

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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

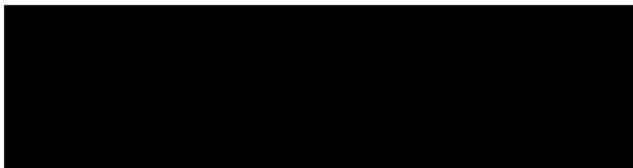
FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER

Date: MAR 15 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:



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 Administrative Appeals Office (AAO) remanded the matter for consideration under new regulations. The director 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.

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 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 or that the beneficiary is qualified for the proffered position.

The petitioner submits a statement on certification in which it states that the director "misread and misunderstood" the petitioner's ordination process and that the beneficiary worked part time as a pastor in Nigeria "before resigning his secular job to completely face his ministerial calling." Additionally, the petitioner submits copies of previously submitted documentation.

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 --

(iii) 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 first 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:

(iii) 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 15, 2006. Accordingly, the petitioner must establish that the beneficiary was 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:

(iii) 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 and Tax Statement] or certified copies of income tax returns.

- (iii) 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.

In his June 8, 2006 letter accompanying the petition, counsel stated that the beneficiary had been working as a minister for over 11 years and had worked for the petitioning organization continuously for the past two years. The petitioner submitted a copy of a November 1, 2004 letter of employment from the [REDACTED], appointing the beneficiary as pastor of the "newly formed [REDACTED] branch" in Fresno, Texas with a starting date of November 1, 2004. The employment offer indicated that the beneficiary would receive a starting salary of \$1,800 per month. A December 1, 2004 letter from the petitioner modified the compensation to \$1,000 per month in salary with a \$1,000 monthly housing allowance.

The petitioner submitted copies of 18 pay stubs reflecting that it paid the beneficiary \$1,000 biweekly during several months in 2005 and 2006. The petitioner provided a copy of the beneficiary's IRS Form 1040, U.S. Individual Income Tax Return for 2004, on which he reported self employment income of \$15,450. The return is dated on March 29, 2006 and filed with the IRS on March 30, 2006. Like a delayed birth certificate, the late filing of the federal tax return two years after the claimed transaction raises serious questions regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991)(discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings). The petitioner also submitted an uncertified copy of the beneficiary's unsigned and undated IRS Form 1040 for 2005, on which he reported wages of \$24,000.

In response to a December 11, 2006 request for evidence (RFE), the petitioner provided a copy of a tax transcript from the IRS reflecting that the beneficiary reported \$24,000 in wages for 2005 and a copy of an IRS Form W-2 for 2006 on which the petitioner reported that it paid the beneficiary \$24,249 in wages and \$12,249 in housing. The petitioner also submitted transcripts from the IRS of its IRS Form 941, Employer's Quarterly Federal Tax Return. The IRS Form 941 is used to report, among other things, wages paid to employees, taxes withheld from employees,

and the employer's share of Social Security and Medicare tax withholding.¹ The transcripts of the petitioner's IRS Form 941 do not appear consistent with the beneficiary's 2005 tax return, on which he reported federal tax withholding of \$408 and the IRS Form W-2, on which the petitioner reported \$400 in tax withholding. The IRS Form W-2 also does not indicate that the petitioner withheld any Social Security or Medicare wages. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Further, as discussed previously, the record reflects that the beneficiary was assigned as the petitioner's pastor on November 1, 2004. The Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, indicates that the beneficiary arrived in the United States on June 7, 2004. The petitioner submitted a copy of the beneficiary's passport indicating that he entered the United States on June 7, 2004 as a B-2 nonimmigrant visitor. An alien who is present in the United States pursuant to a B-2 visa is not authorized to work in the United States. Section 101(a)(15)(B) of the Act, 8 U.S.C. § 1101(a)(15)(B); 8 C.F.R. § 214.1(e). The petitioner also submitted a copy of Form I-797, Notice of Action, indicating that the beneficiary was approved for R-1 nonimmigrant religious worker status on December 10, 2004. Any work performed in the United States in an unauthorized status interrupts the continuous work experience required by the regulation.

In response to the director's second RFE of May 1, 2007, the petitioner stated:

Prior to the posting of [the beneficiary] to our parish, he was the parish pastor of the [redacted]. His first point of posting to the United States was to the [redacted] Stafford Texas where he did undergo tutelage from the month of June 2004 to December 2004 before his appointment as our pastor.

The petitioner stated that the Stafford church "was responsible for [the beneficiary's] upkeep and supervision" prior to his transfer to the petitioning organization. The petitioner further stated that the beneficiary chose to report as income, and pay taxes on, the honorarium and love gifts he received during his tutelage.

