

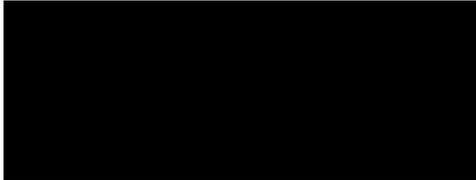
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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DATE: APR 23 2012 OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

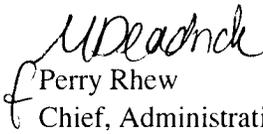
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:
[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.

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 on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is [REDACTED]. 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 Pastoral Assistant at [REDACTED] Park, Illinois. The director determined that the petitioner had not established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits a brief from counsel, a copy of a paystub from [REDACTED] to the beneficiary as well as Employer Contribution and Wage Reports filed by that employer in 2008, copies of Social Security Administration records for the beneficiary, copies of the beneficiary's W-2 transcripts from the Internal Revenue Service for the years 2008, 2009 and 2010, copies of paystubs from [REDACTED] to the beneficiary, copies of parish bulletins from [REDACTED] and a copy of the beneficiary's current Employment Authorization Document. On March 16, 2012, the petitioner additionally submitted a letter from counsel regarding a decision of the U.S. District Court for the Northern District of California along with a copy of the decision.

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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the alien 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. The petition was filed on October 6, 2010. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work in lawful status throughout the two-year period immediately preceding that date.

The USCIS 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.

Evidence submitted with the Form I-360 petition indicates that the beneficiary has been working at [REDACTED] since April, 2006 when he was admitted to the United States in valid R-1 nonimmigrant status which authorized that employment. According to an attachment to the petition, a letter from counsel, and the beneficiary's Form G-325A (submitted with his Form I-485 application filed concurrently with the petition), the beneficiary was additionally employed by [REDACTED] from October, 2006 to June, 2008. A Form W-2

from 2008, submitted by the petitioner, indicates that the beneficiary was paid \$3,260.08 by [REDACTED] during that year. The petitioner acknowledges in the petition and in supporting materials that the beneficiary's employment with [REDACTED] was not authorized.

In the petition and in supporting evidence, the petitioner also indicated that the beneficiary travelled outside the United States during the following periods: February 12, 2008 to March 1, 2008; March 11, 2008 to March 17, 2008; June 6, 2008 to July 2, 2008; November 20, 2008 to November 30, 2008; January 21, 2010 to January 28, 2010; and June 20, 2010 to August 1, 2010. The petitioner submitted copies of pages from the beneficiary's passport showing entry stamps corresponding to these dates of travel and indicating that the beneficiary was readmitted in R-1 nonimmigrant status after each trip. A letter from the Neocatechumenal Center of Lublin asserts that the purposes of these trips was "to accomplish the second phase of the Neocatechumenate," a training relevant to the beneficiary's position.

On July 9, 2011, USCIS issued a Request for Evidence in part instructing the petitioner to submit the beneficiary's Social Security Card Record and copies of the beneficiary's IRS Forms W-2 for 2008, 2009, and 2010 in a sealed IRS envelope. In response, the petitioner submitted evidence of its efforts to obtain the Social Security Card Record, including evidence that the process takes four months, and a printout from the Social Security Administration showing the beneficiary's earnings from 2006 through 2010. The petitioner additionally submitted the beneficiary's Forms W-2 as requested in a sealed IRS envelope. Included was a Form W-2 Wage and Tax Statement which again indicated that the beneficiary received \$3,260.08 from [REDACTED] in 2008. On September 16, 2011, the petitioner additionally submitted the requested certified records from the Social Security Administration, which indicate that the beneficiary was employed by [REDACTED] in each of the years 2006 through 2010 and was also employed by [REDACTED] during 2006, 2007 and 2008, earning \$2,577.43 in 2006, \$12,574 in 2007, and \$3,260.08 in 2008.

On November 1, 2011, the director denied the petition, stating in part:

... 8 C.F.R. 214.2(r)(13) states the following on "*Change or addition of employers*":

An R-1 alien may not be compensated for work for any religious organization other than the one for which a petition has been approved or the alien will be out of status. A different or additional employer seeking to employ the alien may obtain prior approval of such employment through the filing of a separate petition and appropriate supplement, supporting documents, and fee prescribed in 8 CFR 103.7(b)(1).

Moreover, 8 C.F.R. 274a.12(b)(16) states, in pertinent part:

... An alien in this status may be employed only by the religious organization through whom the status was obtained.

... Current R-1 regulation prohibits alien from receiving compensation for work for any religious organization other than the one for which a petition has been approved or the alien will be out of status. Therefore, the beneficiary did not have authorization to work for [REDACTED]. The beneficiary has failed to maintain his nonimmigrant status for not conforming to the requirements of the regulation.

The director therefore found that the petitioner failed to establish that the beneficiary has been lawfully employed as a religious worker for at least the two-year period immediately preceding the filing of the petition.

On appeal, the petitioner asserts that the beneficiary's unauthorized employment with [REDACTED] ended in June, 2008, over two years before the filing of the petition, and that he was subsequently readmitted in valid R-1 nonimmigrant status on July 2, 2008, since which time he has maintained lawful nonimmigrant status. The petitioner therefore argues that the beneficiary was in lawful status throughout the two years immediately preceding the filing of the petition and that his qualifying employment for [REDACTED] during that period was authorized under United States immigration law. In support of its assertions, the petitioner has submitted a copy of the beneficiary's "last paystub" from [REDACTED] for the pay period ending June 6, 2008, indicating a year-to-date total compensation of \$3,260.08. The petitioner notes that this amount is the same amount listed as the beneficiary's total compensation from that employer in 2008 on his official tax and Social Security records. Additionally, the petitioner submits copies of the "Employer's Contribution and Wage Reports," filed by [REDACTED] with the State of Illinois Department of Employment Security for the first, second and third quarters of 2008. The reports list the beneficiary as a worker for the first quarter (ending March 31, 2008) and the second quarter (ending June 30, 2008), but he is not listed as a worker on the third quarter report.

The AAO is persuaded by the evidence submitted on appeal that the beneficiary's unauthorized employment ended in June, 2006. The record shows that the beneficiary was subsequently readmitted to the United States on July 2, 2008 in valid R-1 nonimmigrant status which authorized his employment with [REDACTED] Parish. The evidence submitted by the petitioner establishes that the beneficiary's qualifying employment with [REDACTED] Parish was authorized throughout the two years immediately preceding the filing of the petition and that the beneficiary maintained lawful status throughout that period. Therefore, the AAO finds that the petitioner has established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience 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 met that burden. Accordingly, the AAO will withdraw the director's denial decision and approve the petition.

ORDER: The appeal is sustained and the petition is approved.