

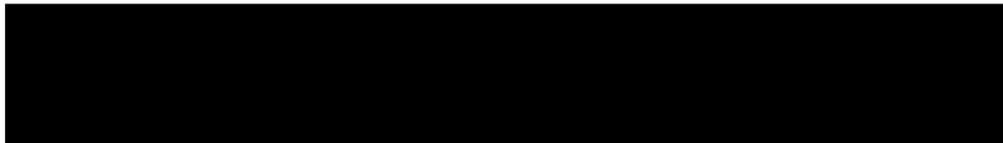
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: **MAR 03 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:

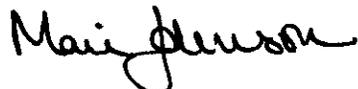
SELF-REPRESENTED

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a Roman Catholic parish. 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 director of its youth ministry. 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 statement and copies of previously submitted materials.

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 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 [Internal Revenue Service] 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 Form I-360 petition on June 24, 2008. In a letter accompanying the initial filing, Rev. [REDACTED], the petitioner's pastor, stated:

Beginning in January 2002, [the beneficiary] has been a member of the [petitioning] [REDACTED] and an employee of our school . . . when he became a member of the teaching Faculty at [the petitioner's] Catholic School. Since that time, he has been responsible for advancing and promoting the teachings of the Roman Catholic faith to young individuals through the ministry of education. He also honed lives and formed responsible young Catholics through the discipline of theater arts when he served as the [REDACTED]

In October 2007, when [the beneficiary] decided not to extend his contract with the school, I convinced him to continue his ministry with the youth at the church. . . .

[The beneficiary] willingly accepted the post of [REDACTED] and by January 2008, he was able to continue his call for educating the youth and advancing and promoting the teachings of the Roman Catholic faith to young individuals.

The beneficiary's résumé lists the following experience during the two-year qualifying period:

Director for Youth Ministry, the petitioning church	January 2008 – Present
[REDACTED]	February 2008 – Present
[REDACTED]	March 2006 – August 2007
[REDACTED] the petitioner's school	January 2002 – October 2007
[REDACTED] the petitioner's school	October 2003 – October 2007
Leadership Trainer, [REDACTED]	2005 school year – 2007 school year
Systems Administrator, the petitioner's school	October 2003 – October 2007
Teacher, the petitioner's school	January 2002 – October 2007

The above list did not differentiate between paid and volunteer activities, and did not show any activity at all by the beneficiary between October 2007 and January 2008. With respect to the beneficiary's teaching duties, the beneficiary stated that he taught "Social Studies for grades 6 through 8; Computer for grade 5; Math for grades 6 through 8; Honors Math 7th grade."

On February 11, 2009, the director issued a request for evidence (RFE), instructing the petitioner to submit various documents required under newly revised regulations. Among other things, the director instructed the petitioner to submit IRS documentation of the beneficiary's prior employment, as well as the beneficiary's detailed employment history.

The petitioner submitted IRS documentation of the beneficiary's compensation for 2006 through 2008, along with copies of pay receipts from the same period. The pay receipts from 2006 and 2007 identified the petitioner's school, rather than the church, as the beneficiary's employer. The last pay statement from the school is dated October 30, 2007. This is consistent with the beneficiary's résumé, which showed a gap in the beneficiary's employment between October 2007 and January 2008. In a letter, [REDACTED] stated:

There was a break in the employment of the beneficiary . . . from November 1, 2007 until December 31, 2007.

The beneficiary, being an Irish citizen, had to go back to Dublin, Ireland to process his R1 visa application. He left Guam on November 12, 2007. After his R1 visa was approved on November 19, 2007, he flew back to Guam on December 7, 2007 after spending a couple of weeks with family in Dublin.

We first got him settled into his apartment and agreed that his employment should officially start on January 1, 2008.

The record shows that the beneficiary's H-1B nonimmigrant status, which had permitted him to teach at the petitioner's school, expired on November 2, 2007. Therefore, from November 3, 2007, until the beneficiary re-entered the United States with his R-1 nonimmigrant religious worker visa on December 7, 2007, the beneficiary had no authorization to work in the United States in any capacity.

Under the regulation at 8 C.F.R. § 204.5(m)(4), 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.

Here, the break was only two months, rather than two years, but the petitioner has not met either of the other two factors. The beneficiary was not still employed as a religious worker. His employment ended in early November and did not resume until January. Also, the nature of the break was not for sabbatical or further religious training. The beneficiary left his teaching position, and the United States, because his nonimmigrant status had expired, and he returned a month later with a new visa and, several weeks after that, a new position.

In the RFE, the director requested an employer attestation, required under the regulation at 8 C.F.R. § 204.5(m)(7). On the attestation, asked whether the beneficiary "has been a religious worker for at least two years immediately before Form I-360 was filed," the petitioner answered "no." In an explanatory note, Fr. Gofigan stated:

As of writing [in February 2009], the beneficiary has held the position of Director of Youth Ministry under an R1 visa for almost 16 months now. But at the time when the Form I-360 was filed on his behalf and received by your office on June 24, 2008, the beneficiary ha[d] held the post for almost six months. However, prior to assuming his post officially as Director of Youth Ministry for the parish, he was already in the ministry of shepherding the youth while he worked as a teacher for our parochial school for six years.

