

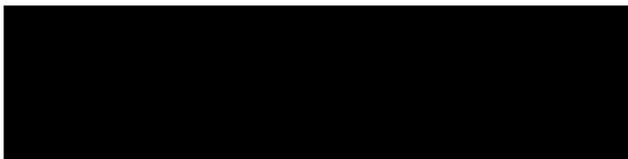
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



C1

Date: **APR 23 2012** Office: CALIFORNIA SERVICE CENTER

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:



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 petitioner is a church. 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 an international ministry coordinator. In a Notice of Intent to Deny, issued on November 16, 2009, the U.S. Citizenship and Immigration Services (USCIS) cited the negative findings of a compliance review and questioned whether the beneficiary is an employee of the petitioning organization as the petitioner asserts. In the notice, USCIS also found that the petitioner had not established that the beneficiary's duties primarily relate to a traditional religious function and the position is recognized as a religious occupation with in the denomination. In her decision, the director found that the petitioner had not established that the beneficiary will be employed in a full time compensated position, and that the petitioner's response to the notice failed to overcome the grounds for denial.

On appeal, the petitioner submits a brief from counsel, and letters from the petitioner, the beneficiary, the [REDACTED] and the beneficiary's accountant. The petitioner also submits attendance sheets from a training seminar and beneficiary's notes from the seminar, a list of other religious workers that the petitioner has sponsored, descriptions of the beneficiary's job duties and schedule, sample sermons and notes written by the beneficiary, photographs, copies of paychecks from the [REDACTED] [REDACTED] copies of the beneficiary's Form 1099 and Form 1040 for 2006, and a membership directory of the petitioning organization. The petitioner additionally submits an excerpt from the constitution of the General Council of the Assemblies of God and printouts from that organization's website as well as copies of documents already in the record.

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 first issue to be discussed is whether the petitioner has established that it will employ the beneficiary in a full time compensated position. As discussed below, the petitioner asserts that the proffered position will be a continuation of the beneficiary's current position. Therefore, the director based her determination on her finding that the petitioner failed to establish that it currently employs the beneficiary in a full time compensated position.

The USCIS regulation at 8 C.F.R. § 204.5(m)(2) provides that in order to be eligible for classification as a special immigrant religious worker, an alien must:

(2) Be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position in one of the following occupations as they are defined in paragraph (m)(5) of this section:

- (i) Solely in the vocation of a minister of that religious denomination;
- (ii) A religious vocation either in a professional or nonprofessional capacity;
or
- (iii) A religious occupation either in a professional or nonprofessional capacity.

The USCIS regulation at 8 C.F.R. § 204.5(m)(12) reads:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval

inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

In a letter accompanying the Form I-360 petition, the petitioner indicated that it employs the beneficiary in a full time position for which she is paid \$30,000 per year. In a separate letter, also submitted with the petition, the petitioner asserted that the beneficiary "is set up on a 40-hour per week schedule, which includes Monday through Friday and Sunday assignments." Copies of approval notices from USCIS, also submitted by the petitioner, indicate that the beneficiary held R-1 nonimmigrant status which authorized her to work for [REDACTED] and for the petitioner from August 9, 2006 to July 10, 2008. In a letter from the beneficiary, she states that she was a full time employee of [REDACTED] from September 2004 until the end of July 2006. The petitioner also submitted copies of the beneficiary's IRS 1040 forms for 2004 and 2005, indicating total wages of \$16,750 for 2004 and \$24,000 for 2005.

On March 5, 2007, USCIS issued a Request for Evidence, in part requesting additional evidence regarding the beneficiary's work history including evidence of compensation or self-support, and requesting copies of the beneficiary's IRS Forms W-2 for the years 2004 through 2006. In response, the petitioner submitted a letter asserting that the beneficiary had been continuously employed as a full-time, compensated religious worker for the previous two years, first for [REDACTED] and presently for the petitioner. The petitioner also asserted that she "will continue to be paid \$30,000 a year for this full time position." The petitioner resubmitted copies of the beneficiary's Forms 1040 for 2004 and 2005 and additionally submitted a copy of the beneficiary's Form 1040 for 2006 indicating \$26,500 reported as a "business income" along with the beneficiary's Form 1099 Miscellaneous Income indicating that she received \$12,500 from the petitioner in 2006.

In a second Request for Evidence, issued on June 19, 2007, USCIS in part requested additional evidence regarding the beneficiary's work history, specifically requesting an experience letter from an authorized official at [REDACTED]. In the request, USCIS again requested copies of the beneficiary's IRS forms for 2004 through 2006, this time instructing the petitioner to send "official IRS printouts submitted in a sealed IRS envelope." The notice also asked the petitioner whether the beneficiary has been a full time paid employee since November 21, 2004, requesting that the petitioner indicate any breaks in her hours of employment. The notice further stated: "According to the evidence submitted it appears that the beneficiary might have been a part time worker in 2006. This is evident since the beneficiary made \$12,500 even though the petitioner claims her salary is \$30,000."

