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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

[REDACTED]

C,

Date: Office: CALIFORNIA SERVICE CENTER

APR 11 2012

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)

[REDACTED]

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 then remanded the petition to the director. The director again denied the petition. The matter is now before the AAO on appeal. The AAO will dismiss the appeal.

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 an associate pastor. The director determined that the petitioner had failed to establish the beneficiary's requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits arguments from counsel and various supporting documents.

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 . . . ; 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 issue on appeal is whether the petitioner has established the beneficiary's requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

While the petition 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." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). Therefore, the revised regulations apply to the matter at hand.

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

(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.

In a letter dated April 15, 2007, [REDACTED] stated that the petitioner “will pay [the beneficiary] a salary of 36,000 [dollars] a year. . . . We will also continue to provide housing and transportation” to the beneficiary.” Such a statement clearly implies that the petitioner already provided the beneficiary’s housing and transportation. In a letter dated June 8, 2007, Reverend [REDACTED] stated that the beneficiary received [REDACTED] in 2007. [REDACTED] also stated that the petitioner paid the beneficiary in cash until December 2005 and by check thereafter.

As evidence to demonstrate the beneficiary’s previous compensation, the petitioner submitted the beneficiary’s uncertified 2006 income tax return which listed the beneficiary as “self-employed” with a net income of [REDACTED]. On the return, the beneficiary claimed to have earned [REDACTED] in gross income, and that same amount appears on the Internal Revenue Service (IRS) Form 1099-MISC for that year. The beneficiary also, however, claimed to have spent \$7,454 of that amount on “Car and truck expenses.” As noted in the AAO’s prior decision, if the beneficiary was responsible for covering his own transportation expenses, then the petitioner was not providing the beneficiary with transportation over and above his salary.

The AAO further summarized the petitioner’s evidence:

In the November 7, 2007 Request for Evidence (RFE), the director had instructed the petitioner to “submit **well-documented** evidence that it provided all of the beneficiary’s living expenses during 2005, 2006, and 2007.” In response, the petitioner submitted a January 15, 2008 letter from [REDACTED] which repeated, word for word, his earlier letter of June 8, 2007. The petitioner also submitted a letter from accountant [REDACTED] indicating that the beneficiary “had an annual salary of [REDACTED] during 2007.”

Photocopied bank statements and processed checks from 2006 and 2007 show that the petitioner paid the beneficiary [REDACTED]. Other checks show occasional smaller amounts, such as a [REDACTED] “love offering” and a [REDACTED] “reimbursement” for unspecified expenses.

Anonymous annotations on one of the beneficiary's own bank statements from September 2007 indicate that two [REDACTED] payments were for a "school bus" and a payment of [REDACTED]." A November 26, 2005 lease agreement for the beneficiary's apartment confirms the [REDACTED], and shows that the beneficiary, not the petitioner, holds the lease for the apartment. The copies of processed checks submitted by the petitioner did not show [REDACTED] payments to cover the beneficiary's monthly rent, and the petitioner's 2006 financial statement did not show that the petitioner paid the beneficiary's rent that year. The beneficiary's rent adds up to [REDACTED] per year, but the highest non-salary expense on the petitioner's financial statement was [REDACTED] for "Supplies."

Following the AAO's March 3, 2011 decision remanding the petition to the director, the director issued a May 23, 2011 Notice of Intent to Deny (NOID), noting these above listed concerns. [REDACTED] responded on June 23, 2011, admitting that the nationwide economic recession had affected his church's ability to compensate the beneficiary the full proffered wage. He also stated that the church had not paid the beneficiary's rent allowance because the beneficiary and his family were living with the reverend and having their expenses paid by him. [REDACTED] did not list the dates in which the beneficiary purportedly lived with him. The petitioner additionally submitted its 2010 compiled financial statement.

Within her October 5, 2011 decision, the director concluded that the petitioner's response to the NOID did not include evidence that the petitioner provided the proffered transportation and housing benefits. The director also noted that the petitioner had failed provide evidence demonstrating that its senior pastor had "taken care of all of [the beneficiary's] expenses." The director found that the submitted evidence reflects that the beneficiary paid his rent and transportation by himself in September of 2007.

On appeal, counsel states that the petitioner had provided the beneficiary with the agreed upon salaries of [REDACTED] in 2007 and [REDACTED] prior to that date. Counsel submits a copy of the beneficiary's uncertified IRS Form 1040 for 2007 showing that he earned [REDACTED] in gross receipts that year. Counsel contends that the beneficiary erroneously stated on his tax returns that he was self-employed when he was instead working for the petitioner's church. Counsel submits no statement from the beneficiary to explain this error and no documentary evidence to support her claim. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The AAO notes that the petitioner has not submitted an IRS Form W-2 or 1099 for 2007 for the beneficiary. The absence of such documents does not support a finding of claimed 2007 income.

The available evidence does not support the petitioner's claim that it has covered the beneficiary's housing and transportation in addition to (rather than as part of) the beneficiary's [REDACTED] salary. The AAO finds that the petitioner has failed to establish its compensation of the beneficiary for the qualifying two-year period according to 8 C.F.R. § 204.5(m)(11). Accordingly, the petitioner

has not demonstrated the beneficiary's continuous employment during the two years immediately preceding the filing date.

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.