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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 24 2012 Office: CALIFORNIA SERVICE CENTER

IN RE:

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

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 a minister. The director determined that the petitioner had not established that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the petition.

Counsel asserts on appeal that the petitioner assigned the beneficiary to work with the Queens International Family Church and the Bethlehem Punjabi Church to help them grow and expand. Counsel submits a brief and additional documentation in support of the appeal.<sup>1</sup>

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).

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<sup>1</sup> The petitioner is represented on appeal by a different attorney. The previous attorney is referred to in this decision as “prior counsel.”

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 AAO notes first that the director states that the petition was filed on August 31, 2006 and cites to a version of the regulation that was superseded by new regulations on November 26, 2008. The director determined that the petitioner failed to extend a qualifying job offer to the beneficiary in accordance with the regulation at 8 C.F.R. § 204.5(m)(4) which required submission of a letter from an authorized official that meets certain evidentiary criteria. That provision of the regulation was revised to read as indicated below. Nonetheless, the petitioner is still required to establish that it has extended a qualifying job offer to the beneficiary. The current regulation at 8 C.F.R. § 204.5(m)(2) provides that to be eligible for classification as a special immigrant religious worker, the alien must:

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 record reflects that the petitioner seeks to hire the beneficiary to work as a minister working approximately 40 hours per week and with an annual salary of \$30,212. The petitioner provided documentation of the beneficiary's qualifications for the proffered position. The record sufficiently establishes that the petitioner has extended a job offer that meets the requirements of the above-cited regulation.

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 petition was filed on June 25, 2009. 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 [U.S. Citizenship and Immigration Services].

If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

The petitioner indicated on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, that the beneficiary was present in the United States pursuant to an R-1 nonimmigrant religious worker visa that was to expire on May 22, 2010. The petitioner indicated that the beneficiary arrived in the United States on May 23, 2007, and submitted a copy of the beneficiary's Form I-94A, Departure Record, confirming his arrival and authorized stay in the United States.

The petitioner also submitted copies of IRS Forms W-2 that it issued to the beneficiary in 2007 and 2008 reflecting in block 1 that it paid the beneficiary \$17,992 in wages and in blocks 3 and 5 that it paid the beneficiary \$30,212 in Social Security and Medicare wages; the IRS Forms W-2 do not explain the difference in the reported wages. The petitioner also provided copies of the beneficiary's tax return transcripts from the IRS reflecting that he reported wages earned of \$17,992 in each of the years. The petitioner submitted no documentation to establish the beneficiary's qualifying work experience in 2009.

In an April 8, 2010 Notice of Intent to Deny (NOID) the petition, the director questioned the validity of information contained in the petition, stating:

- The petitioner's IRS [Form] 990[, Return of Organization Exempt from Income Tax,] federal returns for tax years 2008 indicates no employees at the church only volunteers.
- A list of church members indicates approximately 160 members, and 100 attend regularly
- The church at [REDACTED] currently employs 3 ministers and 3 pastors. No evidence of any of these individuals is on a payroll. The need for another full time employee does not appear to be credible and seems excessive for an attending congregation of 100.
- All documents submitted into evidence state [the] beneficiary . . . is working at the [REDACTED]. However, his name does not appear on any of the flier's [sic] as a practicing minister at the [REDACTED]. The only flier [sic] submitted indicates the beneficiary as a guest speaker.
- The petitioner states the beneficiary has worked full time over the past 2 years. However, the wages earned indicate part time employment over the past 2 years.
- No verifiable schedule was submitted to validate the employment claim. The duties indicated are vague. The petitioner has failed to submit information as to the time, dates, and places of work and points of contact of work performed by the beneficiary for verification.
- The I-129's [sic] non immigrant petition's [sic] which were approved for the beneficiary state his wages would be \$28,500 annually. The petitioner failed to pay the beneficiary the wages [indicated].

In his undated letter submitted with the petitioner's response, prior counsel stated that the director did not take into consideration the beneficiary's housing allowance of \$12,220, an amount reflected on the IRS Forms W-2 in the Social Security and Medicare wages. Prior

counsel acknowledges the error in the IRS Form 990 regarding the number of employees and stated that the petitioner had also recognized the error and filed a corrected return on February 28, 2010. Prior counsel also stated that the number of members at the Marley Drive location is 201, of which 50 are "visitors" and that counting members at all of the petitioner's locations, the number of members is approximately 400.