In response, the petitioner submitted a letter explaining that, while it pays the beneficiary \$30,000 per year (or \$2,500 per month), the beneficiary only began working for the petitioning organization in August of 2006, therefore the Form 1099 for 2006 only reflects five months of income from the petitioner. The petitioner further asserted that from January through July of 2006, the beneficiary worked for [REDACTED] for \$2,000 per month for a total of \$14,000. The petitioner therefore asserted that the total of these two purported incomes explained the total income of \$26,500 listed on the beneficiary's Form 1040 for 2006. In response to the question

of whether the beneficiary had been continuously employed since November 21, 2004, the petitioner asserted that she began working for [REDACTED] in September, 2004 after receiving her R-1 approval. The petitioner submitted official copies of the beneficiary's Forms 1040 for 2004 through 2006 and Form 1099 for 2006 in sealed envelopes from the IRS. The forms contained the same information as the previously submitted copies discussed above.

On November 16, 2009, USCIS issued a Notice of Intent to Deny based in part on a failed compliance review. The notice stated, in part:

Two site visits were conducted at the petitioner's location, [REDACTED]. The officer noted the following. "On January 28, 2008, at 3:00 PM, this officer met with the petition[er] [REDACTED] regarding two pending I-360 petitioners [sic] ... The beneficiaries were not on site... The [petitioner] did not give an explanation as to their location.

A subsequent visit was made on February 07, 2008 to collect additional documentation. Again neither beneficiary was on site nor was the [there an] explanation given for their absence.

...

Furthermore, the beneficiary's tax documents reflect that she is not a full time employee with the petitioner but instead, is the proprietor of her own business. The beneficiary's Form 1040 for 2006 shows business income of \$26,500 as an International Coordinator. Schedule C for the year is missing.

In response to the notice, the petitioner submitted a letter asserting that the beneficiary was attending a seminar given by [REDACTED] during the site visit, and further noting that the beneficiary's schedule is flexible and frequently changes "according to the nature of [her] job." The petitioner submitted an updated copy of the beneficiary's schedule, noting that "[h]er work is assigned at the Church location and by assignment in the community." The petitioner also submitted the beneficiary's 2006 "Schedule C-EZ (Form 1040)" on which she lists her profession as "Int Coordinator." The petitioner additionally submitted photographs purportedly showing the beneficiary working at the petitioning church.

In her decision, the director quotes the pertinent portion of the Notice of Intent to Deny and then summarizes the evidence submitted by the petitioner in response to the notice. In response to the petitioner's assertion that the beneficiary was at a seminar during the site visits, the director states: "The USCIS notes that on January 29, 2008 and February 7, 2008 the petitioner had no explanation for the investigating officer as to where the beneficiary was at the time of the visit." The director also stated the following:

In his letter, counsel states that the photographs provided of the beneficiary are of her at the petitioner's location however; the photographs bear no identifying

marks indicating that the office is actually located within the petitioner's facility. Given that she files her taxes as a sole proprietorship it could just as easily be her home office.

The director determined that the petitioner failed to overcome the doubts raised about its assertions that the beneficiary is employed by the petitioner in a full time compensated position, and therefore found that the petitioner had not established that the beneficiary's prospective position will be a full time compensated position as required under 8 C.F.R. § 204.5(m)(2). The director noted that it is incumbent upon the 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).

In a letter submitted on appeal, the petitioner states the following regarding the lack of knowledge of the beneficiary's whereabouts during the site visits:

I admit that on the two occasions when an immigration officer visited the church, I stated that I did not know where my staff was I have always trusted my employees and have never required any employee to advise me of his or her whereabouts every hour of the day As may be seen by the enclosed documentation, [REDACTED] was at a religious workshop during one of the site visits, and during the other site visit she was not even supposed to be at the church. As I have repeatedly stated, a religious worker, by the very nature of the job, cannot be expected to follow a rigid schedule and is often working outside the church. The very nature of religious work requires one to be off site possibly more than at the church. In the case of [REDACTED] her job duties take her out into the community, to other churches, to schools, to nursing homes. The fact that she was not on site during the two visits of the immigration officer is not surprising and does not mean that she was not a full time member of the church's staff.

