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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:



Office: CALIFORNIA SERVICE CENTER

Date:

**MAR 23 2011**

IN RE:

Petitioner:

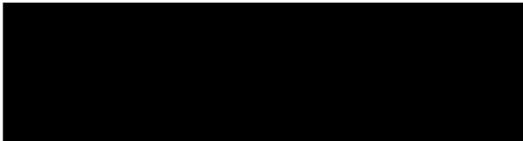


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Beneficiary:

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,

*[Signature]*  
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 "Christian organization with churches" located internationally. 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 at its Silver Spring, Maryland church. 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.

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 September 5, 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:

- (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.

In its April 26, 2006 letter in support of the petition, the petitioner stated that the beneficiary was licensed with the petitioning organization on January 27, 1999 and ordained on August 15, 2004. In a separate document outlining her experience, the petitioner stated that the beneficiary had served as praise and worship minister since 1987 "at Bethel World Outreach Church as well as at various churches in the U.S." The petitioner submitted none of documentation as outlined above to establish that the beneficiary worked 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 December 11, 2006, the director instructed the petitioner to:

Provide evidence of the beneficiary's work history for the years 2004, 2005 and 2006. 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.

The director also requested the beneficiary's federal tax documentation for 2004 through 2006.

In response, the petitioner resubmitted previously submitted documentation but provided no additional information regarding the beneficiary's religious work experience. The petitioner provided financial documentation, including the beneficiary's IRS Forms W-2 for 2004 and 2005, which reflect that she received wages of \$54,610.28 and \$52,928.89, respectively, from Prince George's Community College. The petitioner submitted no documentation to establish that the beneficiary was engaged in religious work with Prince George's Community College.

In response to a second RFE dated April 26, 2007, the petitioner stated that the beneficiary had been the minister of worship with Bethel World Outreach Church since 1991 but provided no other documentation about her religious work history. The director denied the petition, finding that the petitioner had not established that the beneficiary worked in qualifying religious work on a full-time basis.

On appeal, counsel argued that the regulations in effect at the time did not require qualifying work experience to be in a full-time or salaried capacity. Although counsel stated that a brief and/or additional documentation would be submitted in support of the appeal, the AAO received no further documentation prior to remanding the petition for consideration under newly promulgated regulations.<sup>1</sup>

In response to the director's June 17, 2009 Notice of Intent to Deny (NOID) the petition issued following the AAO's remand, the petitioner submitted a copy of the beneficiary's 2008 IRS Form §housing valued at \$4,615.40. However, the petitioner again failed to provide verifiable documentation of any religious work or compensation paid to the beneficiary for such religious work during the qualifying two-year period prior to the filing of the petition. The petitioner did not address this issue further on appeal.

The director also determined that the petitioner had failed to establish that the beneficiary had been lawfully employed as a religious worker for the two years immediately preceding the filing of the petition. The director stated that the beneficiary had been granted Temporary Protected Status (TPS) on December 29, 2005, which was valid for one year and that the petitioner had failed to provide evidence that the beneficiary had maintained her status or had been afforded another valid status.

The record contains copies of the beneficiary's approved Form I-821, Application for Temporary Protected Status (TPS) and copies of her employment authorization cards which reflect that she maintained her TPS status and was granted employment authorization based upon that status. Therefore, we find the beneficiary was in a lawful immigration status during the qualifying two-year period.

Nonetheless, as the petitioner has failed to establish that the beneficiary was engaged in qualifying religious work, it failed to establish that she worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the visa petition.

Beyond the decision of the director, the petitioner failed to establish how it will compensate the beneficiary.

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

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<sup>1</sup> Counsel also failed to respond to the AAO's November 10, 2008 faxed inquiry regarding the additional documentation.

*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 did not indicate any proposed compensation for the beneficiary in its initial submission. It provided a listing of its 2006 salaries and housing allowances; however, the beneficiary was not included on the list. In response to the director's December 11, 2006 RFE, the petitioner submitted a copy of its unaudited income statement and balance sheet for 2006. However, the petitioner provided no further supporting documentation to confirm the assertions made in the financial documentation or contained within the unaudited financial statements. In light of this, limited reliance can be placed on the validity of the facts presented in the financial statements that have been submitted.

The petitioner submitted no additional documentation regarding this issue on appeal. However, in response to the director's NOID following remand, the petitioner submitted a copy of a November 19, 2008 letter in which it informed the beneficiary that she would receive \$30,000 in a housing allowance beginning in 2008. As discussed previously, the petitioner submitted a copy of an IRS Form W-2 on which it reported it paid the beneficiary \$6,115.42 in wages and \$4,615.40 for housing. The petitioner also submitted copies of its unaudited Statement of Activities and Statement of Financial Position Statement for the year ended December 31, 2006 and a copy of its Financial Position for the year ended December 31, 2007, and provided a consolidated Statement of Activities for the same two-year period. The petitioner stated in a February 29, 2008 letter that the financial records would be audited by April 2008; however, it provided no subsequent evidence of the audit. Additionally, the documentation submitted in response to the NOID does not establish how the petitioner intended to compensate the beneficiary when the petition was filed. 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). *See also*, *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The petitioner has failed to provide verifiable documentation of how it intends to compensate the beneficiary.

Additionally, 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., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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 November 3, 2009 is affirmed. The petition is denied.