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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

[Redacted]

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **JAN 25 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.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a church. 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 bible teacher. The director determined that the petitioner failed to establish that the beneficiary seeks to enter the United States “to work continuously and full time as a bible teacher.”

On appeal, counsel states that director “erroneously added the word ‘continuously’ in the denial notice.” Counsel submits a letter in support of the appeal.

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 regulation at 8 C.F.R. § 204.5(m)(2) provides that to be eligible for classification as a special immigrant religious worker, the alien must 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 occupations defined in the regulation at 8 C.F.R. § 204.5(m)(5).

In a July 23, 2007 letter, counsel stated that the beneficiary's R-1 status expired on August 2, 2006 and that she "is maintaining her legal status as F-1 since then." The petitioner submitted a copy of an August 2, 2006 Form I-797A, Notice of Action, approving the beneficiary's change of status to that of an F-1 student effective as of the date of the notice. A Form I-20 A-B, Certificate of Eligibility for Nonimmigrant (F-1) Student, indicates that the beneficiary was approved for educational training at the Elite Language Institute for a period of study to be completed by July 17, 2010.

The director denied the petition, determining that the petitioner had not established that the beneficiary worked continuously and full time as a bible teacher. The director found that the beneficiary changed her status to F-1 in 2006 and was no longer employed as a religious worker. The director stated that as the beneficiary had not been employed as a religious worker since 2006, "the petitioner and beneficiary have not been in compliance with 8 C.F.R. § 204.5(m)(2) since 2006."

On appeal, counsel states that "8 C.F.R. § 204.5(m)(2) does not require 'continuously'" and that the petitioner established that the beneficiary worked continuously as a bible teacher for at least the two years immediately preceding the filing of the petition. Counsel also asserts:

The offer of the permanent position as a Bible teacher continues to exist. The statute limitation of R-1 status is 5 years. The beneficiary used up the statute limitation. The beneficiary's change of status from R-1 to F-1 does not terminate the permanent offer of the Bible teacher position.

Counsel's assertion that the regulation does not require the petitioner to establish that the beneficiary will work continuously in the proffered position is without merit. The regulation requires the petitioner to establish that the alien will work at least 35 hours per week. The alien cannot accomplish this unless he or she will work continuously in the proffered position.

However, the regulation does not require the petitioner to establish that the beneficiary continued to work in a qualifying position subsequent to the filing date of the petition. The regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to establish that the beneficiary worked continuously in a qualifying religious occupation for two full years immediately preceding the filing of the petition. The record sufficient establishes that the beneficiary meets this criterion.

The regulation also requires that the petitioner establish that the beneficiary will work full time in a qualifying position after the petition is approved. The record reflects that the beneficiary worked in an R-1 nonimmigrant religious worker status for the statutory five-year period, after which she could no longer remain in an R-1 status. The record also reflects that the beneficiary subsequently applied and approved for a change of status to F-1 nonimmigrant student. According to the Form I-20, the beneficiary was approved for a one-year course of study at the Elite Language Institute.

When a job offer is the basis for immigration, there must be a high degree of certainty that the employment will not end or be modified because the employer is no longer able to meet the terms agreed upon in the job offer. It must be established, with some degree of certainty that the petitioner is viable to the point where the beneficiary's employment will not end or change because the petitioner is unable to meet the terms of the offer. There is nothing in the instant case to indicate that the petitioner withdrew its job offer, is unable to meet the terms of employment, or that the beneficiary will work in the United States in a position other than the proffered position. We therefore withdraw the director's decision.

Nonetheless, the petition cannot be approved as the record now stands. The regulation at 8 C.F.R. § 204.5(m)(12) provides:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

This matter is remanded to the director to determine if an inspection or compliance review is appropriate in the instant case. 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 AAO for review.