

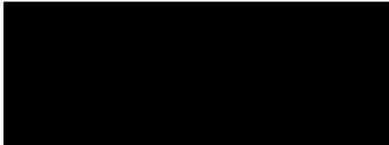
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



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



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Date: Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]  
[REDACTED]

**APR 05 2012**

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

*Evidence relating to the petitioning organization.* A petition shall include the following initial evidence relating to the petitioning organization:

- (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 director noted in her May 4, 2010 decision that the petitioner had submitted a July 18, 2009 Internal Revenue Service (IRS) 501(c)(3) letter demonstrating its organization's tax exempt status. However, the director found that the petitioner had failed to establish credibly that it was a bona fide religious organization during the two-year qualifying period prior to the August 27, 2009 filing of the petition. The director noted that USCIS investigative reports had indicated that the petitioner's IRS 501(c)(3) status had lapsed prior to July 18, 2009. The director concluded that the petitioner's organization was not a bona fide nonprofit religious organization in the United States. Thus, the beneficiary's work there since August of 2008 was not qualifying.

The AAO notes that the petitioner filed the appeal on June 7, 2010 and indicated that it would be submitting a brief and/or additional evidence within 30 days. On the Form I-290B, the petitioner stated

that the director's decision was in error. The petitioner failed to submit any additional evidence then or subsequently with regard to this appeal. The AAO finds that the petitioner has failed to meet its burden of proof by establishing that it was a bona fide nonprofit religious organization prior to and throughout the two-year qualifying period before the petition's filing date.

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. As previously stated, he petitioner filed the petition on August 27, 2009. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work throughout the two years immediately prior to that date.

The USCIS regulation at 8 C.F.R. § 204.5(m)(11) reads:

(11) *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.

On the Form I-360 petition, the petitioner indicated that the beneficiary arrived in the United States on July 28, 2007. Therefore, the beneficiary was in the United States throughout the entire two-year qualifying period. The record shows that the beneficiary entered the United States as an R-1 nonimmigrant visitor for the

[REDACTED] and worked there from July of 2007 to August of 2008 when he began voluntarily working for the petitioner's organization.

The director found that the beneficiary failed to maintain status as an R-1 nonimmigrant when he began working for the petitioner's organization in August of 2008. Any employment based upon the petitioner's approval as an R-1 nonimmigrant was authorized only for the organization that petitioned for him, the [REDACTED]

The director concluded in her decision that the petitioner had failed to establish that the beneficiary maintained continuous employment in a religious occupation in the two years preceding the filing of the Form I-360 petition.

The petitioner did not submit any other information on appeal. It merely contended that the director's decision was erroneous. The AAO notes that the petitioner had submitted a letter dated August 25, 2009 with the petition indicating that the beneficiary had begun working on non-salaried compensation as a volunteer for its organization in August 2008, but that its organization was part of the same denomination as the [REDACTED]

Notwithstanding, the AAO notes that the regulations at 8 C.F.R. §§ 214.2(r)(3)(ii) and (ii)(E) indicate that the beneficiary could only work for the specific organizational unit of the religious organization which would be employing and paying him. Further, the regulation at 8 C.F.R. § 214.2(r)(6)(2007) indicates that "a different or additional organizational unit of the religious denomination seeking to employ or engage the services of a religious worker" shall file a new petition and that "any unauthorized change to a new religious organizational unit will constitute a failure to maintain status..." Finally, under 8 C.F.R. § 214.1(e), a nonimmigrant may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status. As soon as the beneficiary began work for the petitioner, he failed to maintain his status as an R-1 nonimmigrant.

The AAO further notes, as an additional matter, any voluntary employment by the beneficiary during the qualifying period is also disqualifying.

Accordingly, the AAO finds that the petitioner has failed to establish the beneficiary's completion of the requisite two years of continuous, lawful, qualifying work experience in a religious occupation immediately preceding the filing date of the petition.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO 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).

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The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the AAO will dismiss the appeal.

**ORDER:** The appeal is dismissed.