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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

PUBLIC COPY

[Redacted]

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FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: **MAR 23 2011**

IN RE:

Petitioner:

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
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 minister. 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.

On appeal, the petitioner states that the beneficiary arrived in the United States in September 2008 and volunteered for the petitioner while awaiting a decision on his application to change status to that of a R-1 nonimmigrant religious worker. The petitioner submits a letter in support of the appeal.

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 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 June 1, 2009. 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:

- (i) Received salaried compensation, the petitioner must submit IRS 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 submitted a copy of a February 13, 2009 "Certificate of Allowance Paid" from the [REDACTED] South Korea certifying that the beneficiary served as pastor with the organization and the salary he received from January 1, 2005 through January 21, 2009. However, the petitioner failed to submit documentation comparable to that required for establishing work within the United States, as required by the above-cited regulation.

The petitioner also submitted a copy of the beneficiary's Form I-94, Departure Record, which reflects that the beneficiary entered the United States on September 3, 2008 in a B-2 nonimmigrant visitor status for an authorized period of stay until March 3, 2009. 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). Any work performed in the United States in an unauthorized status interrupts the continuous work experience required by the regulation.

The petitioner submitted a copy of a February 26, 2009 certificate of employment from the [REDACTED] in Flushing, New York, certifying that the beneficiary was a professor with the organization. The petitioner submitted no other documentation to establish that the beneficiary worked for [REDACTED]. Further, as noted above, an alien present in the United States in a B-2 nonimmigrant status is not authorized to work in the United States.

In a July 24, 2009 request for evidence (RFE), the director requested additional documentation to establish that the beneficiary was authorized to work in the United States. In addition, the director instructed the petitioner to:

Provide experience letters written by the previous and current employers that include a breakdown of duties performed in the religious occupation for an average week. Include the employer's name, specific dates of employment, specific job duties, number of hours worked per week, form and amount of compensation, and level of responsibility/supervision. In addition, submit evidence that shows monetary payment, such as pay stubs or other items showing the beneficiary received payment. If any work was on a volunteer basis, provide evidence to show how the beneficiary supported himself during the two-year period or what other activity the beneficiary was involved in that would show support. If any of the experience was gained while

working in the United States provide evidence that the beneficiary was employed while in lawful status.

The director also instructed the petitioner to submit copies of the beneficiary's IRS Forms W-2 for the years 2007 and 2008.

In response, the petitioner stated that the beneficiary worked for [REDACTED] in Korea from October 1998 and therefore has no U.S. tax documentation. The petitioner resubmitted the "Certificate of Allowance Paid" from the [REDACTED]. However, it submitted no other documentation to establish that the beneficiary worked and received compensation during the qualifying two-year period.

In denying the petition, the director stated that the petitioner had failed to fully respond to the RFE in that it failed to provide a breakdown of the beneficiary's duties. The director also stated that the petitioner had not explained how the beneficiary was compensated in the United States and who served as pastor prior to the beneficiary. On appeal, the petitioner protested that the latter request was not part of the RFE.

The petitioner again referred to the certificate from the [REDACTED]. However, the petitioner submitted no other documentation to establish the beneficiary's religious employment during the qualifying period. While the petitioner stated that the beneficiary volunteered with the petitioning organization, other documentation in the record indicates that the beneficiary was a professor with the [REDACTED]. The petitioner submitted no documentation of any compensation that the beneficiary received from that organization.

The petitioner further states that the beneficiary worked for the [REDACTED] "through online and phone" and received compensation from that organization. The certificate from the [REDACTED] indicates that the beneficiary was paid through January 2009. The petitioner submitted an employment certificate indicating that the beneficiary was a professor with the [REDACTED] in New York. The petitioner submitted no other information about the beneficiary's compensated work in the United States. The petitioner did not address the beneficiary's lawful immigration status on appeal.

The petitioner failed to provide sufficient documentation, as outlined by the regulation at 8 C.F.R. § 204.5(m)(11), to establish that the beneficiary worked for the [REDACTED] in Korea. The petitioner also failed to establish that the beneficiary worked subsequent to his entry into the United States and that any employment in the United States was in a lawful immigration status.

The petitioner has therefore 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.

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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.