The petitioner submitted a copy of the IRS Form W-2 that it issued to the beneficiary in 2009, which also reflects wages of \$17,992 and Medicare and Social Security wages of \$30,212. The petitioner provided a Social Security earnings record which reflects that the petitioner paid the beneficiary \$30,212 in 2007, 2008 and 2009. Wage and Income Transcripts from the IRS also reflect the \$30,212 in Social Security and Medicare earnings for 2007 and 2008. The petitioner submitted an unsigned copy of an IRS Form 990 for 2008 that reflected 14 employees; however, there is no indication that the return is a corrected return or that it was filed with the IRS.

In a May 6, 2010 statement, [REDACTED] the petitioner's founder, stated that the beneficiary "is available at the Queens Intl Family Ministries office during the week" and that the office is located in South Richmond Hill, New York. The petitioner submitted church programs that reflect the beneficiary's work in New York and a letter from a parishioner who attests to the beneficiary's work there.

In denying the petition, the director stated that a review of the location at which the petitioner indicates the beneficiary will work reveals:

- A street view of the location and property on Map Quest description indicate[s] the location is a small duplex. Not a Church.
- The phone number given by the petitioner for the Queens International Family Church in New York[] is for the [petitioning organization] in South Carolina. No direct phone number could be found.
- A review of Queens International Family Church show[s] a different tax ID number, different controlling principals, and no evidence to indicate an affiliation with the [petitioner].
- A review of all the affiliate organization[s] submitted within the record did not find Queens International Family Church as an affiliate of the petitioner.
- According to the petitioner, the beneficiary works for the [REDACTED] Family Church. However, all IRS W2 documents and federal tax documents indicate employment is with the [petitioning organization] in South Carolina.
- Literature submitted into evidence from both church locations . . . dated April 2<sup>nd</sup> and April 25<sup>th</sup> 2010, show the beneficiary as the minister. The distance

between the two locations is over 730 miles. The attestation claims employment only in South Carolina, however, the evidence submitted indicates employment at the location in New York.

- The beneficiary is engaged in unauthorized employment in the form of the Bethlehem Punjabi Church, of which he is the pastor. That church is associated with the Assemblies of God USA and has no apparent connection to the petitioner.
- The beneficiary's R-1 visa indicates employment is for the petitioner in South Carolina. A review of service records can find no change in employment location for the location in New York. It appears the beneficiary has been living and working in New York since March of 2003. This is a violation of the non-immigrant visa status and is grounds for revocation of the non-immigrant visa for religious workers. R-1 validation is based on the accuracy of the employment location in connection to the petition.
- A check of the address of the church location in New York of [REDACTED] came up with the following information. A business called [REDACTED] a TV Ministries and internet religious site to purchase Punjabi Christian Literature religious material. The contact information is for the beneficiary. It appears the beneficiary is also self employed with obligations with TV ministries.

In an October 9, 2010 letter submitted on appeal, [REDACTED] stated:

[The beneficiary] has pioneered a church among the Punjabi speaking immigrants in Queen [sic], NY and holds weekly church services on a regular basis. . . . He not only hold [sic] a regular Sunday worship service but also does outreach work and one such example is his T.V. program on Queen [sic] Public Television network. He preaches the Good News of the Gospel through this media and reaches hundreds of Punjabi speaking immigrants with the Love of Our Lord Jesus Christ.

He has also voluntarily assisted a lot of local ministries in church pioneering work. Bethlehem Punjabi Church is one such church that requested us for his services.

Counsel states on appeal that "the beneficiary was employed directly by the Petitioner in their North [sic] Carolina church from July 2002 to February 2003 and then his services were used in the Queens Family church and Bethlehem Punjabi Church which have been established as affiliate (same denomination) churches from February 2003 to present." The record does not support counsel's assertion that the Bethlehem Punjabi Church is a member of the petitioner's

denomination. 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 Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The record reflects that the petitioner employed the beneficiary during the qualifying two year period. However, the record does not reflect that all of the beneficiary's work for the petitioner was authorized. The director stated in her decision that approval of the beneficiary's R-1 status was predicated on his work for the petitioner in South Carolina. The beneficiary was not authorized to work in any other location or for any other organization such as the Bethlehem Punjabi Church. The regulation at 8 C.F.R. § 214.1(e) states that a nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act and interrupts the continuity of his work experience for the purpose of this visa petition.

As the beneficiary engaged in unauthorized work during the qualifying two-year period, the petitioner has failed to establish that he worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition.

Additionally, the regulation at 8 C.F.R. § 204.5(m)(12) provides:

*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.

The record does not establish that the petitioner has successfully completed a compliance review or other inspection.

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 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.