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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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DATE: MAY 11 2011 OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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 matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner initially described itself as a non-denominational 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 grant writer and ministry coordinator. The director determined that the petitioner had not established that the beneficiary's intended position qualifies as a religious occupation.

On appeal, the petitioner submits a witness letter and background documentation.

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 in the director's decision is whether the petitioner seeks to employ the beneficiary in a qualifying 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.

The petitioner filed the Form I-360 petition on June 29, 2009. In the employer attestation that accompanied the petition, the petitioner stated that the beneficiary's "daily duties will include grant research preparation and submission, ministry coordinator for youth and community services – phone calls, flyer preparation and posting, coordinating public service announcements and ordering supplies."

On August 15, 2009, the director issued a request for evidence (RFE), instructing the petitioner to submit more details about the beneficiary's intended occupation, and evidence that the position meets the requirements spelled out in the regulatory definition of a religious occupation.

In response, the petitioner submitted the following table:

| Duties of Beneficiary | Level of Responsibility | Number of hours/week |
|---|-------------------------|----------------------|
| 1. Sunday School Teacher | Full responsibility | 3 hrs |
| 2. Coordinator Dance Ministry | Full responsibility | 5 hrs |
| 3. Coordinator Community Programs | Full responsibility | 8 hrs |
| 4. Coordinator Telephone Ministry | Full responsibility | 8 hrs |
| 5. Coordinator Membership Programs | Full responsibility | 5 hrs |
| 6. Web Site Developer and Coordinator | Full responsibility | 4 hrs |
| 7. Assistant Finance Coordinator | Full responsibility | 2 hrs |
| 8. Research and Apply for grants for faith based ministry | Full responsibility | 5 hrs |

The duties listed in the table do not fully correspond to the list the petitioner provided earlier. For example, the original list mentioned "ordering supplies," but not teaching Sunday school.

The petitioner claimed: "These duties relate to a traditional religious function in that they align with duties that are performed by a deacon or deaconess in regular church setting." The petitioner submitted excerpts from the *Deacon Handbook* of the Deacon Ministry of First Baptist Church,

Garland, Texas. (The petitioner, which previously self-identified as “non-denominational,” claimed no affiliation with the Texas church.) The *Handbook* included a general list of “responsibilities,” such as “To lead the church in the achievement of its mission” and “To care for the church’s members and others in the community,” but there was no list of specific duties resembling either of the conflicting lists submitted by the petitioner.

Also, the regulatory definition includes two separate requirements: the position must relate to a traditional religious function and, also, must be recognized as an occupation. Neither implies the other. The *Handbook* submitted by the petitioner did not state that the position of deacon is a compensated occupation. The submitted excerpts contain no mention of “hiring” or “employment,” instead referring to the position as “an elected one.”

The director denied the petition on October 14, 2009, stating that the petitioner failed to show that the beneficiary’s duties relate to a traditional religious function with denominational recognition as a full-time, salaried occupation. On appeal, the petitioner submitted a letter from Bishop [REDACTED] Tennessee, who stated that the petitioner “is a church that is in good standing under the authority of Anointed Outreach Ministry,” and that the beneficiary’s position “is a traditional salaried religious [occupation] within our denomination.”

Bishop [REDACTED] letter is the first mention of denominational affiliation with Anointed Outreach Ministry. The Form I-360 petition included a religious denomination certification, which called on the petitioner to identify its denominational affiliation. On that certification, Rev. [REDACTED] wrote “non-denominational” in the space marked “Name of Religious Denomination.” The petitioner submitted no documentary evidence of this newly-claimed affiliation, and therefore the petitioner’s completely new claim of denominational affiliation lacks credibility. Doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92.

A copy of what purport to be the petitioner’s 2002 bylaws defines the role of “deacons,” but the petitioner had never stated that the beneficiary would serve as a deacon. The petitioner did not mention deacons at all in the initial submission. Later on, the petitioner claimed only that the beneficiary’s role was comparable to that of a deacon – while submitting information from a completely different church.

The petitioner submits printouts from the [REDACTED] defining various characteristics of “Religious Workers.” The information is general in nature, and occupational information from the State of Michigan has no controlling authority in this petition (which involves a church in Tennessee).

The petitioner has not shown that the beneficiary's inconsistently described duties meet the regulatory definition of a religious occupation. The original description leaned heavily toward non-qualifying secular administrative functions, and the petitioner's subsequent alterations of the job description lack credibility. The AAO therefore agrees with the director's finding to that effect.

The AAO may identify additional grounds for denial beyond what the Service Center identified 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).

When considering the question of whether the beneficiary seeks to enter the United States in order to perform qualifying religious work, it is highly significant that the beneficiary last entered the United States on August 12, 2009 with an F-1 nonimmigrant student visa to study for a master's degree in epidemiology at the University of Tennessee College of Graduate Health Sciences. The Form I-20 A-B Certificate of Eligibility of Nonimmigrant (F-1) Student Status indicated that the petitioning church would pay \$41,594 to cover the beneficiary's tuition, fees, and living expenses. Given this entry, just weeks before the petitioner filed the Form I-360 petition, preceded by several years of employment at a hospital (more about which further below), the AAO has serious doubts that the beneficiary intends to work full-time for the petitioner in the future. Instead, her past employment and ongoing studies in a demonstrably secular field strongly suggest an intent to work as a medical professional. The petitioner has asserted that its intended position for the beneficiary requires a bachelor's degree, which the beneficiary earned in 2002; the petitioner has not explained why her intended work would require a master's degree in epidemiology.

