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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:

[Redacted]

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:

[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 employment-based immigrant visa petition was denied by the Director, California Service Center, and 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 an education 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, counsel states that the beneficiary worked in an R-1 nonimmigrant religious worker status prior to her change of status to an E-2 dependent of a treaty worker. The petitioner submits additional documentation 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 July 21, 2008. Accordingly, the petitioner must establish that the beneficiary had been 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.

With the petition, the petitioner provided a copy of the beneficiary's visa indicating that she was approved for B1/B2 nonimmigrant status as a visitor for business or pleasure, and that she entered the United States pursuant to that visa on June 27, 2001. The petitioner submitted a copy of a November 7, 2007 Form I-797A approving the beneficiary's application to extend or change nonimmigrant status to E-2, treaty trader or investor, which was valid from May 13, 2007 to May 12, 2009. The petitioner also submitted a March 30, 2008 "certification of employment" and March 30, 2008 proof of employment letter, both signed by the petitioner's "chair person of committee on pastor parish relation" and its "chair person of committee on finance," and an April 23, 2008 letter submitted with the petition, [REDACTED]

[REDACTED]. The letters certified that the beneficiary had worked for the petitioner as an education minister since April 1, 2006 and was currently receiving an annual salary of \$21,600.

The petitioner submitted a copy of the beneficiary's employment authorization documentation, which was valid from June 9, 2008 to May 12, 2009. According to USCIS records, the beneficiary received authorization to work in her E-2 nonimmigrant status from October 13, 2005 to May 12, 2007 and from June 9, 2008 to May 12, 2009.¹

In denying the petition, the director stated:

[T]he evidence does not indicate that Beneficiary came to the United States to work in a full time compensated position [as] defined in paragraph (m)(5) of section 101(a)(2)(C) of the Immigration and Nationality Act . . . In fact, the record shows that Beneficiary came to the United States as a Treaty Investor or Spouse of a Treaty Investor. Although Beneficiary was issued an Employment Authorization Document to seek employment and did in fact find employment with the [petitioner], Beneficiary can not be classified as a Religious Worker as clearly defined in paragraph (m)(5), which category is eligible for classification as a Special Immigrant Religious Worker.

¹ It appears that the approval of the beneficiary's authorization to work pursuant to her E-2 status was erroneous. Pursuant to the regulations at 8 C.F.R. §§ 274a.12(b)(5) and (c)(2), employment authorization does not extend to the E-2 dependent of the E-1 principal treaty trader or investor unless the principal is an employee of the [REDACTED]

On appeal, counsel states:

[The beneficiary] was admitted and authorized to work as a religious worker on 12/11/2002 as an education director at the request of [REDACTED]. She has engaged in that religious occupation since that time. This position was compensated, full time in a professional capacity. . . .

After [the beneficiary's] husband obtained E-2 status, [the beneficiary] obtained dependent E-2 status, with work authorization, in 2005. She then started work as education minister with petitioner.

[The beneficiary] has never been out of status and has worked as a full time religious worker since 2002.

The petitioner submitted a copy of an August 11, 2002 Form I-797A notifying [REDACTED] that the beneficiary had been approved for R-1 status for the period December 11, 2002 to September 7, 2005 and an April 4, 2009 Form I-797A approving the beneficiary's request to extend her E-2 status from May 13, 2009 to May 12, 2011.

As it pertains to this case, the regulation does not require that the beneficiary's initial entry into the United States to be solely for the purpose of performing work as a religious worker. "Entry," for purposes of this classification, would include any entry under the immigrant visa granted under this category or would include the alien's adjustment of status to the immigrant visa. Further, the regulation does not require that the beneficiary's qualifying work experience in the United States to be as an approved religious worker under the provisions of paragraph (m)(5) of section 101(a)(2)(C) of the Act. We withdraw these statements by the director.

Nonetheless, the petitioner has not established that the beneficiary worked continuously in a lawful immigration status during the qualifying period of July 21, 2006 to July 21, 2008. The record reflects that, during the qualifying period, the beneficiary received authorization to work in the United States from October 13, 2005 to May 12, 2007 and from June 9, 2008 to May 12, 2009. The record contains no documentation to establish that the beneficiary was authorized to work in the United States from May 13, 2007 to June 8, 2008.

The petitioner provided a copy of a 2006 IRS Form W-2, Wage and Tax Statement, issued to the beneficiary by [REDACTED] on which it reported it paid the beneficiary \$5,100 in wages. The beneficiary's uncertified, undated and unsigned IRS year 2006 Form 1040, U.S. Individual Income Tax Return, which she filed jointly with her spouse, shows wages of \$20,400. The record does not reflect the source of the remaining salary reported on the beneficiary's tax return.

The petitioner submitted a copy of a check that it issued to the beneficiary on December 31, 2006 in the amount of \$1,468.95. The petitioner also submitted a copy of an IRS Form W-2 on which it

reported that it paid the beneficiary \$20,400 in wages in 2007. The petitioner provided an uncertified, unsigned and undated copy of the beneficiary's IRS Form 1040, filed jointly with her husband, on which she allegedly reported this wage income. The petitioner further submitted a copy of a check dated January 27, 2008 and made payable to the beneficiary in the amount of \$1,468.95, and copies of unprocessed checks made payable to the beneficiary and dated in February, March and April 2008 in the amount of \$1,510.30.

The record therefore reflects that the beneficiary engaged in employment without proper authorization and thus worked in an unlawful status for approximately one year, between May 2007 and June 2008, of the qualifying period.

Additionally, the petitioner submitted insufficient documentation to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for the two years prior to the filing of the petition. The petitioner stated that the beneficiary began working for the petitioning organization in April 2006. However, it submitted insufficient documentation to establish the beneficiary's work with the petitioner in 2006. The petitioner submitted a copy of an IRS Form W-2 from [REDACTED] indicating that this organization paid her \$5,100 in 2006. The beneficiary and her husband reported wages of \$20,400 on their year 2006 IRS Form 1040. However, the petitioner submitted no documentation to explain the difference in the amount shown on the IRS Form W-2 from [REDACTED] and the wages reflected on the IRS Form 1040. Additionally, the petitioner did not provide a certified copy of the beneficiary's IRS Form 1040 as required by the regulation and provided no other documentation to establish that the tax return was filed with the IRS. Further, the record does not reflect that the checks made payable to the beneficiary in February, March and April 2008 were processed by the bank and the petitioner provided no documentation of any compensation paid to the beneficiary in May and June 2008. Finally, as the petitioner indicated that the beneficiary was given an annual salary of \$21,600 or \$1800 per month and that she began working in April 2006, the wages reported on the beneficiary's 2006 form W-2 should be \$14,400. These discrepancies cast further doubt on the petitioner's claims of the beneficiary's continuous work experience. 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).

The petitioner has failed to establish that the beneficiary worked in a lawful immigration status or 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 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 petition will be denied 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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.