

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: 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 AAO will dismiss the appeal.

The self-petitioner seeks classification 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 evangelist/teacher at [REDACTED]

[REDACTED] The director determined that the self-petitioner had not established that she had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the self-petitioner submits a letter from the [REDACTED] copies of the Notices of Decision regarding the alien's Form I-360 petition and Form I-485 application, and several documents pertaining to the [REDACTED]. These include a copy of the church's Consumer's Certificate of Exemption from the Florida Department of Revenue, a copy of a certificate and letter from the Florida Department of State acknowledging receipt of the church's articles of incorporation, and documents describing the church's faith and creed.

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 December 23, 2009. Therefore, the self-petitioning alien must establish that she 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.

According to the Form I-360 petition and the director's findings, the self-petitioner arrived in the United States on April 6, 2002 in B-2 nonimmigrant visitor status which expired on October 5, 2002. The regulation at 8 C.F.R. § 214.1(e) states that aliens in such status "may not engage in any employment." Service records do not indicate that the self-petitioner held any lawful status in the United States that would have authorized her to work for [REDACTED] during the qualifying two-year period. Accordingly, any work performed by the beneficiary during that time is not considered qualifying prior experience under 8 C.F.R. § 204.5(m)(11).

On appeal, the self-petitioner does not argue that she was in lawful status, but rather that she was not paid a salary for her full-time work, and therefore was not engaged in unlawful employment. On the Form I-290B, the self-petitioner states, in pertinent part:

As to the section 8 C.F.R. 204.5(m) (4), I have been working on the field of Religious worker ever since my arrival, here in the United states as a non salary employee based on the fact that, due to my immigration status, the Law does not allow to receive a salary while I did not possess any documentation from U.S. Citizenship and Immigration services to allow me to do so.

The regulation at 8 C.F.R. § 204.5(m)(11) requires compensated employment. The self-petitioner must submit evidence of prior compensation in the form of IRS documentation, or evidence of qualifying self-support. Permissible circumstances for self-support, outlined in the USCIS regulations at 8 C.F.R. § 214.2(r)(11)(ii), involve the alien's participation in an established program for temporary, uncompensated missionary work. The self-petitioner has not shown or claimed that she participated in such a program, and has offered no evidence that she provided for her own support. The self-petitioner has submitted conflicting evidence regarding the issue of compensation. She states that she received no salary but also notes on the Form I-290B that the church provides her with "shelter, food and transportation." In the Employer Attestation portion of the petition, an official from [REDACTED] indicated that "\$800 is being given on a monthly basis with transportation." In a letter submitted on appeal, the church states that the self-petitioner "has not received a stated salary...but from times to times we collected a love offering to help her with expenses." It is incumbent upon the self-petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Regarding the self-petitioner's claim that her volunteer work within the United States is qualifying experience, any work performed by the self-petitioner as a volunteer is not qualifying. In the preamble to the proposed rule, USCIS recognized that although "legitimate religious work is sometimes performed on a voluntary basis . . . allowing such work to be the basis for . . . special immigrant religious worker classification opens the door to an unacceptable amount of fraud and increased risk to the integrity of the program." *See* 72 Fed. Reg. 20442, 20446 (April 25, 2007). Accordingly, any time the self-petitioner may have spent in the United States "working" as a volunteer for the church cannot be considered qualifying employment.

It is clear that the petitioner has not met the evidentiary requirements regarding compensation as required under 8 C.F.R. §204.5(m)(11). Regardless, the issue of whether or not the self-petitioner was compensated has no effect on the beneficiary's lack of lawful immigration status during the two-year qualifying period. The AAO agrees with the director's finding that the petitioner has not established that the beneficiary had the requisite two years of continuous and lawful work experience immediately preceding the filing date of the petition.

The AAO notes that the self-petitioner also states the following on appeal:

As to the violation of section 8 C.F.R. 204.5(m) (2), when I started working for the church as a non salary employee, I was in legal status, and while continuing working, such status had elapsed, but I remained in the position based on the fact that I was belonging to the religious institution, and was providing me everything to include shelter, food and transportation.

The self-petitioner has not submitted any evidence to establish that she was authorized to work for [REDACTED] at any time during the two-year period immediately preceding the filing of the petition. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

For the reasons discussed above, the AAO agrees with the director's determination that the self-petitioner has not established that she has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.