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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**



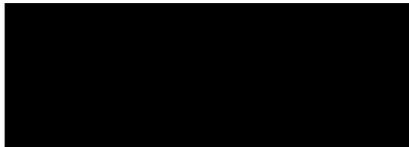
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DATE: **JUN 20 2011** OFFICE: CALIFORNIA SERVICE CENTER FILE:

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:



**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 dismiss the appeal.

The petitioner is a local Baptist convention affiliated with the [REDACTED] and the [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 the pastor of [REDACTED]. The petition lists [REDACTED] as a co-petitioner, but the regulations make no provision for multiple petitioners on a single petition. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). The individual who signed the Form I-360 petition, [REDACTED], is an official (associate executive director) of the local convention, not of [REDACTED] and therefore the AAO considers the convention to be the sole petitioner in this proceeding. The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits a brief from counsel and new witness letters.

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 U.S. Citizenship and Immigration Services (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 legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of “a number of safeguards . . . to prevent abuse.” See H.R. Rep. No. 101-723, at 75 (Sept. 19, 1990). See also *Lorillard v. Pons*, 434 U.S. 575, 580 (1978) (Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it reenacts a statute without change).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. The Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399, 402 (BIA 1980).

An alien seeking classification as a special immigrant minister must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought, and must intend to be engaged solely in the work of a minister of religion in the United States. See *Matter of Faith Assembly Church*, 19 I&N 391, 393 (Commr. 1986). The Ninth Circuit Court of Appeals has upheld the AAO’s interpretation of the two-year experience requirement. See *Hawaii Saeronam Presbyterian Church v. Ziglar*, 2007 WL 1747133 (9<sup>th</sup> Cir., June 14, 2007).

The above case law indicates that to be continuously carrying on the religious work means to do so on a full-time basis. While there have been numerous legislative extensions and amendments to the special immigrant religious worker program since 1990, at no time has Congress legislatively modified or overruled this agency’s understanding of the term “continuous” as shaped by the case law described above.

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 filed the petition on May 20, 2010. The record shows that the beneficiary entered the United States on September 1, 2004 as an F-1 nonimmigrant student, to study for a master's degree at Princeton Theological Seminary and then for a doctorate at the Lutheran Theological Seminary at Philadelphia, Pennsylvania.

The initial submission included a letter from the beneficiary, who stated:

I received admission for my Ph.D. program at Lutheran Theological Seminary at Philadelphia in 2005. Since then, I have had involvement with the formation of [REDACTED]. In the same year 2005, I was requested by [REDACTED] to be their part time student-pastor. Thus, I became their part time student-pastor since 2005.

Though I was given the responsibilities of a part time student-pastor of [REDACTED], I had much more involvement with [REDACTED] because my seminary is there. . . . We established this small congregation as a church in September 2007 with the name [REDACTED]. In this way, I became a volunteer student-pastor at two churches: [REDACTED] at the same time.

In 2009, I completed all my course works and began writing my dissertation. While writing my dissertation, it is no longer required to be on campus. Thus, I moved to [REDACTED] in March 2009, to become more involved in [REDACTED] while writing my dissertation. Since then, I have been leading weekly worship services.

In a May 11, 2010 letter from [REDACTED] chairperson of the [REDACTED] board of deacons, who stated: "In July 2007, [the beneficiary] became our full-time pastor, and established the [REDACTED] speaking Church in Philadelphia." [REDACTED] referred to the beneficiary's work at that church in the past tense, but did not specify when the beneficiary left that church.

[REDACTED] church secretary, stated in an undated declaration that the beneficiary "became a member of [REDACTED] . . . on July 10, 2005. . . . Since then, he has been volunteering at this Church by leading worship services and giving sermons as much as possible."

On December 13, 2010, the director instructed the petitioner to provide further details about the beneficiary's experience during the 2008-2010 qualifying period, and to submit evidence of compensation or self-support as required by the regulation at 8 C.F.R. § 204.5(m)(11).

In response, the petitioner submitted a new (December 29, 2010) letter from [REDACTED], who stated that the beneficiary

served as a pastor of the [REDACTED] h from July 8, 2007 to January 31, 2009. He worked on Saturdays and Sundays [for] an average of 8 hours a week. Since we are a small congregation, we can only compensate him in the form of a love gift.

. . . His job descriptions included leading the worship service, and Bible study classes. Teaching songs and music, and English language to the youth, led prayer meetings at home of members whenever he was called upon to do so. He also provided spiritual support to members in the community as their needs arose.

The petitioner submitted no documentation of "love gifts" from [REDACTED] to the beneficiary.

A January 5, 2011 letter from [REDACTED] deacon chairman, reads in part:

[The beneficiary] has been serving as a [REDACTED] [REDACTED]. Although he was appointed in February 2009, he could physically arrive and begin the ministry at [REDACTED] in March. . . .

[The beneficiary] was working as a student-pastor at [REDACTED] [REDACTED] July 8, 2007-January 31, 2009. . . . During that time, the [REDACTED] [REDACTED] granted him a full scholarship [of] \$24,000.00 which is shown in his I-20. . . .

