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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:

Office: CALIFORNIA SERVICE CENTER

FILE:



SEP 28 2011

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 on March 30, 2009 and a subsequent motion to reopen and reconsider on January 19, 2010. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 ministry assistant. The director determined that the petitioner had not established how it intends to compensate the beneficiary and that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition.

On appeal, counsel asserts that the petitioner has “properly established an ability to pay the compensation for the beneficiary” and that the beneficiary “served as a religious worker for the Roman Catholic Church in accordance with his R-1 visa.” Counsel submits a brief and additional documentation in support of the appeal.

Counsel also argues that the individual who signed the petition on behalf of the petitioner was authorized to do so. This issue has already been decided in the petitioner’s favor and the AAO will not address it further in this decision. Counsel further asserts that the director failed to issue a request for evidence (RFE) or Notice of Intent to Deny (NOID) the petition prior to her March 30, 2009 decision. The AAO notes that the issuance of an RFE or a NOID is within the director’s discretion. 8 C.F.R. § 103.2(b)(8). Further, the director issued a NOID prior to the issuance of the denial that is the subject of this appeal. Accordingly, the petitioner has had sufficient opportunity to provide evidence favorable to the petition and the record does not establish that the director abused her discretion in not issuing an RFE or a NOID prior to her March 30, 2009 decision.

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 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 [Internal Revenue Service] documentation, such as IRS Form W-2 [Wage and Tax Statement] 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 initial filing, the petitioner did not indicate any specific compensation that it intended to provide to the beneficiary. However, the petitioner provided copies of the beneficiary's earnings statements for August 18, 2006, September 1, 2006, November 21, 2006, December 31, 2007, and January 2008 through June 2008. The 2006 statements indicate that the beneficiary was paid by [REDACTED] and [REDACTED]. The 2007 and 2008 statements indicate that the beneficiary was paid by the petitioning organization in the amount of \$16,822.80 in 2007 and \$24,352.44 through June 2008. The petitioner also submitted copies of the audited financial statements for the [REDACTED] for the years 2004 through 2006.

In her NOID of November 18, 2009, the director advised the petitioner that it must prove its ability to compensate the beneficiary and that the financial statements of the archdiocese were not evidence of its ability to compensate the beneficiary. In response, the petitioner submitted copies of page three from what appears to be the church's weekly bulletin for November 15, 2009, November 22, 2009, December 6, 2009, and December 13, 2009. Each document indicated that the petitioner received in excess of \$6,000 in collections for the week. The petitioner also submitted copies of the beneficiary's tax transcripts from the IRS for 2007 and 2008. Each of the transcripts also includes a transcript of the Form W-2 that reflects the petitioner as the employer and income reported of \$16,822 in 2007 and \$24,352 in 2008.

In denying the petition, the director stated that the church bulletins did not constitute verifiable documentation of the petitioner's ability to compensate the beneficiary, that the petitioner did not submit audited financial statements "or authorization from the [REDACTED] supporting the compensation for the permanent position." Counsel's argument on appeal is primarily unresponsive to the issue; however, he does assert that the petitioning organization had authority to file the petition and was supported by the archdiocese.

Nonetheless, the AAO finds that the petitioner has submitted sufficient and verifiable documentation to establish how it intends to compensate the beneficiary. The beneficiary's tax transcripts, the IRS transcripts of the Form W-2, and the earnings statements clearly establish that the petitioner has the ability to compensate the beneficiary. The director's decision to the contrary is withdrawn.

The second issue 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 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 September 11, 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 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 indicated on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, that the beneficiary arrived in the United States on August 7, 2006 and was currently in an R-1 nonimmigrant religious worker status. The petitioner submitted a copy of an October 13, 2006 Form I-797, Notice of Action, indicating that the beneficiary was approved for R-1 status from May 9, 2007 through October 1, 2009 to work for the [REDACTED]. A copy of the beneficiary's I-94, Departure Record, indicates he arrived in the United States on August 7, 2006 to work for the petitioning organization.

