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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

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 0 2 2011

IN RE: Petitioner: [redacted]
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:

[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,

Marin Johnson

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 and remand the petition for further action and consideration.

The petitioner is a Pentecostal Christian denomination. 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. At the time of filing, the petitioner sought to employ the beneficiary as the pastor of one of the petitioner's constituent churches in Pompano Beach, Florida. Inquiries have revealed that the beneficiary has subsequently moved to another of the petitioner's churches in Chelsea, Massachusetts. The director determined that the petitioner had failed a compliance review, owing to apparent discrepancies in the claims of various officials.

On appeal, the petitioner submits materials intended to address the claimed discrepancies.

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)(12) reads:

> *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.

signed the Form I-360 petition on June 13, 2006. The petitioner filed the petition on August 7, 2006. also signed an accompanying letter, dated June 5, 2006, which referred to "[t]he undersigned, , duly elected President of the National Board." A copy of the beneficiary's November 29, 2004 certificate of ordination shows the signature of President." Subsequent submissions dated 2007 identify the president of the petitioning entity as .

As part of USCIS's efforts to verify the petitioner's claims, a USCIS officer contacted by telephone on March 4, 2009. At that time, was in Canada as a missionary, but planned to return soon to the United States. repeated the claim that he was the president of the petitioning entity at the time the petitioner filed the petition.

The USCIS officer also contacted on March 3 and 4, 2009. claimed that he became the president of the petitioning entity in May 2006, and that only the president of the petitioning organization had the authority to sign Form I-360 on behalf of that organization. USCIS concluded that the petitioner had failed its compliance review, based on what appeared to be Rev. Duarte's false claim to be president of the petitioning entity.

On May 16, 2009, the director issued a notice of intent to deny the petition, stating that was not the petitioner's president in August 2006, and therefore he had no authority to sign Form I-360 on the petitioner's behalf, according to the policy that "only the president" could sign the petition. In response, the petitioner submitted a statement jointly signed by and , indicating that the petitioner's elected president during its May 30-June 1, 2006 gathering, but did not assume the office of president until July 6 of that year. In the interim, he was president-elect while his predecessor, retained the title and powers of the president. Therefore, was still president of the petitioning organization when he signed Form I-360 in June 2006, but not when the petitioner actually filed the petition nearly two months later.

The director denied the petition on July 13, 2009, stating that the petitioner had not submitted any documentary evidence to support the claims in the letter (such as documentation of election). The director also stated that "still claimed he was the president in July 2007." The director elaborated that "signed on the ordination certificate of the beneficiary . . . in

July 2007, he still claimed that he was the president [by stating] 'I attest on this day July 13, 2007,' signed '[[*sic*], President.'"

On appeal, the petitioner submits another copy of the beneficiary's ordination certificate, dated 2004, along with organizational materials indicating that newly elected officers take office a month after their election. The director had not previously requested information regarding the election process.

Before the appeal, the record already contained two copies of the ordination certificate. Both versions show the signature of "[President" and "[, Secretary," dated "this twenty ninth day of November in the year of our Lord 2004." One version includes the following handwritten attestation from a notary public:

> Florida State
> Broward County
> This is a true and complete photocopy of an original document. I attest, on this day July 13 2007
> [signature]

The notary stamp of [accompanied the above handwritten attestation. Looking at these two versions of the photocopied certificate, it is quite clear that [signed the certificate in November 2004, and that it was notary [, not [, who signed the copy in July 2007. This is clear not only from the notary's stamp, with [printed name, but also from the signatures on the document. The notary's 2007 signature is clearly different from the reproduced signature of [, but very similar to that of [. It appears that the [who signed the certificate in 2004 is the same [who notarized it in 2007. Taking these facts into account, we conclude that the director mistook [attestation and signature for those of [. The document does not in any way suggest that [was still president of the petitioning organization in 2007, and the notarization of the copy does not represent any attempt to alter or misrepresent the document.

We find the explanation jointly presented by [and [to be plausible and credible on its face, and wholly consistent with the record and with the information obtained from the site inspection. The ordination certificate does not contain the damaging information that the director alleged. The petitioner has overcome the one stated reason for the failure of the compliance review, and the director has cited no other basis for denial of the petition. We will therefore withdraw the director's decision.

Nevertheless, other grounds remain to be addressed before USCIS can approve the petition. The AAO may deny an application or petition that fails to comply with the technical requirements of the law 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 (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).

The USCIS regulation at 8 C.F.R. § 204.5(m)(7) requires the intending employer to execute a detailed employer attestation, included in the newest editions of Form I-360. The present petition, filed using an earlier form, does not include this required document.

In the May 16, 2009 notice, the director requested the attestation, but neglected to specify the information required. The director quoted the regulation at 8 C.F.R. § 204.5(m)(7) in part, but ended with the passage: "The prospective employer must specifically attest to all of the following:..." before changing the subject. The director, therefore, did not provide the petitioner a meaningful opportunity to meet this requirement. We quote, below, the relevant regulation in full.

> An authorized official of the prospective employer of an alien seeking religious worker status must complete, sign and date an attestation prescribed by USCIS and submit it along with the petition. If the alien is a self-petitioner and is also an authorized official of the prospective employer, the self-petitioner may sign the attestation. The prospective employer must specifically attest to all of the following:
>
> (i) That the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation;
>
> (ii) The number of members of the prospective employer's organization;
>
> (iii) The number of employees who work at the same location where the beneficiary will be employed and a summary of the type of responsibilities of those employees. USCIS may request a list of all employees, their titles, and a brief description of their duties at its discretion;
>
> (iv) The number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past five years by the prospective employer's organization;
>
> (v) The number of special immigrant religious worker and nonimmigrant religious worker petitions and applications filed by or on behalf of any aliens for employment by the prospective employer in the past five years;
>
> (vi) The title of the position offered to the alien, the complete package of salaried or non-salaried compensation being offered, and a detailed description of the alien's proposed daily duties;
>
> (vii) That the alien will be employed at least 35 hours per week;
>
> (viii) The specific location(s) of the proposed employment;

(ix) That the alien has worked as a religious worker for the two years immediately preceding the filing of the application and is otherwise qualified for the position offered;

(x) That the alien has been a member of the denomination for at least two years immediately preceding the filing of the application;

(xi) That the alien will not be engaged in secular employment, and any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer; and

(xii) That the prospective employer has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges, and that funds to pay the alien's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization.

Also, as noted above, USCIS has already decided to conduct a pre-approval compliance review. That review, however, concerned only the petitioner's headquarters in New Jersey. The petitioner originally indicated that the beneficiary would work in Pompano Beach, Florida, but has transferred the intended employment to The record does not reflect any attempt at compliance review inspection regarding the beneficiary's intended place of employment. If the director still considers such inspection to be necessary, then any further review should include the site in . If the petitioner again changes the intended place of employment, then the petitioner must immediately notify USCIS of this further change. The regulation at 8 C.F.R. § 204.5(m)(7)(viii) requires the intending employer to specify the location of the beneficiary's intended employment.

Therefore, the AAO will remand the petition for further consideration consistent with the above discussion. 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.