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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: NOV 09 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:

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 petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO subsequently remanded the petition to the director for a new decision based on revised regulations. The director again denied the petition and certified the decision to the AAO. The AAO will affirm the director's decision.

The petitioner identifies itself as a Pentecostal Christian church belonging to the All Nations Outreach Church denomination. 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 initially denied the petition on May 30, 2008, based on issues concerning the beneficiary's compensation and the petitioner's tax-exempt status. While the appeal was pending, U.S. Citizenship and Immigration Services (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 AAO remanded the petition to the director on December 18, 2008, for a new decision based on the revised regulations. The director again denied the petition on April 14, 2009, and certified the decision to the AAO as instructed in the AAO's remand notice. As required by 8 C.F.R. § 103.4(b)(2), the director allowed the petitioner 30 days in which to submit a brief in response to the certified decision. To date, the record contains no further correspondence from the petitioner. The AAO therefore considers the record to be complete.

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 first issue under consideration concerns the beneficiary's intended compensation. The petitioner filed the Form I-360 petition on January 23, 2008. In an October 19, 2007 letter accompanying the initial filing, [REDACTED], district superintendent of the denomination and pastor of the petitioning church, stated:

We currently have 4 churches located throughout Southern California. In the year 2006 the All Nations Outreach Church inc received gross annual support and revenues of . . . US\$1,072,055 with net annual assets of US\$593,146. . . .

[REDACTED] intends to employ [the beneficiary] as a Pastor. . . . He will be compensated at an annual salary of US\$24,000 plus housing and transportation. [The beneficiary] will be assigned to a church in South Street Long Beach Ca. All Nations Outreach Church Inc . . . is working to plant a Hispanic church in the Long Beach area.

On February 12, 2008, the director issued a request for evidence (RFE), instructing the petitioner to submit additional documentation, including financial evidence to establish its ability to compensate the beneficiary. In response, [REDACTED] stated that "[REDACTED]" had "[REDACTED]" and "One Paid employee." [REDACTED] stated that the beneficiary "works full time at the church," but "the church is only providing a 'love offering'" rather than a full salary.

The petitioner submitted its 2007 "Church Budget," claiming \$103,200 in total income and \$88,740 in total expenses, leaving a net balance of \$14,460 for the year. The budget listed only one salary, the "Pastor's Salary" of \$2,600 per month (\$31,200 per year). [REDACTED], the self-described pastor of the petitioning church, appears to be the person receiving the \$2,600 monthly salary. The claimed net income of \$14,460 covers only about seven months of the beneficiary's proffered salary of \$24,000 per year (\$2,000 per month), even without taking into account the additional expenses of "housing and transportation." The budget did not show a specific line item for the beneficiary's claimed "love

offering.” The petitioner submitted no evidence to show the amount of the “love offering,” or to prove that the petitioner had in fact made such payments to the beneficiary.

The director denied the petition on May 30, 2008, in part because “[t]he petitioner did not submit any bank records or other verifiable evidence that they have sufficient income to pay the beneficiary’s salary.”

On appeal from that decision, the petitioner submitted copies of bank statements issued to “All Nations Outreach Church Inc / World Overcomers Ministries.” The bank statements show the following average monthly balances:

February 2007	\$1,308.73	October 2007	\$1,889.54
March 2007	2,121.68	November 2007	1,009.34
April 2007	2,492.08	December 2007	1,813.81
May 2007	2,268.03	January 2008	2,398.13
June 2007	1,312.26	February 2008	1,807.79
July 2007	2,136.98	March 2008	1,895.68
August 2007	2,761.79	April 2008	2,637.53
September 2007	1,331.22	May 2008	1,047.14

The revised 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.

On February 4, 2009, the director issued a new RFE, quoting the revised regulations that included new evidentiary requirements, including the regulation at 8 C.F.R. § 204.5(m)(10). The petitioner’s response included an employer attestation, in which Rev. Aranotu stated that the beneficiary “is compensated at an annual salary of \$24,000.00 plus housing and transportation.” The petitioner submitted copies of processed checks that the beneficiary received between January 2007 and January 2009, in the following amounts:

01/30/2007	\$890.00	06/03/2007	\$172.00
03/01/2007	669.00	06/07/2007	539.00
04/01/2007	1,160.00	06/31/2007 [sic]	371.00

08/02/2007	\$1,117.00	05/04/2008	\$1,501.00
09/10/2007	1,006.00	06/01/2008	1,683.00
09/30/2007	537.00	07/03/2008	1,610.55
11/01/2007	854.60	08/03/2008	1,452.60
12/02/2007	1,268.10	09/04/2008	1,319.40
12/30/2007	1,095.90	10/05/2008	1,394.10
12/31/2007	200.00	11/02/2008	1,179.90
02/03/2008	984.40	11/30/2008	47.56
03/02/2008	1,055.70	12/03/2008	1,439.10
04/06/2008	1,239.30	01/04/2009	902.11

The checks listed above show total payments of \$9,879.60 in 2007 and \$14,906.21 in 2008. All of the listed payments, together, add up to \$25,687.92. Thus, over the course of two years, the beneficiary received barely one year's pay at the proposed rate. The petitioner did not submit any payroll or tax documentation to show that the above paychecks reflect withholding of taxes.

