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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
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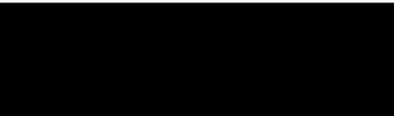
DATE: Office: CALIFORNIA SERVICE CENTER
NOV 25 2011

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:

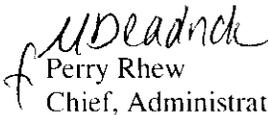


INSTRUCTIONS:

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 director's decision on July 28, 2008. On December 19, 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 worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the petition, that the beneficiary had engaged in unauthorized employment, and how the petitioner intends to compensate the beneficiary.

The petitioner submits 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 first issue presented on appeal is whether the petitioner has established that the beneficiary worked continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the visa petition.

The U.S. Citizenship and Immigration Services (USCIS) 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 January 28, 2008. Accordingly, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

The 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 [Internal Revenue Service] documentation that the alien received a salary, such as an IRS Form W-2 [Wage and Tax Statement] 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 submitted no documentation of the beneficiary's qualifying work experience with the petition. In its May 11, 2008 response to the director's March 6, 2008 request for evidence (RFE), the petitioner stated that the beneficiary had worked for the petitioning organization since 2003 and had "also been gainfully employed at other companies during this time." The petitioner stated that since joining the petitioning organization, the beneficiary "has presided over the Sunday morning worship services, bible studies, prayer meetings, marriage and christening of children." The petitioner further stated that the beneficiary had received a monthly stipend of \$500 per month since 2006.

The beneficiary's résumé indicates that he has worked as an auto worker for [REDACTED] since 2002. The petitioner provided copies of the beneficiary's IRS Form W-2 from [REDACTED] in 2006 and 2007, reflecting wages of \$39,554.06 and \$26,978.20, respectively. The petitioner submitted no documentation to establish that it paid the beneficiary any compensation during the qualifying period. The beneficiary's unsigned and undated IRS Forms 1040, U.S. Individual Income Tax Return, for the same years reflect the wages from [REDACTED] but do not reflect any income from the petitioner.

The director denied the petition on July 3, 2008, finding that the petitioner had not established that the beneficiary worked in a full-time position for the petitioner during the qualifying two-year period. On appeal, the petitioner submitted six affidavits from church members who attested that the beneficiary worked between 45 to 65 hours per week and that the church paid him a monthly stipend of \$500 per month plus a weekly gasoline stipend.

In response to the director's January 5, 2010 Notice of Intent to Deny (NOID) the petition, issued following the AAO's remand, the petitioner again submitted affidavits attesting to the hours the beneficiary worked and the compensation provided by the petitioner. The director again denied the petition, finding that the affidavits were not sufficient to meet the petitioner's burden of proof.

On certification, the petitioner submits copies of processed checks reflecting compensation that it paid to the beneficiary from 2006 to 2009, and copies of an IRS Form W-2 that it issued to the beneficiary in 2009. The checks issued in 2006 were generally in the amount of \$600 while those in 2007 and 2008 were generally in the amount of \$500. However, the documentation does not indicate that the beneficiary received consistent payment from the petitioner every month.

Additionally, the petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). Evidence of payment made to the beneficiary subsequent to January 2008 does not establish that he worked continuously during the statutory qualifying period.

The petitioner has not submitted documentation in accordance with the regulation at 8 C.F.R. § 204.5(m)(11) to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for the two years immediately preceding the filing of the petition. Further, the affidavits of the church members do not indicate the source of their knowledge regarding the number of hours the beneficiary purportedly worked.

In a related issue, the director also determined that the beneficiary had engaged in unauthorized work during the two-year qualifying period.

The regulation at 8 C.F.R. § 214.1(e) provides, in pertinent part, "A nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status within the meaning of section 241(a)(1)(C)(i)."

The petitioner indicated on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, that the beneficiary was present in the United States in a temporary protected status (TPS). In its May 11, 2008 response to the RFE, the petitioner stated that the beneficiary was a third year college student. The petitioner submitted a copy of the beneficiary's visa indicating that he received an F-1 nonimmigrant student visa on August 9, 2001 to study at Livingstone College, with an expiration date of July 17, 2002. USCIS records indicate that he entered the United States pursuant to that visa on August 11, 2001. The records also reveal that while the beneficiary has applied for TPS on several occasions, he has never been approved. Further, the only periods during which the beneficiary was authorized to work during the qualifying two-year period was from July 12, 2005 to July 11, 2006, and March 8, 2007 and September 30, 2007. The beneficiary's work in the United States therefore has not been in an authorized status throughout the two year period immediately preceding the filing of the petition. Any unauthorized work in the United States interrupts the continuity of his work experience for the purpose of this visa petition. 8 C.F.R. § 204.5(m)(4), (11).

Accordingly, the petitioner has failed to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the visa petition.

The third issue presented is whether the petitioner has established how it intends to compensate the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(10) provides that the petitioner must submit:

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 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.

Further, the regulation at 8 C.F.R. § 204.5(m)(7) requires the petitioner to attest that the alien will not be engaged in secular employment, that any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer, that the prospective employer has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges, and that funds to pay the alien's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization.

The petitioner does not identify the compensation associated with the proffered position. However, affidavits from church members indicate that the beneficiary receives a \$500 monthly stipend and a weekly gasoline allowance. The copies of processed checks do not indicate that the petitioner consistently paid the beneficiary in each month. The petitioner submitted a copy of its unaudited income and expense statement for 2007, which reflects that it paid the beneficiary a salary of \$5,545, and that it had income in excess of expenses of \$3,076.98. On certification, the petitioner submits an unaudited copy of a combined income and expense report for the years 2007 through 2010. The document reflects that the petitioner paid the beneficiary \$6,000 in 2008, \$6,800 in 2009, and \$1,400 through February 2010. The document shows net income in the amount of \$3,076.98, \$5,643.39, \$8,901.07, and \$2,829.09, respectively. The petitioner also submitted a copy of an IRS Form W-2 for the beneficiary for the year 2009, reflecting the wages of \$6,800 that the petitioner stated it paid the beneficiary.

The petitioner provided no further supporting documentation to support the assertions made within the *unaudited financial statements*. Furthermore, the petitioner has not established that the compensation to be paid to the beneficiary is sufficient to prevent him from becoming a public charge.

The petitioner has therefore failed to establish how it intends to compensate the beneficiary.

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 February 18, 2010 is affirmed. The petition is denied.