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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

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**U.S. Citizenship  
and Immigration  
Services**



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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: \*

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 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 clerical assistant. The director determined that as the beneficiary was not in a lawful immigration status, 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.

The petitioner submits no additional documentation on certification.

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 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:

- (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.

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 February 12, 2007. 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 USCIS 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:

- (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 [Wage and Tax Statement] 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.

On the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, the petitioner stated that the beneficiary arrived in the United States on July 21, 2002 pursuant to a B-1/B-2 nonimmigrant visitor's visa that was valid until January 31, 2009. USCIS records reflect that the beneficiary entered the United States on July 21, 2002 in a B-2 status that was valid until January 20, 2003. 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 did not state when the beneficiary began her association with the petitioning organization but stated in an undated letter submitted in support of the petition that she had been a member of the petitioning organization since 2003 "and assists charitably in many areas of the ministry." As the beneficiary was not in a lawful immigration status, any work performed by the beneficiary in the United States interrupts the continuity of her work experience for the purpose of this visa petition.

Additionally, the petitioner submitted no documentation to establish that the beneficiary worked in a religious occupation or vocation for the two years immediately preceding the filing of the petition. In its undated letter submitted with the petition, the petitioner stated:

[The beneficiary] serves in the ministry position of President of the New Members Ministry. She conducts monthly meetings, seeks and provides training, keeps new members abreast of all events, oversees the in-take process of new members, and oversees the new member classes to assure students and teachers are present.

In addition, [she] assists with the distribution of food from the [petitioner's] Food Pantry.

The petitioner submitted no documentation to establish that the beneficiary worked in any capacity during the qualifying period. 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 a request for evidence (RFE) dated November 7, 2007, the director requested additional information regarding the beneficiary's work during the two years immediately preceding the filing of the petition, including specific job duties and any remuneration that she received for her services. The petitioner did not provide specific information regarding the beneficiary's qualifying work experience but stated in a January 28, 2008 letter that:

[The beneficiary] will continue to volunteer in the areas of:

- Bible Study Teacher where she instructs young children
- COLCC Finance Department – assisting with the counting and preparation of the offerings for bank deposits
- [The petitioner's] Pre-School Financial Assistant – assisting with Bookkeeping & Finance, billing and collecting tuition payments from parents
- Coordinating the assimilation of new members into the ministry
- Public Relations & Advertising

The petitioner submitted a copy of a May 31, 2007 lease agreement that it states is for an apartment that it leases for the beneficiary. However, the beneficiary is not identified in the lease and nothing in the record indicates that she resides there. Further, the lease is dated in May 2007 and effective on October 1, 2007. Therefore, even if the lease was an apartment for the beneficiary, it provides no documentation to establish that the beneficiary was compensated for her work during the qualifying period of February 2005 to February 2007.

On appeal, the petitioner submitted an April 10, 2008 letter which it outlined the “missionary services” in which the beneficiary was involved:

1. Hyacinth HIV/Aids foundation – Providing education, free testing and assistance to people in our community who are infected or affected by this disease.
2. Providence House – This is a home that battered women with or without children, in need of immediate assistance in housing, meals, and place to reside until permanent housing can be obtained.
3. Burlington Woods Nursing Home – This is an elderly facility. We provide nutritious snacks, flowers, personal gifts and personal one on one reading to provide comfort and support to the elderly.
4. Home & Hospital Visitation – We pray and encourage the sick and bereaved.
5. Drug Abusers – We assist in connecting them with a rehabilitation clinic . . . .
6. Food Pantry – South Jersey Food Bank (connection) – Through our dedication to the homeless and families in need, we provide food for individuals, families, food baskets and supporting other agencies with meeting their needs in this area.

7. Over-Seas Mission – . . . We assist children in the Sub-Saharan regions of Africa who are infected with HIV/AIDS and the affects [sic] of war and poverty. We help to provide shelter, clothing, education, food and other resources to improve their standard of living.

The petitioner submitted no other documentation to establish that the beneficiary worked during the qualifying period or that she was in a lawful immigration status. The petitioner also failed to respond to the director's Notice of Intent to Deny (NOID) the petition issued following the AAO's remand and submitted no documentation in response to the notice of certification. Accordingly, the petitioner has failed to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the visa petition.

Further, the petitioner failed to establish that the proffered position qualifies as that of a religious occupation. The regulation at 8 C.F.R. § 204.5(m)(5) defines "religious occupation" as 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.

The petitioner stated that the proffered position was that of clerical assistant. The petitioner identified the duties of the position as:

- answering telephones
- copying
- filing
- ordering supplies
- other clerical duties as requested

The petitioner also stated that the beneficiary would continue to volunteer in other areas as previously listed. While the petitioner stated that the beneficiary teaches bible classes and trains

new members, it indicated that she volunteers for these duties and submitted no documentation to establish that these duties are the primary focus of the proffered position. The definition of religious occupation in the above-cited regulation specifically excludes clerical employees. The petitioner has not submitted any documentation to establish that the duties of the proffered position primarily relate to a traditional religious function or primarily relate, and clearly involve, inculcating or carrying out the religious creed and beliefs of its denomination. The petitioner also failed to establish that the position is recognized as a religious occupation within its denomination.

The petitioner has failed to establish that the position of clerical assistant is a religious occupation within the meaning of the regulation.

Additionally, the petitioner has failed to establish how it intends to compensate the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(10) provides that the petitioner must submit:

*Evidence relating to compensation.* Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

The petitioner submitted no documentation of any offer of compensation to the beneficiary. As discussed above, the petitioner provided a copy of a lease that it stated was documentation of an apartment that it leased for the beneficiary. However, nothing in the record indicates that the beneficiary actually resides in the apartment. Further, the lease is dated after the filing date of the petition. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

The petitioner submitted copies of its balance sheet and statement of activities from an accountant's compilation report reflecting financial information for 2005 and 2006. A compilation, however, is based primarily on the representations of management. Therefore, limited reliance can be placed on the validity of any information presented in the accountant's compilation report. The petitioner submitted no documentation to support the assertions in the financial documentation or contained within the unaudited financial statements. The petitioner also submitted copies of IRS Form 941, Employer's Quarterly Federal Tax Return, for all quarters of 2005 and 2006. However, as the petitioner does not indicate it has paid the beneficiary in the past and provides no documentation that it has compensated a similar position in the past, the tax returns are not evidence of how it intends to compensate the beneficiary.

The petitioner has therefore failed to establish how it intends to compensate the beneficiary.

Finally, the petitioner has failed to meet the requirements of the regulation at 8 C.F.R. § 204.5(m)(7), which requires the petitioner to submit a detailed attestation with details regarding the petitioner, the beneficiary, the job offer, and other aspects of the petition. The record contains no such attestation.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g., Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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 28, 2009 is affirmed.