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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: Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED] 1
MAY 27 2011

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)

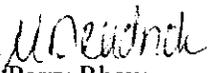
ON BEHALF OF PETITIONER:
[REDACTED]

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. On December 11, 2008, the 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 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 been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

The petitioner provides 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 issue presented on certification is whether the petitioner has established that the beneficiary worked continuously in a qualifying religious occupation or vocation for the two 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 December 14, 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.

In its December 7, 2006 letter accompanying the petition, the petitioner stated that the beneficiary worked as a pastor for [REDACTED] in Vancouver, Canada from September 2001 to June 2006 and for the petitioning organization since July 2006. The petitioner further stated that the position required the beneficiary to work 40 to 45 hours per week and that he had been paid \$30,000 per year for his services. The petitioner submitted a November 28, 2006 "employment certification" signed by [REDACTED], verifying that the beneficiary had worked for the petitioner from July 1, 2006 to the date of the certification and two programs for church services in 2006 that identify the beneficiary as the petitioner's pastor. The petitioner also submitted a December 1, 2006 "certificate of personal history" from the Pan-American Annual Conference of the Korean Methodist Church signed by [REDACTED], certifying that the beneficiary served as senior pastor of Pillar Methodist Church from September 2001 to June 2006 and with the petitioning organization from July 2006.

The petitioner further submitted a copy of a "payroll tax statement" for the beneficiary from its tax service. The document indicates that the beneficiary paid the beneficiary \$7,500 for the third quarter of 2006. The petitioner also submitted copies of "Statements of Account for Current Source Deductions" from the Commissioner of Revenue for the Canada Revenue Agency. These documents indicate that the petitioner submitted assessed payments to the agency for 2004 to 2006.

Several of the documents, apparently required to be filed on a monthly basis, indicate that the organization had a gross payroll of \$1,200; however, the documents do not state the particular employee for whom the payments were made.

In a request for evidence (RFE) dated May 15, 2007, the director requested additional information regarding the beneficiary's qualifying work experience, including evidence that he was compensated for his work. In response, the petitioner resubmitted copies of the Statements of Account from the Canada Revenue Agency and the copy of the payroll tax statement from its tax service. The petitioner also submitted a July 17, 2007 letter from [REDACTED], in which he confirmed that the beneficiary worked for Pillar Korean Methodist Church on a full-time basis from September 2001 to June 2006 and was paid \$1,800 per month.

Additionally, the petitioner submitted an "employment letter" in which its president, [REDACTED] confirmed that the beneficiary had worked for the petitioner 40 hours per week and had been paid \$2,500 per month. The petitioner provided a copy of Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, for 2006 indicating that it paid the beneficiary \$15,000 in wages, and a copy of the beneficiary's IRS Form 1040, U.S. Individual Income Tax Return, and his IT-201, State of New York Resident Income Tax Return, on which he reported wages of \$15,000.

The director determined that, as the Statements of Account for Current Source Deductions from the Canada Revenue Agency did not indicate that the payments were made on behalf of the beneficiary, the petitioner had submitted insufficient evidence of the beneficiary's employment with [REDACTED]

On appeal, the petitioner submitted a copy of the beneficiary's Canada Customs and Revenue Agency T1 General, Income Tax and Benefit Return, for the year 2005 and a copy of the June 2006 Statement of Account for Current Source Deductions. According to counsel, since the beneficiary's address on the tax return and the address on the Statements of Account are the same, these documents are evidence that the beneficiary worked for [REDACTED] Church during the requisite period.

The beneficiary's 2005 Canadian tax return reflects that he reported \$14,400 in wages, which is consistent with a \$1,200 monthly salary from the [REDACTED], however it is less than the \$1,800 per month that Bishop Shin stated that the beneficiary was paid. Additionally, the beneficiary reported \$10,000 in self-employment income. The beneficiary identified the main product or service of his business as "homestay." Therefore, the record does not establish that the beneficiary worked full time and continuously as a minister during 2005 as alleged by Bishop Shin. 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).

Pursuant to requirements under section 2(b)(1) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008), USCIS issued 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).

In keeping with this requirement, the AAO remanded the petition to the director on December 11, 2008, to give the petitioner an opportunity to meet the new requirements.

The new USCIS 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. 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 did not respond to the director's Notice of Intent to Deny (NOID) the petition issued following the AAO's remand.

The petitioner has not established that the beneficiary worked full time as a minister in Canada. The statute provides at section 101(a)(27)(C)(ii) that the alien must be coming "solely" for the

purpose of carrying on the vocation of a minister of the religious denomination. The statute also provides at 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work “continuously” for the two years immediately preceding the filing of the application for admission. An alien minister who works a second job “is precluded from special immigrant classification, which requires the minister to have been and intend to be engaged solely as a minister of a religious denomination.” *Matter of Faith Assembly Church*, 19 I&N 391, 393 (Commr. 1986). *See also, Hawaii Saeronam Presbyterian Church v. Ziglar*, 243 Fed.Appx. 224 (9th Cir., 2007).

Accordingly, the petitioner has failed to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding 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.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2^d Cir. 1989).

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 August 21, 2007 is affirmed. The petition is denied.