

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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

APR 23 2012

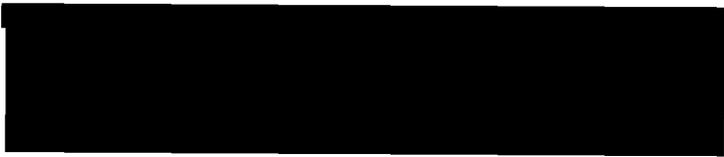


IN RE: Petitioner:
Beneficiary:



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:

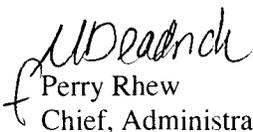


INSTRUCTIONS:

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

The petitioner is church that 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), as an associate pastor. The director determined that the petitioner had failed to establish its qualifying tax-exempt status and the beneficiary's completion of the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

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 October 1, 2008, 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 October 1, 2008, 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 issues on appeal are whether the petitioner has established its qualifying tax-exempt status and whether the petitioner has established the beneficiary's completion of the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(8) reads, in full:

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 June 28, 2010 decision that the petitioner had submitted an 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 February 19, 2010 filing of the petition. The director noted that USCIS investigative reports indicated that [REDACTED] had previously filed 85 religious worker petitions for four different churches. The director noted that the address listed on the petitioner's IRS 501(c)(3) letter was the subject of a prior investigation and was a three-story private residence without any signage or indication that it was functioning as a church. The director concluded that the petitioner's organization was not functioning as a bona fide nonprofit religious organization in the United States. Thus, the beneficiary's work there since September of 2010 was not qualifying.

On appeal, counsel provides evidence regarding the petitioner's establishment as a corporation under New York law in 2000. Counsel provides copies of its 2010 Ministry Plan and Manuel to establish the bona fides of the petitioner's organization. Counsel asserts that the address listed on the petitioner's IRS 501(c)(3) letter is its mailing address and that its physical address is instead the one listed on the petition. 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). Counsel does not directly state that the prior USCIS investigation of the address listed on the IRS 501(c)(3) letter was performed at an incorrect location. Counsel also does not further refute the director's findings. 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.

Regarding the director's second ground for denial, 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, the petitioner filed the petition on February 18, 2010. 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 September 14, 2009. Therefore, the beneficiary was not in the United States throughout the entire two-year qualifying period. The record shows that the beneficiary entered the United States as a B-2 temporary nonimmigrant visitor for pleasure, a status that does not authorize employment in the United States. 8 C.F.R. § 214.1(e). The beneficiary's B-2 status expired on March 13, 2010. On appeal, counsel indicated that the beneficiary had worked for the Seoul Jung Bu Church in South Korea from September 19, 1991 to September 1, 2009 and then as a volunteer for the petitioner since September of 2010.

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

On appeal, counsel asserts that the beneficiary began working for the petitioner's church in an unclaimed capacity as a volunteer in September of 2010, a date the AAO notes follows the filing of the petition. Counsel does not state whether the beneficiary worked for another employer between his final day of work for the Seoul Jung Bu Church in South Korea on September 1, 2009 and the petition's filing date. Instead, it appears that the beneficiary was in the United States as a B-2 visitor following his September 14, 2009 date of entry.

The AAO notes that the beneficiary had instead listed on his Form G-325A dated February 1, 2010 accompanying his Form I-485 application that he began working for the petitioner's church as a volunteer in September of 2009. It is unclear from the record of proceeding when the beneficiary began working for the petitioner. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988), states:

It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.

The AAO notes that, as an additional matter, any voluntary employment by the beneficiary during the qualifying period would have also been disqualifying. 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).

The AAO quotes 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 regulation clearly refers to employment rather than volunteer work. The self-support here relates to nonimmigrant religious workers who are part of an established missionary program. 8 C.F.R. § 214.2(r)(11)(ii). In this instance, the record does not establish that the beneficiary was in a missionary program. Accordingly, the petitioner's voluntary work in the United States does not count toward the two-year continuous work requirement.

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.

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.