

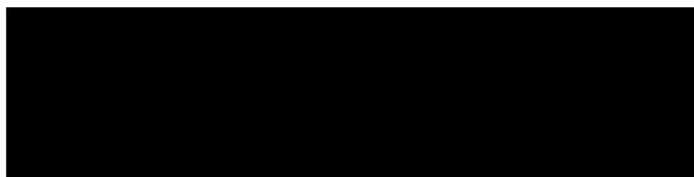
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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**



C1

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

Petitioner:

Beneficiary:



IAN 25 2011  
Y

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 29, 2008, the AAO remanded the matter for consideration under new regulations. The Director, California Service Center, 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.<sup>1</sup>

The petitioner is a "Christian mission dedicated to the planting of new churches." 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. The director determined that the petitioner had not established that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the petition.

On certification, the petitioner states that it has provided "ample explanation of how the Church is compensating" the beneficiary. The petitioner submits a letter 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

---

<sup>1</sup> As noted in our previous decision, the petitioner's appeal was filed by attorney [REDACTED]. However, on April 4, 2008, [REDACTED] was sworn in as an immigration judge for the Los Angeles Immigration Court. As the record does not indicate the appearance of any new counsel in this proceeding, we consider the petitioner to be unrepresented.

(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 the beneficiary worked continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the visa petition.

The U.S. Citizenship and Immigration Services (USCIS) 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 the beneficiary 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 June 11, 2007. Accordingly, the petitioner must establish that the beneficiary had been 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 [Wage or Tax Statement] 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 no documentation with the petition to establish that the beneficiary worked continuously during the qualifying period. In a September 24, 2007 request for evidence (RFE), the director instructed the petitioner to:

Provide evidence of the beneficiary's work history beginning June 11, 2005 and ending June 11, 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 an undated letter signed by the secretary general of the Church of God Complete Evangelism in San Miguel Petapa, Guatemala, accompanied by an English translation, which stated that the beneficiary worked for the organization from December 1, 1988 through February 18, 2007 and that his duties consisted of preaching and teaching the bible, family counseling, formation of leaders, preparation and executing of financial projects and all activities relating to the administration of the church. The petitioner submitted no other evidence of the beneficiary's prior employment as outlined in the above cited regulation. The petitioner did not allege any employment by the beneficiary from February 2007 to September 24, 2007, the date the petition was filed.

On January 30, 2008, the director denied the petition, finding that the petitioner had failed to establish that the beneficiary worked continuously in a qualifying vocation or occupation for two full years immediately preceding the filing of the petition. On appeal, the petitioner's former counsel stated that the beneficiary had worked as the chief pastor for the Christian Center for Restoration and Adoration in San Miguel Petapa, Guatemala from June 11, 2005 through March 2007. However, the letter from the church indicates that the beneficiary worked in San Miguel Petapa only through mid-February 2007. Further, the petitioner did not allege, and submitted no documentation, to establish that the beneficiary worked from February 2007 to the date the petition was filed.

On December 29, 2008, the AAO remanded the petition for consideration under new regulations. On February 4, 2009, the director advised the petitioner of the new evidentiary requirements and afforded the petitioner 30 days to submit the additional "information, evidence or arguments" in support of the petition. In response, the petitioner submitted a letter from [REDACTED], the state administrative bishop for the petitioning organization. [REDACTED] stated that the beneficiary began working for the petitioning organization in 2007. However, he did not state in which month the beneficiary began his duties with the petitioner and the petitioner provided no additional documentary evidence to establish that the beneficiary worked during the qualifying period. The director again denied the petition finding that the petitioner had failed to establish that the beneficiary worked continuously during the qualifying period, and certified her decision to the AAO.

In its letter submitted on certification, the petitioner states:

The Church of God submitted all the information regarding [the beneficiary's] work history and also a certified letter from a Guatemalan church official that attests that [the beneficiary] was working in one of the Churches of God in the city of Petaca, Guatemala.

It seems to us that the examiner is requesting information that relates to a foreign country (Guatemala) in which our affiliated churches work in a different manner than here in United States. We have a letter from [REDACTED] who is the General Pastor in Guatemala. He is truthful source of information. We also sent to the examiner, a letter from [REDACTED] E. Territorial Supervisor and also a letter from [REDACTED], National Superintendent over Guatemala, and all attest that [the beneficiary] is an active, ordained minister of the Church of God from the year 1982 to the present.

Nonetheless, the petitioner has submitted no documentation of any compensation received by the beneficiary as required by the regulation at 8 C.F.R. § 204.5(m)(11), which requires the petitioner to submit comparable documentation of the beneficiary's work if it occurred outside of the United States.

Additionally, the record reflects that the beneficiary last entered the United States as a B2 nonimmigrant visitor for pleasure on August 26, 2007. A nonimmigrant in B2 status is not authorized to work in the United States. The record does not clearly indicate when the beneficiary began working for the petitioner. However, any work in an unauthorized immigration status interrupts the continuous work experience for purposes of this visa classification.

The petitioner has failed to establish that the beneficiary 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 it intends to compensate the beneficiary.

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 its April 10, 2007 letter submitted in support of the petition, the petitioner stated, "The Church of God in Tucson, AZ at [REDACTED] guarantees a minimum salary of \$3,600 a month plus \$1,125.00 for a housing allowance." In an October 23, 2007 letter submitted in response to the director's RFE, the petitioner stated that the beneficiary had "been invited to assume the responsibilities of Senior Pastor at the Sinai Church of God located in Tucson, Arizona" and that the beneficiary would "receive a salary provided by the local congregation." In an October 24, 2007 letter, the general treasurer of the Church of God Sinai stated that the "church will do its part in taking care of the financial needs of our new pastor and his family by granting a salary of \$900.00 . . . per week."

On appeal, the petitioner's former counsel asserted that the petitioner had submitted information indicating the beneficiary's salary would and could be paid and that it was "important to remember, that the applicant is being sponsored not by a local church, but actually by a church with a worldwide reach." Counsel also stated that the petitioner would have provided more information if it had been requested to do so." However, the petitioner failed to submit any documentary evidence to establish that the beneficiary had received compensation in the past, that it had previously compensated a similar position, or any other verifiable documentation of its how it intended to compensate the beneficiary.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial 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 (9<sup>th</sup> 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).

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 7, 2009 is affirmed. The petition will be denied.