In support of the explanation of the beneficiary's absence during the site visits, the petitioner submits a letter from [REDACTED] of the Mission for Christ International stating that the beneficiary attended "a ten day missions training" from January 28, 2008 to February 8, 2008, along with copies of the attendance sheets for each day of the training including the beneficiary's name and signature on each sheet. The petitioner also submitted copies of 15 pages of handwritten notes purportedly taken by the beneficiary during the training.

In response to the statements concerning the beneficiary's taxes, the petitioner states:

The Service accuses [REDACTED] of having her own business on the basis of tax returns showing she filed as a sole proprietorship. [REDACTED] has always issued its employees 1099s rather than W-2s on the advice of its accountant. According to the accountant for [REDACTED] this forces the recipient for file

Schedule C-EZ. She, however, is not an independent contractor, but works as an employee of the church...

Finally, the evidence shows that the church has paid \$30,000 for the services of [REDACTED]. It is inconceivable that the church would pay that kind of salary for one not employed full-time by the church.

The petitioner submitted a letter signed [REDACTED] states that he prepared the beneficiary's tax returns in 2006. In the letter, [REDACTED] asserts that the beneficiary is an employee of the church rather than an independent contractor, but that she is required under the Internal Revenue Code to file Schedule C-EZ as a result of the Form 1099-MISC received from the church.

The petitioner submitted additional photographs of the beneficiary purportedly working at the church including several pictures which include signs for [REDACTED] indicating that they were taken on the petitioner's property.

The AAO is persuaded that the petitioner has overcome the doubts raised regarding its assertions that it employs the beneficiary in a full time compensated position. The documentation and explanations submitted by the petitioner provide a logical and convincing explanation regarding the beneficiary's absence during the site visits as well as regarding the tax forms filed by the beneficiary in 2006. Therefore, the director's finding that the petitioner has not established that the beneficiary will be employed in a full time compensated position is withdrawn.

The remaining issue to be discussed is whether the petitioner has established that the beneficiary's position is recognized as a religious occupation within the denomination. The regulation at 8 C.F.R. 204.5(m)(5) states, in pertinent part:

Definitions. As used in paragraph (m) of this section, the term: ...

Religious occupation means an occupation that meets all of the following requirements:

- (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.
- (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.
- (C) The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar

positions, although limited administrative duties that are only incidental to religious functions are permissible.

(D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

The Form I-360 petition submitted on November 21, 2006 did not list a job title for the beneficiary's position, but in an accompanying letter, the petitioner described the position as follows:

██████████ duties as our evangelist will be: developing ministry strategies for evangelism, providing Christian counseling, assisting our leaders in our encouragement/helps ministry, involvement in the prayer ministry, and as an International Pan-Asian Mission Outreach Coordinator.

In a weekly schedule submitted in support of the petition, the petitioner lists the beneficiary's daily assignments for Monday through Friday and Sunday, including "Evangelism and Missions Coordination," "Evangelism and Missions," "Prayer," "Evangelism among Asians," "Night Prayer with Nationals and Internationals," and "worship and helping." The durations listed with these scheduled assignments total 20 hours, and an additional line states "Pastoral assignment (sermon typing) 20 hrs per week."

In the Request for Evidence issued on March 5, 2007, USCIS instructed the petitioner to submit additional documentation regarding the proffered position. The notice specifically asked for the beneficiary's job title and requested a detailed description of the work, a daily and weekly schedule for the position, and an explanation of how the duties of the position relate to a traditional religious function. The notice additionally requested "documentary evidence that the governing body recognizes the position of coordinator" and "documents showing how the governing body defines the position of coordinator."

In response to the request, the petitioner resubmitted a letter originally submitted with the petition, containing the same description of the beneficiary's duties. In a cover letter, the pastor for the petitioner stated:

The word Coordinator is only used once to describe one of the assignment areas which is the International Pan-Asian Missions Outreach Coordinator role. The word Coordinator is used at times in the Assemblies of God to describe a minister who coordinates people or events. I myself, as an Assemblies of God minister, had that title in one of the missions ministries I was involved with in the past.

The petitioner did not submit any documentary evidence in support of the assertion that the Assemblies of God denomination recognizes the position of coordinator. On the beneficiary's

tax return for 2006, also submitted in response to the Request for Evidence, her occupation is listed as “International Coordinator.”

In the second Request for Evidence, issued on June 19, 2007, USCIS again requested additional evidence regarding the beneficiary’s proffered position, duties, and schedule. Although a cover letter from former counsel stated that the enclosed evidence included a “letter from the petitioner, detailing [REDACTED] work at the ministry,” a review of the evidence submitted revealed no such letter, nor any further evidence or description regarding the proffered position.