In a July 15, 2007 letter, [redacted] the senior pastor [redacted] stated that the beneficiary underwent "tutelage" with the organization from June 10, 2004 to December 2004 "in order to acquaint himself of the practices and cultures in the United States, as well as the waiting period for the change of status from B-2 to R-1." [redacted] stated that the beneficiary was scheduled to work three days a week for five hours each day but "regularly exceeds these hours" and that he was supported during his tutelage "through love gifts and honorarium from the congregation." He provided the following schedule for the beneficiary:

¹ See *IRS Publication 15: Employer's Tax Guide*.

| | | |
|----------------|---|--|
| <i>Weekly</i> | | |
| Monday | 6 pm. to 9 p.m. | Sunday school review with the teachers. |
| Tuesday | 12 noon to 5 p.m. (official) 6:30 p.m. to 8:00 p.m. | Providing Spiritual guidance to parishioners Assisting in Bible Study classes |
| Wednesday | 12 noon to 5 p.m. (official) | Visitation & Counseling Assist in weekly events planning |
| Friday | 12 noon to 5 p.m. (official) 7 p.m. to 10:00 p.m. | Providing Spiritual guidance to parishioners Night prayer meeting with prayer group |
| Saturday | 7 a.m. to 12 noon. | Neighborhood evangelism & Visitation |
| Sunday | 8 a.m. to 9 a.m. 9 a.m. to 10 a.m. 10 a.m. to 12 noon 1 p.m. to 2 p.m. | Discipleship (Leadership) training & prayers Teaching Sunday school classes Assist in Worship service Counseling/follow-up for New parishioners |
| <i>Monthly</i> | | |
| 1st Friday | 10 p.m. to 2 a.m. | Congregational Night Prayer service (Holy Ghost Service) |
| Last Friday | 10p.m. to 2 p.m. | Joint Zonal Night Prayer service (Zonal Holy Ghost Service) |
| 1st Sunday | 5 p.m. to 6 p.m. | Assist during the Lord's Supper |
| 2nd Sunday | 7 p.m. to 8 p.m. | House fellowship teaching. |

In denying the petition on August 27, 2007, the director found that the beneficiary was under instruction with the [REDACTED] from June 10, 2004 until December 2004 and did not work during that period. The director determined that therefore the petitioner had failed to establish that the beneficiary worked continuously during the qualifying period.

On appeal, counsel stated:

[I]n stating [the beneficiary] was in “tutelage” . . . the Petitioner meant that the beneficiary was acquainting himself with the workings of their United States mission. It does not mean he was not working in his designated religious duties. In fact, beneficiary had at the time been offered full employment and as was the practice of the Church, had to work along side a resident Pastor before heading out to man their Chapel at Fresno, Texas. Thus, [t]he service’s interpretation of the word “tutelage” and their application of it, is in error, and does not apply in the way Churches are known to be run.

The petitioner stated in a September 26, 2007 letter:

In our religious organization no Minister is appointed to oversee a branch or parish (in a new territory) without first been [*sic*] under the instruction (or tutelage) or a [redacted] (in Nigeria or here in the United States) for at least Six months duration. While receiving instruction, such individual continues to perform his/her ministerial duties as authorized during ordination Following this rule, the beneficiary received his instruction (or tutelage) from one of our senior pastors . . . between June 10, 2004 and December 10, 2004. . . The upkeep of our pastors comes from salary and love offerings of gifts from the local church.

. . . [W]e also preach and believe that Ministers who serve at the altar should be partakers of the offerings of the altar (which we call love offerings or honorarium or moratorium). The beneficiary has been a Minister of our religious organization from Nigeria hence all work and duties performed during the tutelage period here in the United States was never seen as voluntary as there was a weekly full-time work schedule of performed duties while he was at the [redacted] different from the duties he has been performing while with the [redacted] [redacted], and also he was supervised by the [redacted]

In the Notice of Intent to Deny (NOID) issued on February 4, 2009 following the AAO’s remand, the director requested the petitioner to submit documentation required by new regulations promulgated on November 26, 2008 to establish the beneficiary’s qualifying work history. While in its response the petitioner specifically noted the requirement that qualifying work experience in the United States must be in a lawful immigration status, it submitted no documentation to establish that the beneficiary’s work in the United States prior to December 10, 2004 was authorized pursuant to U.S. immigration laws.

In her certified decision, the director again denied the petition after determining that the beneficiary’s “tutelage” was not work in a religious occupation. In its statement submitted on certification, the petitioner stated that the beneficiary worked as an application consultant and entered the United States pursuant to a B-2 visa paid for by his employer but that he had worked as a minister in Nigeria on a part-time basis while working in his secular employment.

Nonetheless, the issue is the beneficiary's work in the United States prior to approval of his R-1 visa. We disagree with the director that the beneficiary's association with the [REDACTED] was as a student or under instruction. While the petitioner terms the beneficiary's work as "tutelage" to prepare him for work in a new territory, it consistently stated that the beneficiary worked as a minister during this time. It provided a work schedule for the beneficiary that included duties clearly consistent with employment. We note that the beneficiary reported income from this work, albeit late. While we do not find that the petitioner has provided sufficient documentation to establish the beneficiary's qualifying work experience during the period from June 15, 2004 through December 10, 2004, the record sufficiently establishes that the beneficiary was not in training during the period that he worked with the [REDACTED]

However, the petitioner has not established that the beneficiary was authorized to work in the United States from June 15, 2004 through December 10, 2004. As previously discussed, the beneficiary was in a B-2 nonimmigrant visitor status and was not authorized to work in the United States. Work in an unauthorized status interrupts the qualifying work experience for purpose of this visa petition. Therefore, the petitioner has failed to establish that the beneficiary worked continuously in a qualifying religious capacity for two full years immediately preceding the filing of the petition.

