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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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[REDACTED]

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DATE: **MAY 20 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)

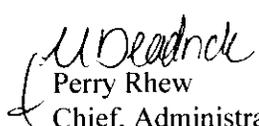
ON BEHALF OF PETITIONER:
[REDACTED]

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 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 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 a pastor. The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits arguments from counsel, along with statements from the beneficiary and another witness.

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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(4) states that the beneficiary must

[h]ave 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.

The USCIS regulation at 8 C.F.R. § 204.5(m)(11) reads:

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 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.

The AAO notes that the record contains a status inquiry from attorney [REDACTED]. The record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, naming [REDACTED] as the beneficiary's attorney, but there is no Form G-28 signed by both [REDACTED] and an authorized official of the petitioning entity. Therefore, [REDACTED] has not demonstrated that he is the petitioner's attorney of record. The term "counsel" in this decision shall refer only to [REDACTED] who is the attorney named on the petitioner's Form G-28.

The petitioner filed the Form I-360 petition on April 21, 2009. Evidence submitted with the petition indicated that the beneficiary entered the United States on August 23, 2006 as an F-1 nonimmigrant student, to study at the International Theological Seminary on El Monte, California. The petitioner indicated that, as of the April 2009 filing date, the beneficiary was still an F-1 nonimmigrant student.

The petitioner submitted a copy of the beneficiary's résumé, which included the following information:

| | | |
|-------------|--------------|---|
| Education: | 2006-2008 | International Theological Seminary |
| Experience: | 2002-2006 | [REDACTED] Ethiopia |
| | 2006-2008 | Voluntary Service [at the petitioning church] |
| | 2008-Present | Evangelist [at the petitioning church] |

Documentation from the International Theological Seminary confirmed that the beneficiary received a master of arts degree on June 7, 2008.

The petitioner did not submit any evidence of the beneficiary's compensation or employment authorization during the 2007-2009 qualifying period.

The director denied the petition on October 8, 2009, stating that the beneficiary did not engage in compensated, authorized employment throughout the two years immediately preceding the petition's April 21, 2009 filing date. The director also noted: "there is no evidence of compensation paid to the beneficiary by the petitioner for the beneficiary's evangelistic work from 2008."

On appeal, counsel stated "a misreading of the résumé" led the director to the erroneous conclusion "that the beneficiary has done volunteer work from 08/2006-2008 (only)." In a new declaration, the beneficiary asserts: "My resume indicates that I have done volunteer, non salaried services from August 2006 to June, 2008. . . . It does not indicate that I have always worked for free."

The petitioner submits a letter from [REDACTED], vice chairman of leaders at [REDACTED] Church, [REDACTED] Ethiopia, who states that the beneficiary was a salaried employee of that church from 1991 to August 2006. The letter includes no documentation of salary payments. More importantly, August 2006 was more than two years before the petition's filing date, and therefore any compensated employment at that time falls outside the two-year qualifying period.

USCIS records show that the beneficiary held employment authorization from July 1, 2008 to June 30, 2009, but evidence of authorization is not evidence of actual employment. The petitioner has not submitted IRS records of the beneficiary's compensation, or explained the absence of such evidence. Likewise, the petitioner has submitted no comparable evidence of the beneficiary's compensated employment prior to his arrival in the United States. An employer's letter, with vague references to an unspecified salary, is not comparable to IRS documentation of compensation.

With respect to the beneficiary's seminary studies, the regulation at 8 C.F.R. § 204.5(m)(4) allows for an interruption in the beneficiary's religious work for purposes of religious training, but during that time the beneficiary must remain an employee of a qualifying religious organization. The petitioner has not shown that any such organization considered the beneficiary to be an employee during the period of his studies in the United States.

The director, in the denial notice, quoted in full the USCIS regulations at 8 C.F.R. §§ 204.5(m)(4) and (11). The petitioner, on appeal, makes no effort to meet the requirements outlined in those regulations. The AAO agrees with the director's finding that the petitioner failed to show that the beneficiary meets the statutory and regulatory requirement of two years of continuous experience immediately preceding the filing date.

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.