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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 25 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.

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 affirmed the denial of the petition. The matter is now before the AAO on a motion to reopen and reconsider. The AAO will grant the motion and again affirm the denial of the petition.

The petitioner seeks classification 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 rabbi at [REDACTED] San Francisco, California. The director determined, and the AAO agreed, 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.

Counsel describes the latest filing as an appeal. There is no appeal, however, to an AAO decision. The petitioner can contest an AAO decision only by filing a motion. Therefore, the AAO can only review this filing if the AAO considers it to be a motion. (Both types of filing involve the same Form I-290B, and the same filing fee.) Counsel indicates that a brief will follow within 30 days. More than a year later, the record before the AAO contains no further submission from counsel. Furthermore, while the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.3(a)(2)(vii) permits additional time to file a brief in support of an appeal, no comparable regulation exists for motions to reopen or reconsider.

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).

At the time the petitioner filed the petition, the USCIS regulations at 8 C.F.R. §§ 204.5(m)(1) and (3)(ii)(A) required the petitioner to establish that the beneficiary was continuously engaged in qualifying religious work throughout the two years immediately preceding the petition's filing date. Following revisions to the regulations, 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) 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 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 petitioner filed the Form I-360 petition on July 6, 2007. In a June 14, 2007 letter, [REDACTED] president of [REDACTED] stated that the petitioner "has been employed with [REDACTED] Congregation since September 2006. However, he has volunteered for our congregation from November 2005 and

through August 2006, until his employment with us on September 1, 2006.” Subsequent correspondence from [REDACTED] has repeated this basic assertion.

The petitioner’s initial submission included copies of IRS Form W-2 Wage and Tax Statements, showing that Congregation [REDACTED], in San Francisco, paid the petitioner \$42,000 (including parsonage) in 2005, and that [REDACTED] paid him \$12,000 (including parsonage) in 2006. The petitioner’s last pay receipt from 2005 is for the second half of October. The petitioner submitted copies of paychecks from [REDACTED] from October 2006 through March 2007. These materials are consistent with the claim that the petitioner was unemployed from late 2005 through most of 2006.

The petitioner’s R-1 nonimmigrant status permitted him to work for [REDACTED] until November 16, 2006. The record does not reveal why that employment ended more than a year ahead of schedule.

Materials submitted with the petition indicated that, during his period of unemployment from November 2005 through August 2006, the petitioner lived off his spouse’s savings and charity. The petitioner received \$1,990 in contributions from Jewish Family and Children’s Services, and borrowed \$2,000 from the Hebrew Free Loan Association.

In the certified denial issued March 31, 2009, the director found that the petitioner’s claimed volunteer work was not qualifying experience. The director concluded: “the evidence is insufficient to establish that the beneficiary has been performing full-time paid work” throughout the qualifying period. In response to that denial, counsel stated: “The law seems to allow for a situation when a religious pries[t] is not financially compensated, but who can show by clear and convincing evidence how he or she was supported during this unpaid time without having to seek secular employment.”

In its October 28, 2009 decision affirming the denial of the petition, the AAO agreed with the director that “the petitioner provided insufficient evidence to establish that he worked continuously from November 1, 2005 through August 31, 2006.” The AAO added that the USCIS regulation at 8 C.F.R. § 204.5(m)(11)(iii) requires evidence of self-support in instances of unpaid work.

On motion, counsel maintains: “Petitioner provided sufficient evidence to support his statements that he worked as a full-time rabbi without compensation from November 2005 through August 2006 at [REDACTED] Congregation.” The petitioner resubmitted various materials submitted previously.

In a new letter dated November 18, 2008, the petitioner cites bank statements to show that he had over \$18,000 in the bank as of November 2, 2005, an amount that dwindled to barely \$1,000 by July 2, 2006. The petitioner states that this shows he was living off of his savings, not from secular employment, during that period. [REDACTED] members describe the petitioner’s rabbinical activities in late 2005 and early 2006.

Counsel states: “USCIS does allow for a situation where some work was done on a voluntary basis, it does not preclude situations such as beneficiary’s – it is only in ideal situations a beneficiary will be able to prove [past employment] with pay stubs.” The current regulations do, in fact, require evidence

of compensation except under limited, defined circumstances in which an alien relies on self-support rather than compensation. An explanation of the circumstances permitting self-support appears in the USCIS regulation at 8 C.F.R. § 214.2(r)(11)(ii):

Self support. (A) If the alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.

