

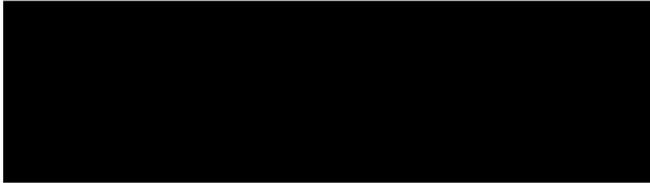
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



C1

DATE: SEP 12 2011 OFFICE: CALIFORNIA SERVICE CENTER



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 matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is described as a church and Bible institute. 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 cantor. 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 a written statement and supporting exhibits.

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) 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) requires that qualifying prior experience, if acquired in the United States, must have been authorized under United States immigration law.

The petitioner filed the Form I-360 petition on June 23, 2010. On that form, the petitioner indicated that the beneficiary has been in the United States since April 12, 2003. The petitioner left blank the space marked for the beneficiary's "Current Nonimmigrant Status." The petitioner answered "Yes" when asked if the beneficiary had ever worked in the United States without authorization.

The director denied the petition on October 4, 2010, stating that the beneficiary entered the United States without inspection in 2003, and held no lawful immigration status or employment authorization during the 2008-2010 qualifying period.

On appeal, the petitioner asserts that the director incorrectly stated that the beneficiary entered the United States without inspection. The petitioner submits documentation indicating that the beneficiary entered the United States on April 12, 2003 as a B-2 nonimmigrant visitor for pleasure, with that status valid until October 11, 2003.

The record contains no evidence that the beneficiary ever applied for or received an extension of stay. Even if the beneficiary had received an extension, 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.

Whatever the beneficiary's means of entry in 2003, the relevant period is the two years immediately preceding the petition's June 23, 2010 filing date. The petitioner does not contest the director's finding that the beneficiary lacked lawful status and employment authorization during 2008-2010. Instead, the petitioner cites *Ruiz-Diaz v. United States*, No. C07-1881RSL (W.D. Wash. June 11, 2009), and states that, under that decision, "applicants shall not accrue unlawful presence, unlawful status or unauthorized employment."

The *Ruiz-Diaz* decision, which the Ninth Circuit Court of Appeals overturned in *Ruiz-Diaz v. USA*, No. 09-35734 (9th Cir. Aug. 20, 2010), tolled unlawful presence and unauthorized employment only in the limited context of aliens who attempted to file a Form I-485 adjustment application concurrently with a Form I-360, only to have USCIS reject the adjustment applications because the regulations made no provision for concurrent filing.

The *Ruiz-Diaz* ruling waives the accrual of unlawful presence in relation to adjustment applications. It does not waive or nullify the regulations at 8 C.F.R. § 204.5(m)(4) and (11), which require an alien's qualifying experience in the United States to have been authorized under United States immigration law. We quote the relevant paragraph below:

For purposes of 8 U.S.C. § 1255(c) and § 1182(a)(9)(B), if a beneficiary of a petition for special immigrant visa (Form I-360) submits or has submitted an adjustment of status application (Form I-485) or employment authorization application (Form

I-765) in accordance with the preceding paragraphs, no period of time from the earlier of (a) the date the I-360 petition was filed on behalf of the individual or (b) November 21, 2007, through the date on which the United States Citizenship and Immigration Services (“CIS”) issues a final administrative decision denying the application(s) shall be counted as a period of time in which the applicant failed to maintain continuous lawful status, accrued unlawful presence, or engaged in unauthorized employment.

Id. at 2. The ruling specifically refers to 8 U.S.C. § 1255(c) and § 1182(a)(9)(B). The former statutory passage relates to adjustment of status; the latter passage relates to unlawful presence in the context of inadmissibility. The *Ruiz-Diaz* ruling did not require USCIS to approve any petition under 8 U.S.C. § 1153(b)(4), or to overlook any beneficiary’s unlawful employment in the context of such a petition. Rather, the ruling presupposes an already-approved immigrant petition, and deals exclusively with adjustment of status, which is the next step in the immigration process. In this instance, USCIS has not approved the underlying immigrant petition. Whatever the *Ruiz-Diaz* ruling meant at the adjustment stage, it did not require USCIS to disregard unauthorized employment or lack of lawful status at the petition stage. The current regulations at 8 C.F.R. §§ 204.5(m)(4) and (11) were already in effect when the district court rendered the first *Ruiz-Diaz* decision, and the court did not invalidate those regulations in its decision.

No one disputes that the beneficiary lacked employment authorization and lawful immigration status during the 2008-2010 qualifying period. The beneficiary therefore does not meet the regulatory requirements of 8 C.F.R. §§ 204.5(m)(4) and (11). The director properly denied the petition on that ground, and the AAO will affirm that decision and dismiss the appeal for that reason.

Beyond the director’s decision, review of the record reveals several additional grounds for denial. The AAO may deny an application or petition that fails to comply with the technical requirements of the law even if the Service Center does not identify all of the grounds for denial 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 USCIS regulation at 8 C.F.R. § 204.5(m)(8) requires the petitioner to submit evidence of its tax-exempt status. Specifically, the petitioner must submit:

- (i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or

(iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, as something other than a religious organization:

(A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

The petitioner has not submitted the required documentation. The record does not contain any IRS determination letter, either for the petitioning organization itself or for any parent organization holding a group exemption. The petitioner executed a religious denomination certification claiming affiliation with the "Apostolic Church Assembly in Christ Jesus." The petitioner's initial submission included a "certificate of formation" that the [REDACTED]" filed with the State of Texas in 2007, but the record contains no IRS determination letter to show that organization holds a valid group exemption that covers the petitioning entity. USCIS cannot properly approve the petition without this required evidence, and its absence is a further ground for denial.

The 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 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.

In its employer attestation, under "Description of the proposed salaried and/or non-salaried compensation," the petitioner wrote simply "non-salaried compensation," with no further elaboration or description.

The petitioner has not explained how it intends to compensate the beneficiary, and it has not submitted any evidence of its ability or intention to do so. Therefore, the petitioner has not satisfied the regulatory requirements at 8 C.F.R. § 204.5(m)(10). The petitioner has likewise failed to establish that it seeks to employ the beneficiary in a full-time compensated position as required by the regulation at 8 C.F.R. § 204.5(m)(2). The petitioner's failure to submit this required evidence is grounds for denial of the petition.

Finally, the director has already addressed the regulation at 8 C.F.R. § 204.5(m)(11) in terms of the lawful employment clause, but another issue arises from the full text of that regulation:

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 has not submitted any evidence of the beneficiary's compensation or financial support from the petitioner or any other source during the two-year qualifying period. The petitioner has merely submitted photographs of the beneficiary in what resembles a church setting. The petitioner has submitted no evidence of the beneficiary's past employment and compensation. The absence of this evidence is yet another disqualifying factor.

The petitioner has submitted almost none of the evidence required by the regulations. The petitioner has not even attempted to explain its failure to submit this evidence. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

The AAO will dismiss the appeal 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 appeal is dismissed.