

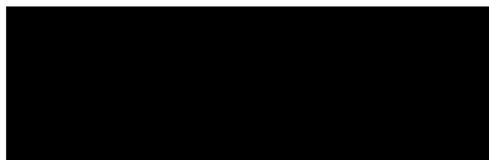
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



C1

FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

MAR 23 2011

IN RE: Petitioner:
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,

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 "prayer group within the Roman Catholic 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 preacher/disciple. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation and 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 first issue presented is whether the petitioner has established that the proffered position qualifies as that of a religious occupation. The U.S. Citizenship and Immigration Services (USCIS)

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.

In response to a December 11, 2006 request for evidence (RFE), the petitioner submitted a job description that shows the following:

1. PREACHER/DISCIPLE – Preach the Word of God. It is a must to do an extensive study of the scriptures and meditations before each prayer meeting and be ready for healing and counseling session thereafter. Accept long term or temporary assignments to different chapters, cell groups and outreaches within California and other states as need requires.
 - Stand-by at office every Sunday, except the second of each month, to accept telephone calls for counseling and pray over during and after airing of the ministry’s Sunday prayer meeting TV program
 - Every second Sunday of each month, lead a group to a FEEDING-THE-HOMELESS program at [REDACTED].
 - Entertain calls for counseling, pray over and other matters during and after working hours, weekdays or weekends.
 - Do other job as may be assigned in relation to duty as preacher/disciple.
2. OFFICE STAFF – During regular working hours, weekdays, assist in routine office functions such as data entry, errands and other clerical jobs.
3. TECHNICAL SUPPORT – In-charge of sound system installation and supervision during two (2) regular Sunday prayer services in Los Angeles and in outreaches all over Southern California.
 - Editing and re-recording of audio and video taped copy of prayer services to be distributed to members and sponsors.

In a second job description, the petitioner also included another category of duties: [REDACTED] – In-charge of minor repairs and maintenance of the ministry’s office and building such as carpentry, electrical and plumbing.”

In response to a second RFE dated April 4, 2007, the petitioner stated that the beneficiary performed the following duties:

- 1) Weekdays, on normal operation, 9am to 12 noon – re-recording, editing and copying of audio and video taped prayer meetings to be distributed to members and donors. Job includes labeling and titling of copies. One needs to be a minister to do it since familiarity with the scripture is required to do the editing and titling of copies. Sometimes this duty is interrupted by calls for counseling of pray over.
- 2) Weekdays, 1pm – 6pm – Assist in routine office functions such as data entry, errands and other related jobs. Data entry consists of writing input on donations and preparation of written acknowledgements for anything received. Errands consist of sending or mailing out of recorded services at an average of 50 to 150 copies daily. [REDACTED] also include purchasing supplies for office and recording needs. Ministers on office duty answers calls for counseling and pray over. At times the beneficiary has preaching assignment at night, he may try to find comfortable time to prepare or read the scripture as long as it does not hamper normal office function.
- 3) Preaching assignments at nights or weekends not considered part of 40hr/week function for the beneficiary received \$75 - \$150 stipend per talk depending on where assigned.
- 4) Duties [REDACTED] considered a voluntary offering,.
- 5) Sound system installation and supervision during two (2) regular Sunday services at Los Angeles is regular worship
- 6) Attending seminars and others studies part of learning process.

Noting the clerical and secular nature of the duties of the position, the director determined that the petitioner had submitted insufficient documentation to establish that the duties relate to a traditional religious function and denied the petition.

On appeal, counsel asserted that the beneficiary’s position is that of “a counselor/preacher/manager” and that his “primary goal and duties are to advance the word of the Lord by helping those in need and crisis. He is a brother of the order.” The petitioner, through its executive coordinator, [REDACTED], stated in an October 10, 2007 letter, that in submitting the job description:

[W]e admit we prepared a [vague] account of his hours and duties. That while we failed to focus more on his religious functions we also added other unrelated functions. These are due to our perceptions that being able to do other church jobs

would be helpful in getting favorable decision on our petition request. Secular jobs are done by our full-time preacher-disciples in rotation basis and only happen in our Los Angeles office which serves as the coordinating center for our USA, Canada and Europe chapters.

[] Most of our prayer meetings, discipleship/formation trainings, bible studies and other seminars are held during weekends or night time to make it available for our working members to attend. Due to the nature and time of our services, we are not too concerned about counting number of hours worked by our full-time preachers. Which means application of a 40hr/wk basis is not a big deal to us.

[] We receive an average of 5 to 15 calls daily for counseling or pray over. And in between those calls, our disciples-preachers who are on-duty daytime are willing to assist in routine office functions in order to make their stay in the center worthwhile provided it will not affect main their [sic] function. We also consider secular jobs part of learning process. At the time of the preparation of [the beneficiary's] job description he was already recalled back to the Los Angeles center. For this reason, such secular jobs were included in the list of his duty [sic].

Nonetheless, the work schedule provided for the beneficiary indicates that his duties are primarily secular in nature. While the petitioner includes "preaching assignments," it does not indicate how often the beneficiary engages in such activity and further states that the assignments are not included in the 40 hour work week. The petitioner submitted no documentation of any specific requirements for the proffered position.

The petitioner submitted a copy of an August 5, 2005 memorandum assigning the beneficiary to work at the " [redacted] s and [redacted] p from August 10, 2005 to January 10, 2006." The memorandum indicates that his duties would include "talks on their prayer meetings," training of volunteer workers, bible studies and meetings with council members and elders. The memorandum did not specify any particular hours that the beneficiary was to work.

The petitioner submitted no documentation on certification.

The evidence of record does not establish that the duties of the proffered job primarily relate to a traditional religious function or primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination. The petitioner also failed to establish that the proffered position is recognized as a religious occupation within [redacted] the petitioner's denomination. While the job description lists some duties of the position that are religious in nature, the work schedule indicates that the secular duties are the primary focus of the job. 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 submitted insufficient documentation to establish that the proffered position is a religious occupation as defined by the regulation.

The second issue 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 November 13, 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.

The petitioner indicated on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, that the beneficiary arrived in the United States on September 28, 1992. The petitioner provided a copy of the beneficiary's visa, which indicated that he was approved for a C1/D,

transient crewmember, visa on September 2, 1992 with an expiration date of August 31, 1997. An entry stamp on the visa indicates that the beneficiary entered the United States in 1993 pursuant to that visa.¹ The petitioner provided no documentation that the beneficiary has been present in the United States in a lawful immigration status subsequent to 1993. Therefore, any work performed by the beneficiary in the United States interrupts the continuity of his work experience for the purpose of this visa petition.

The petitioner has not established that the beneficiary worked in a lawful immigration status and therefore has failed to establish that he 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.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial 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 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 October 30, 2009 is affirmed. The petition is denied.

¹ The exact date of the entry is illegible.