In a separate letter, detailing the beneficiary's work history, [REDACTED] stated that the beneficiary was a full time employee (40 hour week) of our parochial school . . . [in] 2006 and 2007. . . .

[U]nlike other public schools, the primary thrust of Catholic education is faith formation. At the forefront of the core curriculum is the Religion subject and all its co-curricular activities. All other major and special subjects adhere closely to this thematic teaching. . . .

As a Social Studies teacher for middle school, he adhered to Archdiocesan guidelines and curriculum on the Catholic Church's teachings on social issues such as abortion,

teenage pregnancy, drug addition, teenage drinking, poverty, racism, justice and equality.

. . . [T]he majority of his functions and job descriptions . . . are closely coordinated by the guidelines of the traditional religious function of catechesis, inculcating values formation, and appreciation of Catholic traditions.

Ministry in the church is generally perceived as voluntary involvement to a function or cause as compelled by a moral scruple. . . . However, my experience as a priest has taught me that volunteers in the ministry come and go as they please. . . . That is why we hire salaried employees to oversee the ministry on a full-time basis.

The director denied the petition on August 22, 2009, based on a finding that the petitioner did not continuously employ the beneficiary as a religious worker throughout the two-year qualifying period from June 2006 to June 2008.

On appeal, [REDACTED] states that the “beneficiary has been working for our parish for 6 years and three months continuously prior to the filing of the I360 petition on 6/24/08.” [REDACTED] then contradicts this assertion, acknowledging the “interruption [for] a period of 2 months from November 1, 2007 t[h]rough December 31, 2007. In which time, the beneficiary’s contract and visa had already expired and he had to go back to Dublin, Ireland for the issuance of his new working visa.” The petitioner submits new copies of previously submitted materials, including payroll documents and the beneficiary’s résumé.

The regulations at 8 C.F.R. §§ 204.5(m)(2) and (4), taken together, require the beneficiary to have worked continuously throughout the two-year qualifying period in one of three capacities: (i) as a minister of the petitioner’s religious denomination; (ii) in a religious vocation; or (iii) in a religious occupation. The USCIS regulation at 8 C.F.R. § 204.5(m)(5) defines those three capacities:

Minister means an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination’s standards, to conduct such religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and
- (D) Works solely as a minister in the United States, which may include administrative duties incidental to the duties of a minister.

Religious occupation means 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.

Religious vocation means a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life. The religious denomination must have a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. Examples of individuals practicing religious vocations include nuns, monks, and religious brothers and sisters.

The petitioner has not claimed that the beneficiary is a minister (an ordained member of the clergy). The petitioner's use of the term "ministry" in this proceeding has been in a looser sense of the word, referring simply to serving the goals of the church. Likewise, the petitioner has not claimed that the beneficiary had made a formal lifetime commitment to the religious life as part of a religious vocation. The petitioner's claim rests on the claim that the beneficiary has worked in a religious occupation.

The petitioner has not shown that teaching social studies, math, or computer classes constitute a religious occupation, even in the context of a private Catholic school. The petitioner has noted that the beneficiary, as a teacher, was subject to "Archdiocesan guidelines and curriculum," but this does not make the teaching of intrinsically secular subjects relate to a traditional religious function. By way of analogy, Roman Catholic hospitals in the United States fall under the Ethical and Religious Directives for Catholic Health Care Services, but it does not follow that a surgeon in such a hospital works in a religious occupation. We note that the petitioner has not claimed that only a Catholic can teach social studies or math in a Catholic school. The petitioner has claimed only that teachers in Catholic schools are subject to diocesan rules and curriculum, in the same way that public school teachers must adhere to local policies and curriculum requirements.

Furthermore, the above regulatory definition requires that a religious occupation “be recognized as a religious occupation within the denomination.” [REDACTED] however, has clearly stated that the beneficiary’s work in the youth ministry “is generally perceived as voluntary,” and that [REDACTED] himself personally converted what had been a voluntary position into a paid occupation. These statements indicate that the petitioner’s denomination considers such work to be traditionally voluntary, rather than an occupation. Therefore, apart from the question of the beneficiary’s earlier teaching duties, it is far from clear that the beneficiary’s later duties as a youth minister qualify as a religious occupation recognized as such within the Roman Catholic denomination.

The beneficiary’s employment in 2006 and 2007 appears to be overwhelmingly secular in nature, and his 2008 employment is, by the petitioner’s own admission, typically a volunteer function rather than an occupation within the Catholic church. In between those two positions was a two-month interruption in which the beneficiary was not employed in any capacity at all. Any one of these three factors would be sufficient for us to agree with the finding that the petitioner has not shown the beneficiary to have continuously engaged in a qualifying religious occupation or vocation throughout the two-year qualifying period.

Review of the record shows an additional factor of concern. 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 (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).

When, as here, the petitioner is identified as a church or related entity, the regulation at 8 C.F.R. § 204.5(m)(8) requires the petitioner to submit either (i) a currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or (ii) for a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt.

The record does not contain a copy of the required IRS determination letter. This, by itself, does not prove that the petitioner is not a 501(c)(3) tax-exempt organization, or that the petitioner is not covered by a group exemption. Nevertheless, the record lacks this required document, and its absence is grounds for denial of the petition.

The AAO will dismiss the appeal 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 met that burden.

ORDER: The appeal is dismissed.