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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



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DATE: **MAY 17 2011** OFFICE: CALIFORNIA SERVICE CENTER FILE:

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.

Thank you,

5 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 withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further action and consideration.

The petitioner is a Pentecostal Christian 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 had the requisite two years of continuous, lawful work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits arguments from counsel and copies of the beneficiary's employment authorization cards.

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 petitioner filed the Form I-360 petition on November 5, 2008. On that form, the petitioner stated that the beneficiary had never worked in the United States without authorization. Asked to state the beneficiary's "Current Nonimmigrant Status," the petitioner answered "EWI," meaning "entered

without inspection.” The petitioner did not indicate that the beneficiary had any lawful immigration status or employment authorization.

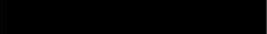
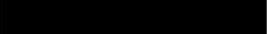
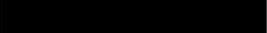
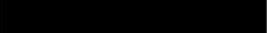
While the petition was pending, USCIS published new regulations for special immigrant religious worker petitions. Supplementary information published with the new rule specified: “All cases pending on the rule’s effective date . . . will be adjudicated under the standards of this rule. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information.” 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

The revised U.S. Citizenship and Immigration Services (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.

The director denied the petition on March 17, 2009, stating that the beneficiary’s “employment did not constitute valid lawful employment within the meaning of the regulation.”

On appeal, counsel argues that the beneficiary “has been employed with USCIS authorization since 1994, and he has maintained continuous work authorization from the Service for the specified period in question (since 11/05/2006). . . . Documentation . . . is attached.” The petitioner submits photocopies of four Form I-766 Employment Authorization Cards. Counsel states that the petitioner would have submitted these materials earlier if asked, but the director never issued a request for evidence to allow the petitioner to comply with the new provisions in the revised regulations.

USCIS records confirm that these documents are authentic, but they do not show “continuous work authorization.” Rather, each card was valid for one year, and the cards do not cover an uninterrupted period. USCIS records provide the following information:

I-765 receipt number	Filing Date	Valid From	Expires
	06/09/2005	06/17/2005	06/17/2006
	06/26/2006	[never valid – denied for abandonment]	
	11/28/2006	12/16/2006	12/16/2007
	11/30/2007	12/20/2007	12/19/2008
	12/12/2008	01/07/2009	01/06/2010

There is a gap of more than six months between the June 2005 card and the December 2006 card. The petitioner submits nothing on appeal to show that the beneficiary held valid employment authorization as of the November 8, 2008 filing date.

Because USCIS records show that the beneficiary applied to renew his employment authorization in June 2006, the AAO has reviewed the file for that application. The Director, Texas Service Center, denied the application for abandonment, because the beneficiary had supposedly failed to submit color photographs of himself in response to a July 12, 2006 request for evidence.

The record proves that the beneficiary did, in fact, respond to that notice on August 10, 2008. The beneficiary's response, which the beneficiary's attorney mailed to the Texas Service Center, somehow found its way into the beneficiary's A-file at the California Service Center instead of the Form I-765 file at the Texas Service Center. Because the photographs never reached the I-765 file, the director in Texas mistakenly concluded that the petitioner had failed to submit them.

The above information strongly suggests that USCIS error is responsible for the lapse in the beneficiary's employment authorization. If the director in Texas received the photographs and approved the employment authorization application, then the beneficiary would have held the proper authorization when the two-year qualifying period began in November 2006.

The director must issue a new decision, taking into consideration the evidence that shows USCIS error with regard to his 2006 application for employment authorization, and incorporating any *nunc pro tunc* remedy that the director may deem appropriate.

Review of the record reveals additional issues of concern that preclude approval of the petition. The AAO may cite additional grounds to deny an application or petition that fails to comply with the technical requirements of the law 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 USCIS regulation at 8 C.F.R. § 204.5(m)(7) requires the petitioner to submit a detailed employer attestation, providing certain information about the intending employer, the beneficiary, and the job offer. The record does not yet contain this required attestation. The director must allow the petitioner the opportunity to submit it.

Also, the regulation at 8 C.F.R. § 204.5(m)(8) requires the petitioner to submit evidence of tax exempt status, including a copy of a valid determination letter from the Internal Revenue Service (IRS). In this instance,

_____ stated that the _____ church where the beneficiary works "is part of our Organization . . . and share[s] the same federal exception 505(C)(3) [*sic*]." _____ claimed that the organization in Puerto Rico holds a group exemption that covers beneficiary's church in Georgia. The record, however, does not strongly support this claim.

The petitioner has submitted a copy of an April 19, 1994 IRS determination letter, issuing a group exemption to _____ with employer identification number _____. On Form I-360, the petitioner listed its _____ IRS Form

1099-MISC Miscellaneous Income statements that the [REDACTED] church issued to the beneficiary for 2005-2007 show the [REDACTED] church's [REDACTED]. Therefore, the petitioner has claimed two different EINs, neither of which matches the EIN shown on the IRS determination letter from 1994. We note that the letters from the IRS and [REDACTED] show an organization name that is similar, but not identical, to the organization name shown on Form I-360 (which lacks the word "Pentecostal").

The petitioner has not shown that the Maryland organization is the same as [REDACTED] organization headquartered in Puerto Rico. If the two organizations are one and the same, then documentary evidence should exist to show that the entity moved its headquarters from [REDACTED]

It is possible that all these organizations are, in fact, connected as the petitioner claims, but the record does not contain enough evidence to demonstrate the connection. The petitioner must submit either an IRS determination letter issued specifically to the [REDACTED] church (with an effective date no later than November 5, 2006), or persuasive documentary evidence to establish that the 1994 group exemption letter covers the petitioning church [REDACTED]

The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document . . . does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence . . . pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

8 C.F.R. § 103.2(b)(2)(i). Under the above regulation, a newly-written letter from a church official [REDACTED] would not suffice to establish the relationships between the various churches and organizations.

Therefore, the AAO will withdraw the director's decision and remand the petition for a new decision. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, the director must certify to the Administrative Appeals Office for review.