

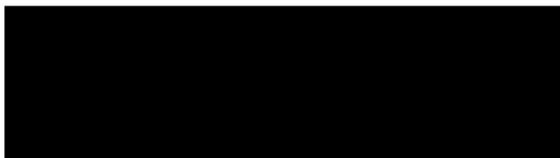
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



C₁

Date: **APR 18 2012** Office: CALIFORNIA SERVICE CENTER

FILE:

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 petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO remanded the matter to the California Service Center for further consideration and action. The Director, California Service Center, 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 certified decision.

The petitioner is a church. It seeks classification for 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 assistant pastor. The director determined that the petitioner had not established that the beneficiary had worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the petition.

The petitioner submits a statement and additional evidence 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 issue presented is whether the petitioner has established that the beneficiary worked continuously in a qualifying religious vocation or occupation in a lawful status 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 February 11, 2009. Accordingly, the petitioner must establish that the beneficiary had been 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.

Within the AAO's May 20, 2010 decision remanding the matter to the California Service Center, the AAO noted that, in his April 21, 2009 letter, [REDACTED] stated that the beneficiary did not receive his ministerial license until January of 2008 and had not become a paid minister until November of 2008. Prior to 2008, the beneficiary had purportedly volunteered his services in various ministries.

The AAO further noted that the record indicates that the beneficiary entered the United States on December 22, 2000 as a B-2 nonimmigrant visitor with an approved stay until June 21, 2001. Thus, the record did not reflect that the beneficiary was a paid religious worker or that the beneficiary was in an authorized immigration status during the qualifying period.

Within her July 20, 2010 certified decision, the director highlighted that she had issued a Request for Evidence (RFE) to the petitioner on June 9, 2010, asking for evidence regarding the beneficiary's religious work during the two-year qualifying period. The petitioner had responded on July 12, 2010, indicating that the beneficiary is a paid full-time religious worker and that he had earned a weekly salary of \$500.00 from November 2008 to November of 2009 (\$800.00 weekly following that date).

The director noted that the petitioner submitted checks issued to the beneficiary for work performed, but that there was no evidence that they were ever cashed and processed by a bank. The petitioner also submitted a copy of a Form W-2 wage and tax statement issued by [REDACTED] to the beneficiary for work performed in 2009. The petitioner had submitted a Form 1099-MISC for work performed by the beneficiary in the amount of \$26,500.00 for 2009, but that amount did not equate to the full above listed salary that the petitioner was purportedly paying the beneficiary.

Accordingly, the director concluded that the petitioner had failed to demonstrate that the beneficiary was working in a religious occupation since his entry into the United States.

In response to the director's certified decision, the petitioner submitted a letter on August 23, 2010. The petitioner again reaffirms that the beneficiary did not become a licensed minister until January of 2008 or a paid full-time minister until November of 2008.

The petitioner states that its prior accountant stopped working there prior to the beneficiary's wage increase from \$500.00 to \$800.00 each week and that its new accountant accidentally did not make adjustments to the church records. The petitioner states that the accountant also did not account for the beneficiary's \$500.00 Christmas bonus in 2009.

The petitioner claims that the checks it submits reflect the correct amounts paid to the beneficiary and that it will submit adjusted tax returns for the beneficiary to the IRS and to New York state to reflect his additional wages.

The AAO notes that, like a delayed birth certificate, amended tax returns created several years after the fact would raise serious questions regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991)(discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings).

Regarding the beneficiary's volunteer work for the petitioner's church as a minister starting in January of 2008, in supplementary information published with the proposed rule in 2007, USCIS stated:

The revised requirements for immigrant petitions and nonimmigrant status require that the alien's work be compensated by the employer because that provides an objective means of confirming the legitimacy of and commitment to the religious work, as opposed to lay work, and of the employment relationship. Unless the alien has taken a vow of poverty or similarly made a formal lifetime commitment to a religious way of life, this rule requires that the alien be compensated in the form of a salary or in the form of a stipend, room and board, or other support so long as it can be reflected in a W-2, wage transmittal statements, income tax returns, or other verifiable IRS documents. USCIS recognizes that legitimate religious work is sometimes performed on a voluntary basis, but allowing such work to be the basis for an R-1 nonimmigrant visa or special immigrant religious worker classification opens the door to an unacceptable amount of fraud and increased risk to the integrity of the program. In this rule, USCIS is proposing to implement bright lines that will ease the verification of petitioner's claims in the instances where documentary evidence is required.

72 Fed. Reg. 20442, 20446 (April 25, 2007). When USCIS issued the final version of the regulation, the preamble to that final rule incorporated the above assertion by reference: "The rationale for the proposed rule and the reasoning provided in the preamble to the proposed rule remain valid and USCIS adopts the reasoning in the preamble of the proposed rule in support of the promulgation of this final rule." 73 Fed. Reg. 72275, 72277 (Nov. 26, 2008).

We quote 8 C.F.R. § 204.5(m)(11)(iii) again here, along with its prefatory clause from 8 C.F.R. § 204.5(m)(11):

If the alien was employed in the United States during the two years immediately preceding the filing of the application and . . . [r]eceived 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.

The self-support here relates to nonimmigrant religious workers who are part of an established missionary program. The petitioner has made no assertion and has provided no evidence that the beneficiary was part of such a program. Accordingly, the beneficiary's voluntary work in the United States is not qualifying.

Additionally, USCIS records reflect that the beneficiary entered the United States on December 22, 2000 pursuant to a B-2 nonimmigrant visitor's visa. The beneficiary's authorized period of stay ended on June 21, 2001. A B-2 nonimmigrant visitor status does not authorize employment in the United States. 8 C.F.R. § 214.1(e). Any work that the beneficiary may have performed prior to the February 22, 2009 filing date in an unauthorized status would interrupt the continuity of the qualifying work experience.

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 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 director's decision of July 20, 2010 is affirmed. The petition is denied.