Another issue concerns the beneficiary's intended compensation. The USCIS regulation at 8 C.F.R. § 204.5(m)(10) reads:

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 [Internal Revenue Service] 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.

In its employer attestation, the petitioner claimed to have two employees, and stated that the beneficiary

will be compensated through the provision of room and board, meals will be from our kitchen ministry that provides 3 meals daily for members, personal items will be paid

for through petty cash and financial remuneration will be from approved grants and approved salary based upon grantor's recommendation.

The petitioner did not specify any dollar amounts relating to the offered compensation. The petitioner claimed to own a house on church grounds, but submitted no documentation to this effect. In terms of financial documentation, the petitioner submitted a copy of its "Projected Budget for 2009," presuming income of \$500,000 and expenses of about \$220,000. These numbers, if correct, would leave ample funds for the beneficiary's compensation, but the petitioner submitted no verifiable documentary evidence to back up the figures. The petitioner claimed to have budgeted \$80,000 for salaries, but neither provided IRS documentation of past salaries nor explained its absence.

In the August 2009 RFE, the director instructed the petitioner to submit IRS documentation to show how it will compensate the beneficiary. In response, the petitioner stated that the beneficiary would receive "Non-salaried compensation – therefore no IRS documentation is available." The petitioner also claimed that the petitioner had three members of its "paid staff . . . compensated through provision of housing stipends and the operation of a church kitchen." The petitioner also stated that "7 ministers are given [a] stipend after preaching." This contrasts with the petitioner's initial claim of two employees and an \$80,000 budget for salaries.

Also, the petitioner had previously indicated that the beneficiary would in fact receive a salary, albeit in an amount not yet determined. The assertion that the beneficiary's compensation would be entirely non-salaried, therefore, amounts to a significant revision of the petitioner's claim.

For the reasons discussed above, the AAO finds that the petitioner has not provided the required documentary evidence regarding the beneficiary's intended compensation.

Finally, there is the issue of qualifying past employment. The USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working as a minister or 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 USCIS regulation at 8 C.F.R. § 204.5(m)(11) requires that qualifying prior experience, if acquired in the United States, must have been authorized under United States immigration law.

Part 3 of the Form I-360 petition instructed petitioner to provide information about the beneficiary's current nonimmigrant status "if this person is in the United States." The petitioner left the section blank, implying that the beneficiary was not in the United States, but in its employer attestation, stated that the beneficiary "has worked with [the petitioner] for the past 6 years in a voluntary position."

The petitioner submitted IRS transcripts of the beneficiary's timely filed federal income tax returns for 2006 through 2008, showing that the beneficiary earned over \$45,000 in each of those three years. The transcripts did not identify the source of this income.

In the RFE, the director requested additional evidence of the beneficiary's employment during the two-year qualifying period. In response, the petitioner stated that the beneficiary "is now currently in the status of a[n] F1 student at the University of Tennessee Graduate Health Science in Memphis and is being provided with room and board at a house which is located on the church property." In a separate letter, the petitioner's pastor, Rev. [REDACTED] stated that the beneficiary "has worked voluntarily for the ministry and no compensation was provided as during this time [the beneficiary] was legally employed by [REDACTED]." Copies of USCIS documents show that the beneficiary held H-1B nonimmigrant specialty worker status through St. Jude from September 4, 2003 to May 1, 2009. Copies of IRS Forms W-2 for 2007 and 2008 identified [REDACTED] as the sole source of the beneficiary's income in those years; the amounts match the total income reported on the corresponding IRS transcripts.

The beneficiary's H-1B status expired May 1, 2009. The beneficiary entered the United States with an F-1 visa on August 12, 2009. She was, therefore, outside the United States for at least some of that intervening period, although the record does not show for how long. At no time did the beneficiary hold any nonimmigrant status that allowed her to accept compensated employment at the petitioning church.

The petitioner has described the beneficiary's past work as uncompensated volunteer work, but the petitioner has also repeatedly indicated that it provided free housing to the beneficiary. The IRS Form I-20 A-B indicates that the petitioner also paid for the beneficiary's graduate studies, which began shortly before the filing date.

The Board of Immigration Appeals ruled that an alien who "receives compensation in return for his efforts on behalf of the Church" is "employed" for immigration purposes, even if that compensation takes the form of material support rather than a cash wage. *See Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982). If the petitioner did provide housing and pay tuition costs, then the petitioner did compensate the beneficiary, albeit in a non-salaried form. The petitioner has not claimed or shown that USCIS ever authorized the beneficiary to perform compensated work for the petitioner.

As an H-1B nonimmigrant, the beneficiary could work only for the sponsoring employer, St. Jude Children's Research Hospital. *See* 8 C.F.R. § 274a.12(b)(9). In her subsequent F-1 status, the beneficiary would have been eligible for employment authorization only under limited conditions specified at 8 C.F.R. § 274a.12(b)(6); the petitioner has not claimed or shown that the beneficiary met any of those conditions. A nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status. 8 C.F.R. § 214.1(e).

If, as the petitioner has claimed, the beneficiary worked for the petitioner during the two-year qualifying period in exchange for housing, then she engaged in unauthorized employment with the petitioner, and failed to maintain lawful status as an H-1B and F-1 nonimmigrant. The petitioner's

claims, on their face, indicate the beneficiary does not meet the regulatory requirements at 8 C.F.R. §§ 204.5(m)(4) and (11).

Therefore, the AAO finds that the petitioner has not shown that the beneficiary meets the requirements relating to past qualifying employment.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the AAO will dismiss the appeal.

ORDER: The appeal is dismissed.