[REDACTED] requested [the beneficiary] to be their student-pastor while writing his dissertation, and he began the ministry at [REDACTED] from March 1, 2009 to present. From this time, the seminary stopped their scholarship. . . .

Normally, he works for 15 hours per week. For the rest, we give him a chance to study and finish writing his Ph.D. dissertation.

gives him stipend and some small amount for scholarship to support his studies as the following:

- 1. Housing: \$850.00
- 2. Food: 300.00
- 3. Travel: 300.00
- 4. Studies: 300.00
- 5. Health Insurance: 200.00

The new assertion that has provided the beneficiary with a stipend contradicts the earlier claim that the beneficiary was a volunteer.

The petitioner's initial submission included a copy of a Form I-20 A-B Certificate of Eligibility for Nonimmigrant (F-1) Student Status signed by , director of student services at the Lutheran Theological Seminary at Philadelphia, and dated May 13, 2009. That document includes the following financial information:

This school estimates the student's average costs for an academic term of 9 months to be:

- a. Tuition and Fees \$12,050.00
- b. Living expenses 10,000.00
- \* \* \*
- Total 22,050.00

This school has information showing the following as the student's means of support, estimated for an academic term of 9 months. . . .

- a. Student's personal funds \$0.00
- b. Funds from this school 6,000.00  
Specify type: scholarship
- c. Funds from another source 18,000.00  
Specify type: UCC Scholarship
- d. On-campus employment 0.00
- Total 24,000.00

According to the above information, the claim that the beneficiary received \$24,000 per year in scholarship funding is correct, although most of that funding came from a source other than the seminary itself. Also, claimed "the seminary stopped their scholarship" on March 1, 2009, but the Form I-20, dated May 13, 2009, indicated that the beneficiary was still receiving scholarship funding.

In a letter dated January 10, 2011, [REDACTED] director of graduate studies at [REDACTED] discussed the beneficiary's graduate studies and stated: "It is the intention of both [Myanmar Institute of Theology] and our institution that [the beneficiary] will return to Myanmar to teach at the seminary. . . . [The beneficiary] can return to Myanmar with the appropriate credentials of both his degree and the important experience of having served the Burmese community in the U.S." [REDACTED] referred to the "application for an R-1 visa," R-1 being the designation for a nonimmigrant religious worker, and indicated that the beneficiary would serve [REDACTED] while he is finishing his PhD dissertation." From these comments, [REDACTED] does not appear to be aware that the petitioner has filed an immigrant petition, not a nonimmigrant petition, on the beneficiary's behalf.

The director had instructed the petitioner to submit IRS documentation, but the only such documentation the petitioner provided consisted of IRS Form W-2 Wage and Tax Statements, showing that the beneficiary earned minimal amounts on campus at the seminary (\$816.00 in 2008 and \$535.50 in 2009).

The director denied the petition on January 31, 2011, because the record "clearly shows that the beneficiary was not employed for the period of February 1, 2009 through February 28, 2009" and that the beneficiary worked only eight to 15 hours per week during the qualifying period. On appeal, counsel states that the beneficiary "has been pursuing graduate studies in theology in F1 status. His activities during this time constituted carrying on a religious vocation since his study was consistent with his ministerial vocation and he continued to perform the duties of a minister of religion during that time."

The regulation at 8 C.F.R. § 204.5(m)(5) states: "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 other words, if an alien is performing qualifying religious work, then the alien may simultaneously pursue religious study without affecting eligibility; but religious study itself is not qualifying religious work, and past periods of study do not constitute qualifying experience.

Counsel claims that, during the qualifying period, the beneficiary "provided an average of at least 35 hours per week of religious services to Baptist congregations and their members." The petitioner submits new witness letters, revising the earlier estimates of the beneficiary's weekly work hours.

[REDACTED], in a March 30, 2011 letter, states:

Previously we submitted a letter indicating that [the beneficiary] provided eight hours of services per week as an assistant pastor and later acting pastor. A review of the situation indicates that this is an undercount of the hours he spent in his ministry to our congregation [because] we only included the time he actually preached and presided over religious services.

. . . A more accurate accounting [of] the time engaged in religious work over the course of an average week with our congregation follows.

- |  |         |
|--|---------|
| 1. Preparation for two sermons                         | 9 hours |
| 2. Saturday Worship service                            | 2 hours |
| 3. Sunday Worship service                              | 2 hours |
| 4. Home visitation and counseling                      | 9 hours |
| 5. In-home prayer services                             | 2 hours |
| 6. Preparation for and attendance at Deacons' meetings | 3 hours |
| 7. Religious education of youth . . .                  | 8 hours |

for an average total of 35 hours per week. In addition, [the beneficiary] involved himself in congregational administrative matters and community affairs on an average of two hours per week.

