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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 16 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:
[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.

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 petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO subsequently remanded the petition to the director for a new decision based on revised regulations. The director again denied the petition and certified the decision to the AAO. The AAO will affirm the director's decision.

The petitioner, described by its director as a "missions outreach arm of the United Methodist Church" that operates a thrift store and food bank, 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 missionary pastor. The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

As required by the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.4(b)(2), the director allowed the petitioner 30 days in which to submit a brief in response to the certified decision. To date, the record contains no further correspondence from the petitioner or from counsel.

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 petitioner filed the Form I-360 petition on June 18, 2008. On the form, the petitioner indicated that the beneficiary's B-1 nonimmigrant visitor status had expired on December 22, 1999, and that the beneficiary had worked in the United States without authorization.

At the time the petitioner filed the petition, the U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. §§ 204.5(m)(1) and (3)(ii)(A) required the petitioner to establish that the beneficiary continuously engaged in qualifying religious work throughout the two years immediately preceding the petition's filing date.

The petitioner submitted a letter on the letterhead of [REDACTED] jointly signed by [REDACTED] president of the church's administrative council, and the church's minister, [REDACTED]. The letter indicated that the beneficiary "worked in our Church as fulltime Outreach Pastoral Assistance and as a religious Counselor . . . till 30th September 2005." This work ended more than two years before the petition's filing date.

[REDACTED] was also executive director of the petitioning entity, but he did not indicate that the beneficiary has ever worked for the petitioner. In a July 20, 2007 letter, Rev. [REDACTED] described the job offer, and stated that the beneficiary would "commence his function as a Missionary pastor" after receiving the necessary visa. This wording implies that the beneficiary had not yet begun working in that capacity. Rev. [REDACTED] appears to have written the 2007 letter in support of an R-1 nonimmigrant visa petition, but we can find no record that the petitioner ever filed such a petition.

Nothing in the petitioner's initial submission addressed the beneficiary's experience during the 2006-2008 qualifying period. On September 10, 2008, the director instructed the petitioner to submit evidence regarding the beneficiary's work history and other matters. In response, the petitioner submitted a letter with the heading "**JOB EXPERIENCE** (From June 18, 2006 to Present)" (emphasis in original), in which Rev. [REDACTED] stated that the beneficiary "is an excellent Preacher and has been Preaching regularly the word of God and helped the Pastor in the administration of Sacraments." [REDACTED] added that the beneficiary "was able to counsel Youth and Senior Citizens," "has been very good with mentally disadvantaged people," and "visit[ed] sick people." The petitioner submitted copies of several other letters, all signed by [REDACTED] (with the surname underlined with two dots beneath the underline) except for one letter, purportedly from Chennai, India, signed by "Rev. [REDACTED]" (with the surname underlined with two dots beneath the underline). [REDACTED] appears to be a variation of Rev. [REDACTED] name (with [REDACTED] moved to the end).

In one of his letters, Rev. [REDACTED] stated: "Since [the beneficiary] doesn't have any status there is no way we can pay him. But he is provided with free food, free accommodation, transportation and medical benefits." Counsel stated: "Beneficiary does not have a W-2 because he was paid in room and board, transportation and medical benefits. He was not able to be paid in money because he does not have a social security number."

The director denied the petition on November 10, 2008, stating that the petitioner had not submitted any verifiable evidence of prior employment or compensation. The petitioner appealed that decision, and submitted an affidavit from Rev. [REDACTED] providing further details about the beneficiary's claimed work and non-salaried compensation.

While the appeal was pending, USCIS published new regulations for special immigrant religious worker petitions. Supplementary information published with the new rule specified: "All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). Accordingly, on January 23, 2009, the AAO remanded the petition to the director for a new decision based on the new regulations.

The revised USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been performing qualifying religious work, 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, in part:

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.

The director denied the petition on January 31, 2009, stating that the beneficiary never had employment authorization at any time during the qualifying period. As we have already noted, the petitioner does not appear to have contested the director's certified decision. The petitioner had previously admitted (on multiple occasions) the beneficiary's lack of lawful status. Therefore, we will affirm the director's uncontested denial of the petition.

The beneficiary's lack of lawful status and employment authorization is, by itself, sufficient grounds for denial of the petition. Review of the record, however, shows additional deficiencies. 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).

The director noted the beneficiary's lack of lawful status, but the record also lacks the evidence of prior compensation required under 8 C.F.R. § 204.5(m)(11). Virtually everything in the record that pertains to the beneficiary's claimed employment with the petitioner rests on unsupported statements from a single witness (Rev. Purushothaman). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

The USCIS regulation at 8 C.F.R. § 204.5(m)(7) requires the petitioner to submit a detailed employer attestation concerning the employer, the beneficiary, and the job offer. The record does not contain an employer attestation.

The regulation at 8 C.F.R. § 204.5(m)(8) requires the petitioner to submit an IRS determination letter showing that the petitioner is a non-profit organization in its own right, or is covered by a group exemption granted to a parent organization. Counsel has stated that the petitioner is tax-exempt owing to its affiliation with the United Methodist Church, but the record does not contain the required IRS documentation to that effect.

The regulation at 8 C.F.R. § 204.5(m)(10) requires the petitioner to submit verifiable evidence of how the petitioner intends to compensate the beneficiary, including IRS documentation if available. The petitioner has claimed that it intends to pay the beneficiary \$1,500 per month plus housing, food, transportation, and other benefits. The petitioner submitted an uncertified copy of its IRS Form 990 return (comparable to an income tax return) for 2005. According to that form, the petitioner took in \$104,176 in revenue and paid \$151,505 in expenses (including \$64,316 in officer and employee compensation), for a deficit of \$47,329 for the year. The petitioner had begun the year with \$35,450 in net assets, but exhausted those assets and ended the year with \$11,879 in debt. Given this information, it is not at all apparent that the petitioner can afford to absorb still more expenses in the form of the beneficiary's \$18,000 annual salary plus benefits.

Because the petition, on its face, must be denied owing to the beneficiary's lack of status, we could not have approved the petition even if the petitioner had addressed all the additional issues above. Nevertheless, as the matter now stands, the record contains a number of disqualifying deficiencies.

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 affirm the director's certified denial of the petition.

ORDER: The director's decision of January 31, 2009 is affirmed. The petition is denied.