentation regarding the proffered position, the duties of the position, and the compensation offered. Accordingly, the petitioner has not established that she seeks to enter the United States to work for a bona fide nonprofit religious organization or to work full time in a qualifying religious occupation or vocation. Further, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

The third issue presented on appeal is whether the petitioner has established that the proffered position qualifies as that of a religious occupation. The 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.

In his letter of October 23, 2007 submitted with the petition, [REDACTED] stated that the duties offered to the petitioner by [REDACTED] would include teaching catechism, providing religious instruction, giving preparation for the reception of the sacraments of penance, first communion and confirmation, and working with students [REDACTED]

[REDACTED] In response to the director's January 4, 2008 RFE, Our [REDACTED] Academy provided a detailed schedule for the self-petitioner, which indicated that the petitioner primarily taught secular subjects. The director denied the petition on April 4, 2008, finding that the petitioner had not established that the position qualified as a religious occupation.

On appeal, the petitioner asserted that [REDACTED] every subject taught in our schools" and that the curriculum she taught "is profoundly Catholic." Nonetheless, as discussed previously, the petitioner stated that she would be employed by a different organization than [REDACTED] [REDACTED]. The petitioner submitted no documentation regarding this new employer or of the position that she would occupy.

The petitioner has failed to establish that her proffered position is a religious occupation within the meaning of the regulation.

The fourth issue is whether the petitioner has established she 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 she 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 October 26, 2007. Accordingly, the petitioner must establish that she had been continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

With the petition, the petitioner submitted an October 16, 2007 letter from [REDACTED] parish priest with [REDACTED] Philippines, in which he stated that the petitioner served as a catechist at the S [REDACTED] from the 2005-2006 school year until October 15 of the 2007-2008 school year. At that time, she "answered the request" of [REDACTED] to teach at [REDACTED]. The petitioner submitted a copy of her visa, indicating that she was approved for an R-1 nonimmigrant religious worker visa, valid from September 20, 2007 to September 18, 2010, to work for [REDACTED] of [REDACTED]. The petitioner's Form I-94 reflects that she entered the United States pursuant to that visa on October 18, 2007. The petitioner submitted no other documentation to establish that she worked continuously in a qualifying religious occupation or vocation for the two years immediately preceding the filing of the petition.

In her RFE of January 4, 2008, the director instructed the petitioner to:

Provide evidence of the beneficiary's work history beginning October 31, 2005 and ending October 30, 2007 only. Provide a breakdown of duties performed in the religious occupation for an average week. Include the employer's name, specific job duties, the number of hours worked, remuneration, level of responsibility and who supervised the work. Ideally, this evidence should come in a way that shows monetary payment, such as W-2 forms, pay stubs, or other items showing the beneficiary received payment. Documentation showing the withholding of taxes is good evidence. However, you may also show payment through other forms of remuneration. If any work was on a volunteer basis, provide evidence to show how the beneficiary supported himself or herself (and family members, if any) during the two-year period and any other activity with which the beneficiary was involved in that would show financial support.

In response, the petitioner submitted a March 5, 2008 letter from [REDACTED] who stated that the petitioner "performed religious teaching duties" and worked as a catechist for the [REDACTED] [REDACTED] from June 20, 2005 to October 15, 2007. [REDACTED] further stated that the petitioner was a volunteer and supported herself by assisting in the family business.

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 submitted a copy of her IRS Form W-2 issued by the [REDACTED] in Denver, reflecting that it paid her \$2,307.68 in 2007. The petitioner submitted no other documentary evidence as outlined in the above-cited regulation to corroborate her employment in the Philippines and to establish her work during the qualifying period.

The petitioner has failed to establish that she 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, the petitioner has failed to establish how her prospective employer intends to compensate her.

The regulation at 8 C.F.R. § 204.5(m)(10) provides that the petitioner must submit:

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 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.

In his letter of October 23, 2007, Father ██████ stated that the beneficiary would receive a monthly compensation of \$1,250. The petitioner provided a copy of a 2007 IRS Form W-2 reflecting that she received wages of \$2,307.68. The petitioner also submitted a copy of an unaudited financial statement of the ██████ and copies of the organization's bank account statements for January and February 2008.

However, in her January 10, 2009 statement, the petitioner stated that ██████ of ██████ experienced financial problems and as a result, she would leave the organization and work for ██████. The petitioner submitted no documentation to establish how ██████ would compensate her. Accordingly, the petitioner has not established how either organization intends to compensate her for her services.

Additionally, while the petitioner submitted documentation to establish that ██████ of ██████ is a bona fide non profit organization, she has submitted no similar documentation for ██████. Therefore, even if her proposed change of employer did not constitute an impermissible material change in her petition, she has failed to establish that ██████ is a bona fide nonprofit religious organization pursuant to 8 C.F.R. § 204.5(m)(5).

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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.