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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 23 2012** Office: CALIFORNIA SERVICE CENTER

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

The petitioner is a religious order of priests and brothers. 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 teacher/director of music. The director determined that the petitioner had failed to establish that the beneficiary had worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa 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 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 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 petitioner filed the Form I-360 on January 29, 2010. 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 [Internal Revenue Service] documentation that the alien received a salary, such as an IRS Form W-2 [Wage and Tax Statement] 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 last arrived in the United States on August 11, 2009. The record indicates that beneficiary was in the United States throughout the entire two-year qualifying period. On the Form I-360, under "Current Nonimmigrant Status," the petitioner wrote "F-1." The petitioner submitted a copy of the beneficiary's Form I-94 Departure Record demonstrating the beneficiary's admission as an F-1 nonimmigrant student on August 11, 2009.

The director sent the petitioner a Request for Evidence (RFE) on May 18, 2010, asking for more information demonstrating the beneficiary's work history. Specifically, the director asked for experience letters from the beneficiary's employer(s) evidencing that the beneficiary was employed while in lawful status. The petitioner responded on June 9, 2010, but it did not submit the requested evidence. Rather, the petitioner submitted a letter dated June 1, 2010 from [REDACTED] stating that the beneficiary had been involved in religious work for the Saint Joseph Parish in Lodi since his arrival in the United States in the summer of 2006.

The director noted that the petitioner had failed to submit any evidence indicating that the beneficiary was lawfully employed in the United States or that U.S. Citizenship and Immigration Services (USCIS) had granted the beneficiary permission to work. The director noted that the beneficiary entered the United States as an F-1 nonimmigrant student with duration of status. The director further noted that the beneficiary submitted a Form G-325A on January 5, 2010 indicating that he had only been a student, rather than an employee, in the past five years. The director accordingly concluded that the petitioner had failed to submit sufficient evidence to establish that the beneficiary had been performing full-time, authorized work as a teacher/director of music during the two years preceding the filing of the petition.

On appeal, the petitioner submits a letter dated August 2, 2010 and an affidavit dated July 29, 2010 from [REDACTED] indicating that the petitioner has provided the beneficiary with material support constituting compensation since the summer of 2006. [REDACTED] states that his organization has provided the beneficiary with lodging, clothing, transportation, books, and other material needs throughout this period, but provides no documentary evidence to support his statement. The AAO does not dispute that non-salaried compensation is acceptable; in this instance, however, the record of proceeding contains only assertions from the petitioner regarding this compensation. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The petitioner additionally submits a prior AAO decision, which found that a petitioner's provision of food and lodging amounted to compensation for services performed. While 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

The case cited by counsel precedes newly published regulations. 73 Fed. Reg. 72276, 72283-84 (November 26, 2008). Those new regulations require the beneficiary's prior employment to have been lawful and authorized. 8 C.F.R. §§ 204.5(m)(4) and (11). As previously indicated, the beneficiary was an F-1 nonimmigrant student from August 11, 2009 onwards. In this F-1 status, the beneficiary would have been eligible for employment authorization only under limited conditions specified at 8 C.F.R. §§ 214.2(f)(9)-(11) and 274a.12(b)(6); the petitioner has not claimed or shown that the beneficiary met any of those conditions. The AAO notes that, 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.

Thus, the petitioner has failed to establish that the beneficiary had the requisite qualifying experience during the two years immediately preceding the filing of the petition on January 29, 2010. The regulations at 8 C.F.R. §§ 204.5(m)(4) and (11) require the beneficiary's prior employment to have been lawful and authorized.

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.