The beneficiary's earnings statements indicate that he received \$833 from [REDACTED] in 2006, \$1,087.75 from the [REDACTED] in 2006, \$16,822.80 from the petitioner in 2007, and \$24,352 through June of 2008. The documentation in the record indicates that, although the [REDACTED] was the petitioning organization in 2006, the beneficiary's work location was to be with the petitioning organization. However, the compensation reportedly received by the beneficiary is inconsistent with work in a full-time capacity in 2006 and 2007. Further, the earnings statement and the corresponding IRS Form W-2 indicate that the beneficiary did not work past June 2008. Therefore, the financial documentation does not reflect that the beneficiary worked continuously in a qualifying religious vocation or occupation for the two years immediately preceding the filing of the visa petition.

Additionally, on February 20, 2009, an immigration officer (IO) visited the petitioner's premises for the purpose of verifying the claims in the petition. According to the IO, the [REDACTED] who signed the petition on behalf of the petitioner, could not adequately account for the beneficiary's work hours at the church, and when asked where the beneficiary currently was, advised the IO that the beneficiary had taken a one week vacation to Texas. The IO further reported that his investigation revealed that the beneficiary had surrendered his California driver's license to the State of Texas on October 10, 2008 and that the California Employment Development Department had no record of the beneficiary working for any employer in the State of California.

In her NOID of November 18, 2009, the director advised the petitioner that the IO had found that the beneficiary was not working full time for the petitioning organization, that the State of California had no employment record for the beneficiary, and that [REDACTED] was unable to give details of the beneficiary's work with the petitioner. The director instructed the petitioner to submit evidence of the past compensation paid to the beneficiary, a copy of the beneficiary's Social Security record, a copy of the beneficiary's work schedule, evidence of his work history, and specific terms of the beneficiary's employment.

In response, the petitioner submitted a letter indicating that the beneficiary was offered full-time employment as a ministry assistant at the rate of \$3,283 per month, that his duties would include assisting ordained priests in conducting worship services and providing spiritual guidance to fellow church members. The petitioner also submitted copies of IRS transcripts and a copy of the beneficiary's Social Security record.

The petitioner initially claimed that the beneficiary was unavailable during the IO's visit because he was visiting Texas. In response to the NOID, the petitioner submitted a partial copy of an e-mail confirming the beneficiary's reservation for a flight to Houston, Texas on January 10, 2009. In denying the petition, the director stated that the date of the beneficiary's reserved flight was a month prior to the IO's visit and did not provide documentary evidence that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the petition.

On appeal, the petitioner submits a January 29, 2010 letter from [REDACTED] of vocations for the [REDACTED] who states that from September 2008 to April 2009, the beneficiary "was a participant in our monthly priestly discernment training program." Counsel argues that such training is not inconsistent with the regulation. However, the petitioner provided no additional documentation about the "discernment training program" and how the beneficiary could have been absent from the petitioning organization for eight months to attend a "monthly" training program. Additionally, the petitioner offered no explanation as to why [REDACTED] characterized the beneficiary's presence in Texas as a vacation and, although not addressed by the director, why the beneficiary would have surrendered his California driving license to the State of Texas.

Furthermore, the petitioner submitted a January 27, 2010 letter from [REDACTED] in Pittsburgh, Pennsylvania, certifying that the beneficiary was a full-time student at the institution and

was the recipient of a scholarship to attend the university. The record does not establish when the beneficiary began his attendance at [REDACTED] University or that he is still in the employ of the petitioning organization. Counsel asserts that the “professional skill gained after the studies will be at the service of the [petitioner], and the [REDACTED]” However, nothing in the record supports this statement by counsel. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The beneficiary seeks entry into the United States as a special immigrant religious worker pursuant to section 203(b)(4) of the Act, 8 U.S.C. § 1153(b)(4), which is an employment-based visa petition. The petitioner must therefore establish that a current and valid job offer exists for the beneficiary. The petitioner has failed to do this.

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 petitioner has also failed to establish that a current and valid job offer exists within the petitioning organization.

The petition will be denied 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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.