The director also determined that the petitioner had failed to establish that the beneficiary was qualified for the proffered position. The regulation at 8 C.F.R. § 204.5(m)(5) defines religious worker as "an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister." The regulation also defines minister as and 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.

Additionally, the regulation at 8 C.F.R. § 204.5(m)(9) provides:

Evidence relating to the qualifications of a minister. If the alien is a minister, the petitioner must submit the following:

(i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and

(ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological institution is accredited by the denomination, or

(iii) For denominations that do not require a prescribed theological education, evidence of:

(A) The denomination's requirements for ordination to minister;

(B) The duties allowed to be performed by virtue of ordination;

(C) The denomination's levels of ordination, if any; and

(D) The alien's completion of the denomination's requirements for ordination.

With the petition, the petitioner submitted a copy of a February 8, 1997 "certificate of stewardship" from the [REDACTED] certifying that the beneficiary had been ordained as a minister. In her RFE of May 1, 2007, the director instructed the petitioner to:

Submit evidence to show the requirements for ordination. If the religion does not have formal ordination procedures, there must be other evidence that the individual has authorization to conduct religious worship and perform other services usually performed by members of the clergy.

In its undated response, the petitioner stated:

[The beneficiary] is an ordained Minister of the gospel of our Lord and Savior Jesus Christ under the religious organization known as The [REDACTED]. This religious organization issues out certificate of ordination to individuals as an evidence that the individual has the right to conduct religious worship and other services usually performed by members of the clergy. Any individual ordained by the [REDACTED] possesses a certificate of stewardship listing all the authorization and rights given to such individual to conduct religious services and worship to the body of believers of the Christian religious faith.

The petitioner submitted a copy of a June 15, 2005 "certificate of stewardship" issued to the beneficiary from the [REDACTED] ordaining him "as a Minister in the Position of Pastor." The petitioner provided no documentation of its denomination's requirements for ordination, as requested by the director in her RFE.

In denying the petition, the director noted that the beneficiary's 2002 application for a B-2 visitor indicated that he was an "application consultant" and that an honorary PhD in Theology issued to the beneficiary by the [REDACTED] "carries little weight as an indicator of the beneficiary's qualifications."

We note that the petitioner acknowledged that the beneficiary worked part time as a minister in Nigeria and that his application for a B-1/ B-2 visa was in connection with his secular occupation. Additionally, the petitioner did not indicate that the honorary PhD was in any way indicative of the qualifications necessary for the beneficiary to perform his job.

On appeal, the petitioner stated:

A Minister in our religious organization requires an ordination from the General Overseer . . . of The [REDACTED] in order to be authorized to conduct religious worship and to perform other religious duties usually performed by authorized members of clergy of The [REDACTED].

The petitioner further stated:

The [REDACTED] ordination process starts when an individual . . . becomes born again and joins the as [sic] a member. The individual then undergoes discipleship training for at least a year in the church to be endorsed as a worker in the [RCCG]. After the training one becomes a volunteer in the church either as an Usher or Sunday School Teacher, or singing as a choir member depending on individual endowed gifts or talents. After being a volunteer/worker and faithfully serving in the church for at least five (5) years, such an individual could be recommended for ordination as a Deacon or as an Assistant Pastor or a Minister, depending on the approval from the office of the General Overseer . . . of the [RCCG]. . . . The ordination as a Minister or Assistant Pastor which is accompanied with a Certificate of Stewardship indicating that such individual is authorized to perform the religious duties listed therein.

However, the highest ministerial ordination in the [REDACTED] is the office of a 'Pastor[.]' An ordained Minister could be recommended to be ordained into this highest office of a 'Pastor' after he or she has been proven to be faithful and dedicated to the doctrines and vision of the [REDACTED] . . . Certificate of Stewardship is also issued after this ordination, which shows that the duties are the same with that of a Minister or an Assistant Pastor. The purpose of this final and highest ordination is for Ministerial hierarchy in The [REDACTED]

The petitioner submitted no documentation to support any of its statements regarding ordination in its denomination. 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 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In her certified decision, the director again stated that the beneficiary's PhD was not indicative of his qualifications and noted that the petitioner failed to provide documentation of the denomination's ordination requirements as requested in the RFE.

The regulation at 8 C.F.R. § 204.5(m)(9) requires the petitioner to submit evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological institution is accredited by the denomination, or for denominations that do not require a prescribed theological education, evidence of the denomination's requirements for ordination to minister;

The regulation at 8 C.F.R. §§ 103.2(b)(8) and (12) provides that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. The 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).

The petitioner has failed to submit documentary evidence of the requirements for ordination of its denomination, as required by the regulation or in response to the director's RFE. Accordingly, it has failed to establish that the beneficiary is qualified for the proffered position.

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 12, 2009 is affirmed.