In the second denial notice, issued April 14, 2009, the director stated that the paychecks reproduced in the record do not add up to \$24,000 per year. The director also stated that the petitioner failed to show that the checks came from the petitioner's bank account, or that the petitioner had sufficient funds to pay the difference between the actual payments and the full salary. As noted previously, the record contains no evidence that the petitioner has contested this decision.

The AAO notes that the beneficiary's 2007-2009 paychecks identify the payer as "Ministerio Internacional de Restauracion," [REDACTED], which is neither the name nor the address of the petitioning entity. The bank account number shown on the checks, ending in 7697, does not match the account number on the petitioner's bank statements, ending in 9322. The previously submitted 2007 "church budget" did not account for payments to the beneficiary as documented in the checks listed above. The checks, therefore, do not establish that the petitioner has ever paid the beneficiary.

The petitioner did not explain the relationship between the petitioning church, physically located at [REDACTED] and Ministerio Internacional de Restauracion at [REDACTED]. The petitioner has also submitted copies of rent checks drawn from the account of World Overcomers Ministries, a name that also appears on a photographed church sign. If "All Nations Outreach Ministries," "All Nations Outreach Church," "World Overcomers Ministries" and "Ministerio Internacional de Restauracion" are all one and the same, the petitioner's use of multiple names has caused unnecessary confusion. If, on the other hand, the entities are different, then it was misleading for the petitioner to submit documentation relating to all four entities as though they all related to the petitioning entity and the beneficiary's job offer.

The petitioner has not shown that it has paid the beneficiary \$24,000 per year, nor has it shown that it would have been able to do so. The paychecks shown in the record are from a different ministry at

a different address than the petitioning entity. The record contains no evidence at all that the petitioner has ever paid the beneficiary's housing or transportation expenses. The AAO therefore affirms the director's finding that the petitioner has not established its ability and/or intention to pay the beneficiary at the rate claimed.

The second stated ground for denial concerns the beneficiary's past experience. At the time of filing, the USCIS regulation at 8 C.F.R. § 204.5(m)(1) required that an alien seeking classification as a special immigrant religious worker must have been performing qualifying religious work continuously for at least the two-year period immediately preceding the filing of the petition. The regulation at 8 C.F.R. § 204.5(m)(3)(ii)(A) required the petitioner to submit a letter from an authorized official of the religious organization to establish that the beneficiary had the required two years of experience.

On the Form I-360 petition, the petitioner indicated that the beneficiary arrived in the United States as a B-2 nonimmigrant visitor for pleasure on March 28, 2000, with status valid until September 27, 2000. Documents reproduced in the record confirm these claims. The petitioner did not indicate that the beneficiary had subsequently extended his stay or changed to another nonimmigrant status.

In his October 19, 2007 letter, [REDACTED] stated: "From 1985 to present, [the petitioner] served as a minister on the staff of the International Charismatic Service, Colombia. His most recent staff position was Pastor with the responsibilities of Church planting." [REDACTED] wrote those words more than seven years after the beneficiary left Colombia for the United States. The record contains no documentation from the International Charismatic Service and no letter from any official of that organization to confirm that it ever employed the beneficiary.

In a second letter, also dated October 19, 2007, [REDACTED] stated that the beneficiary "is a working pastor from the period of time, which began 02/27/02 and is continuing at the present time."

In the February 2008 RFE, the director requested additional information about the beneficiary's work history. The petitioner submitted a copy of the second letter of October 19, 2007, described above.

The director's May 2008 denial did not address the beneficiary's past experience.

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.

Following the AAO's December 2008 remand order, the director, in the February 4, 2009 RFE, quoted the revised regulation at 8 C.F.R. § 204.5(m)(11). The petitioner's response did not address the beneficiary's past employment except for the aforementioned paychecks, the earliest of which dated from January 30, 2007, less than a year before the petition's January 23, 2008 filing date. As noted previously, the checks do not show that the beneficiary worked for the petitioner. The irregular monetary amounts do not suggest a fixed salary, or the petitioner's ability to compensate the beneficiary fully at any time. The petitioner submitted no evidence at all of the beneficiary's activities before January 2007.

The director, in the certified denial notice of April 2009, stated: "There is no information in the record to demonstrate that the beneficiary was authorized by United States Immigration to work legally in the United States." Therefore, the director concluded, the petitioner had not shown that the beneficiary continuously engaged in authorized employment throughout the two years immediately preceding the petition's January 2008 filing date.

As noted previously, the beneficiary entered the United States as a B-2 nonimmigrant and there is no evidence that the beneficiary held any lawful nonimmigrant status after September 27, 2000. The USCIS regulation at 8 C.F.R. § 214.1(e) states that a B-2 nonimmigrant may not engage in any employment, and that any unauthorized employment by a nonimmigrant constitutes a failure to maintain status.

The AAO affirms the director's uncontested finding that the petitioner failed to show that the beneficiary had lawful immigration status and work authorization throughout the qualifying period. The fragmentary evidence of record documents less than one year of payments to the beneficiary from any religious organization before the filing date.

The AAO will affirm the certified denial of the petition 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 met that burden.

ORDER: The director's decision of April 14, 2009 is affirmed. The petition is denied.