In the Notice of Intent to Deny, issued on November 16, 2009, USCIS instructed the petitioner to submit evidence that the beneficiary’s duties primarily relate to a traditional religious function and the position is recognized as a religious occupation within the denomination.

In the Form I-360 Employer Attestation, submitted in response to the notice, the petitioner lists the title of the position offered as “International Ministry Coordinator.” In a cover letter in response to the notice, former counsel for the petitioner argued that “[the beneficiary’s] work as an International Coordinator is very similar to Missionary; her work is intended to promote world missions, AND missions among the ethnic communities in Tulsa.” A letter from the petitioner included the same description of the beneficiary’s duties as contained in previously submitted letters. The petitioner submitted a new work schedule for the beneficiary, but it only listed days and times without any description of the work performed. The petitioner did not submit evidence in support of former counsel’s argument that the International Coordinator position is similar to that of Missionary, nor did the petitioner submit evidence that either of those positions is recognized within the Assemblies of God denomination as a religious occupation. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaignena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

It is noted that in the cover letter of the response to the Notice of Intent to Deny, former counsel stated that USCIS previously “approved the beneficiary’s R-1 work as an international coordinator in granting her R-1 petition.” The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988).

Furthermore, the AAO’s authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), aff’d, 248 F.3d 1139 (5th Cir. 2001), cert. denied, 122 S.Ct. 51 (2001).

In her decision, the director notes that the petitioner was asked to provide evidence that the beneficiary's duties primarily relate to a religious function and the position is recognized as a religious occupation within the denomination. The director goes on to conclude that "[t]he petitioner did not sufficiently address this issue."

On appeal, the petitioner argues that the title of the beneficiary's position is "irrelevant," and states:

With regard to the title for [REDACTED] the church alternatively gave her the title of International Coordinator, Evangelist and/or International Coordinator/Evangelist. It could just as well have called her a missionary, counselor or teacher, as her duties and job assignments required her to: evangelize within the church and the community; coordinate activities between the church, sister churches, international churches in the area and individuals within the international community; counsel with members of the congregation and other individuals within the Tulsa metroplex (particularly those she visited at the nursing homes); teach new communicants and Sunday school classes; conduct religious worship and perform other spiritual functions associated with the beliefs and practices of Assemblies of God. All of these activities relate to a traditional religious function within the church and the denomination.

The petitioner also submits a list of job duties and a detailed sample weekly schedule for the beneficiary's position. In support of the petitioner's assertion that the beneficiary's position is recognized as a religious occupation by the Assemblies of God denomination, the petitioner has submitted pages printed from the website of the General Council of the Assemblies of God, which make numerous mentions of "evangelism." The petitioner also submits an excerpt from the Constitution of the General Council of the Assemblies of God, in which the petitioner has highlighted the following statement: "Each General Council affiliated assembly has the right of self-government under Jesus Christ, its living Head, and shall have the power to choose or call its pastor, elect its official board, and transact all other business pertaining to its life as a local unit."

Additionally, the petitioner submits a copy of a cover letter from the petitioner's R-1 petition on behalf of the beneficiary, in which it listed her job title as "Evangelist," as well as a copy of the previously submitted cover letter to the response to the March 5, 2007 Request for Evidence, in which the petitioner claimed that "[t]he word Coordinator is used at times in the Assemblies of God to describe a minister who coordinates people or events."

The AAO finds the evidence submitted by the petitioner insufficient to establish that the beneficiary's duties and position are recognized within the Assemblies of God denomination. Although the evidence submitted on appeal supports the assertion that the beneficiary's evangelizing duties are recognized by the denomination, the petitioner has offered no evidence beyond its own assertions that the beneficiary's duties as a coordinator are recognized by the Assemblies of God. 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)). Furthermore, although the excerpt from the Constitution of the General Council of the Assemblies of God may establish that the petitioner has the right to create new positions in order to transact its business as a local unit, it does not establish that the General Council recognizes the proffered position as a religious occupation primarily relating to a traditional religious function.

The AAO further notes that the weekly schedule originally submitted with the Form I-360 petition states that 20 hours of the beneficiary's 40-hour schedule are dedicated to "Pastoral assignment (sermon typing)," suggesting that administrative duties may make up a major portion of the beneficiary's position. This assignment is not listed on any of the other schedules or descriptions of the beneficiary's job duties, and no explanation is given for this discrepancy. As stated above, it is incumbent upon the 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).

For the reasons discussed above, the AAO agrees with the director's finding that the petitioner has failed to establish that the beneficiary's duties primarily relate to a traditional religious function and the position is recognized as a religious occupation within the denomination. Therefore, the petitioner has failed to establish that the proffered position is a religious occupation as defined at 8 C.F.R. 204.5(m)(5).

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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.