(B) An established program for temporary, uncompensated work is defined to be a missionary program in which:

- (1) Foreign workers, whether compensated or uncompensated, have previously participated in R-1 status;
- (2) Missionary workers are traditionally uncompensated;
- (3) The organization provides formal training for missionaries; and
- (4) Participation in such missionary work is an established element of religious development in that denomination.

(C) The petitioner must submit evidence demonstrating:

- (1) That the organization has an established program for temporary, uncompensated missionary work;
- (2) That the denomination maintains missionary programs both in the United States and abroad;
- (3) The religious worker's acceptance into the missionary program;
- (4) The religious duties and responsibilities associated with the traditionally uncompensated missionary work; and
- (5) Copies of the alien's bank records, budgets documenting the sources of self-support (including personal or family savings, room and board with host families in the United States, donations from the denomination's churches), or other verifiable evidence acceptable to USCIS.

Here, the petitioner has not claimed or shown that he was part of an established program for temporary, uncompensated missionary work. Rather, he entered the United States in 2004 for salaried employment

at CAS. That employment ended, for reasons unexplained, in late October 2005, and the petitioner did not again secure employment until ten months later.

Furthermore, the AAO's previous decision quoted, in full, the USCIS regulations at 8 C.F.R. § 204.5(m)(4), which requires the alien to have worked "in lawful immigration status," and 8 C.F.R. § 204.5(m)(11), which requires the alien's work experience in the United States to "have been authorized under United States immigration law."

The record shows that the petitioner entered the United States on August 17, 2004, as an R-1 nonimmigrant religious worker, permitted to work for CAS until November 16, 2006. The petitioner abandoned his R-1 nonimmigrant status when he ceased working for CAS in late October 2005. Because the job offer from CAS was the sole basis for the petitioner's admission into the United States, that basis for admission ended when the employment did. At some point in mid-2006, the petitioner left the United States, and re-entered on August 30, 2006, with a new R-1 nonimmigrant visa that permitted him to work for [REDACTED] until August 31, 2009.

The admitted ten-month gap in the petitioner's paid employment from November 2005 to August 2006 coincides with an equal lapse in his lawful immigration status and employment authorization. The assertion that the petitioner worked as an uncompensated volunteer does not resolve this issue. Working without pay does not bestow lawful immigration status, as required by the regulation at 8 C.F.R. § 204.5(m)(4). Furthermore, the regulation at 8 C.F.R. § 204.5(m)(11) requires that the alien's work "must have been authorized under United States immigration law." The petitioner has not documented any authorizing event or circumstance by which USCIS affirmatively permitted the petitioner to remain in the United States, working for [REDACTED] after his employment ended at CAS.

The record persuasively and consistently points to the conclusion that the beneficiary had neither lawful immigration status nor authorization to work for [REDACTED] in a paid or unpaid capacity from November 2005 to August 2006. This, on its face, disqualifies the petitioner for the benefit sought. The AAO will affirm its prior finding that the petitioner failed to establish two years of continuous, qualifying work experience immediately preceding the petition's filing date.

Beyond the director's decision, review of the record reveals other grounds that preclude approval of the petition. 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).

The petitioner's past experience in the United States must have been with one or more *bona fide* religious organizations, recognized by the IRS as tax-exempt. *See* 8 C.F.R. §§ 204.5(m)(1), (5) and (8). The petitioner claims to have worked for KYC since November 2005. KYC's June 21, 2006 IRS determination letter, however, indicates that the effective date of KYC's exemption is January 13, 2006. The record does not show why [REDACTED] was not tax-exempt earlier than that date. Nevertheless, the IRS letter, on its face, indicates that [REDACTED] was not a tax-exempt religious organization from November 1,

2005 to January 12, 2006. Therefore, even if the petitioner held lawful status and employment authorization at the time (which he did not), the record would not show that he worked for a qualifying tax-exempt religious organization during that period.

Finally, the record reveals contradictory information regarding the beneficiary's job offer from KYC. The original employment contract expired on August 31, 2008. A September 5, 2008 letter attributed to Mr. ██████ indicated that in "June this year [2008] we agreed to terms of employment of additional two years." The petitioner also, however, submitted a copy of a contract dated December 2, 2007, stating: "The term of employment shall be five years commencing on September 1st 2008, and terminating on August 31st 2013." These two statements appear to contradict each other, unless ██████ originally agreed to a five-year commitment but then reduced that commitment to two years (in which case the beneficiary's job offer has already expired). 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.

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 affirm the denial of the petition.

ORDER: The Administrative Appeal Office's decision of October 28, 2009 is affirmed. The petition is denied.