In his new letter, [REDACTED] claims that, in the initial estimate of hours worked, "we only included the time [the beneficiary] actually preached and presided over religious services," but in the new schedule, [REDACTED] claimed that the beneficiary spent only four hours a week, not eight, presiding over religious services. Furthermore, [REDACTED] earlier letter did not state that the beneficiary only performed such services. Rather, he stated that the beneficiary's "job descriptions included leading the worship service, and Bible study classes. Teaching songs and music, and English language to the youth, led prayer meetings at home of members whenever he was called upon to do so. He also provided spiritual support to members in the community as their needs arose."

In a new, undated letter, [REDACTED] states that his previously stated estimate of 15 hours per week "was based on the time [the beneficiary] was actually preaching, presiding at services or meetings and teaching choir practice." [REDACTED] offers a revised schedule:

- |   |         |
|---|---------|
| 1. Preparation for two or three sermons                                 | 9 hours |
| 2. Friday night Worship Service   | 2 hours |
| 3. Preparation for and conducti[ng] Saturday Fasting Prayer Services    | 2 hours |
| 4. Sunday Worship service   | 2 hours |
| 5. Choir practice   | 6 hours |
| 6. Home visitation and counseling                                       | 5 hours |
| 7. Providing religious education, linguistic and other assistance . . . | 8 hours |
| 8. Church Deacons' meeting  | 2 hours |
| 9. Preparation for and Teaching Sunday School                           | 5 hours |

[REDACTED] previous letter did not indicate that the beneficiary spent 15 hours a week "preaching, presiding at services or meetings and teaching choir practice." Rather, [REDACTED] categorically stated that the beneficiary "works for 15 hours per week. For the rest, we give him a

chance to study and finish writing his Ph.D. dissertation.” This wording leaves no room to infer 29 additional hours of church work per week.

It strains credulity that officials of two different churches would both grossly understate the beneficiary’s weekly work hours, recalling the correct figures only after the director stated that part-time employment did not qualify the beneficiary for the classification sought. The record contains no documentary evidence to support the drastically revised schedules. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

Doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92.

Against the backdrop of the questionable credibility of the new letters, the AAO considers [REDACTED] claim, in the newest letter, intended to address the beneficiary’s activities in February 2009:

While he began working on site on March 1, 2009, we came to an agreement regarding his services at the end of January. During the month of February he consulted with church leadership about the services he would provide and spent a considerable amount of time developing lesson plans for religious education, preparing sermons and developing assistance programs for our congregation.

This claim that the beneficiary devoted a full month to preparing for his upcoming work at FBC, MD, is no more credible or substantiated than the petitioner’s other assertions on appeal.

Furthermore, the regulation at 8 C.F.R. § 204.5(m)(11) requires the petitioner to provide IRS documentation of compensation provided, and specifies that experience gained in the United States must have been authorized under United States immigration law. The petitioner has not met either of these requirements.

The petitioner initially referred to the beneficiary as a volunteer, but later claimed to have provided stipends and support to the beneficiary. Likewise, [REDACTED] has stated that PBBC gave the beneficiary “love gifts” during his time at that church. The petitioner has not provided IRS documentation of this compensation, or explained its absence. The petitioner cannot evade the regulatory requirement to provide IRS documentation of compensation simply by labeling payments to the beneficiary as “stipends.” The director instructed the petitioner to submit IRS documentation, and the petitioner’s failure to provide that documentation is, by itself, grounds for denial of the petition. The non-existence or other unavailability of required evidence creates a presumption of

ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

With regard to lawful immigration status, the record shows that the beneficiary entered the United States as an F-1 nonimmigrant student, and did not change that status during the two-year qualifying period. The regulation at 8 C.F.R. § 214.2(r)(9)(ii) authorizes F-1 nonimmigrant students to work off-campus only under specified circumstances, such as severe economic hardship, and the student must file Form I-765 to apply for employment authorization. The record does not reflect that the beneficiary followed any of these requirements.

Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status. 8 C.F.R. § 214.1(e). The Board of Immigration Appeals ruled that an alien who “receives compensation in return for his efforts on behalf of the Church” is “employed” for immigration purposes, even if that compensation takes the form of material support rather than a cash wage. *See Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982). Here, the petitioner claims that the beneficiary received payments for services rendered, which amounts to employment. What the petitioner and PBBC chose to call those payments is immaterial to the proceeding at hand.

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 (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).

A petition must be filed as provided in the petition form instructions either by the alien or by his or her prospective United States employer. 8 C.F.R. § 204.5(m)(6). From the record, the identity of the beneficiary’s prospective employer is not clear. If the beneficiary would be an employee of [REDACTED] directly, then the petition was not properly filed. The convention filed the petition, and therefore the petition was properly filed only if the convention is the beneficiary’s prospective employer. It cannot suffice for the convention to file the petition while declaring [REDACTED] to be a co-petitioner. In the event that the petitioner chooses to pursue this matter any further, any subsequent motion must include evidence that the convention, not [REDACTED], is the prospective employer, and that arrangements to that effect were already in place as of the petition’s filing date. Making such arrangements now cannot suffice. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Commr. 1998).

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 dismiss the appeal.

**ORDER:** The appeal is dismissed.