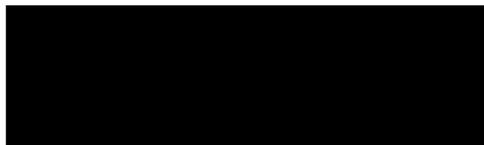


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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: OFFICE: CALIFORNIA SERVICE CENTER

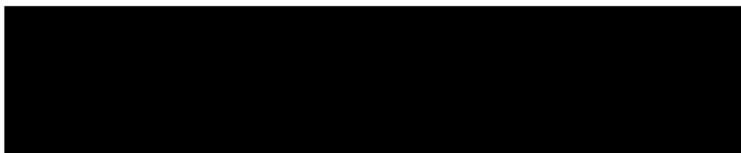
FILE: 

APR 25 2012

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.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, (the director) denied the employment-based immigrant visa petition. The matter was before the Administrative Appeals Office (AAO) on appeal. The AAO remanded the case to the director. The director denied the petition a second time, and certified the matter to the AAO. The AAO will withdraw the decision of the director. Because the record, as it now stands, does not support approval, the AAO will remand the petition to the director for further consideration and action.

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 associate pastor. On October 9, 2007, the petitioner initially filed the Form I-360 petition. On December 4, 2007, the director issued a Request for Evidence, which the petitioner timely responded to. On August 5, 2008, the director initially denied the petition. The petitioner timely filed an appeal to the AAO. On December 10, 2008, the AAO remanded the matter to the director. On June 23, 2009, the director issued a Notice of Intent to Deny (NOID), to which the petitioner timely responded. On September 24, 2009, the director again denied the petition and certified the decision to the AAO. Noting the results of a failed site review, the director found that the beneficiary would not be working in a full time compensated religious occupation and that the beneficiary's schedule significantly conflicts with the actual activities of the beneficiary.

On certification, the petitioner submits a brief from counsel and several supporting exhibits.

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 is whether the beneficiary will work in a full time, compensated position in a religious occupation. The regulation at 8 C.F.R. § 204.5(m)(2) states that:

(m) Religious workers. This paragraph governs classification of an alien as a special immigrant religious worker as defined in section 101(a)(27)(C) of the Act and under section 203(b)(4) of the Act. To be eligible for classification as a special immigrant religious worker, the alien (either abroad or in the United States) 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.

In the present case, the director found that:

The beneficiary's duties as a tennis instructor and a judo teacher, which comprise a significant amount of the beneficiary's time (claimed as part of his religious duties) cannot be considered as activities that constitute the practice of religion; and

On certification, counsel for the petitioner addressed this finding. She wrote that:

At no time did the petitioner assert the beneficiary would be engaged in teaching tennis or judo. The proffered position is that of an Associate Pastor. Petitioner contends the USCIS erred or mixed up the files and erroneously denied this case on information contained in a file other than the beneficiary.

The AAO has reviewed the FDNS report that the director refers to in her decision. It is clear from this report that the FDNS officer spoke to the petitioner, not the beneficiary. Regarding the September 23, 2007 site visit, the FDNS officer reported that she "interviewed beneficiary/signatory

The report then states:

██████████ said he has Bible Study/Prayer meeting on Mondays through Saturdays from 8pm to 9pm. ██████████ claimed that he “volunteers” daily from 9am to 12pm and from 3pm to 6pm as a tennis instructor for elderly people at ██████████ between ██████████ in Los Angeles. In the evening, he “volunteers” to teach Judo to young people from 6pm to 8pm at ██████████ in Los Angeles. ██████████ claimed that he is volunteering in order “to evangelize Christianity to non-believers.” ██████████ said he prepares for weekly sermons on Sundays at 4pm.

First, the reference to ██████████ as both the signatory and beneficiary is clearly an error. Second, the remaining statements by ██████████ regarding work as a ██████████ and ██████████ appears from the language of the report to be ██████████ description of his own duties, not the beneficiary’s.

As additional grounds for denial, the director also stated that:

According to the USCIS Fraud Detection and National Security (FDNS) Office, the beneficiary’s work schedule as stated in the I-129 significantly conflicts with the activities of the beneficiary. However, the petitioner’s response to the NOID did not address these issues.

Counsel rebutted this point by stating that:

There was no request made, and the issue of the inconsistent work schedule was never raised in the NOID. Had the USCIS raised the issue at the NOID, petitioner would have responded

The AAO reviewed the NOID. The director never raised any of the issues of the FDNS report in the NOID. It is understandable then why the petitioner did not address or rebut these issues.

A review of the record does not support the contention that the beneficiary would be teaching tennis or judo. In the attestation clause, the petitioner stated that the beneficiary would be working as an assistant pastor. The petitioner submitted two work schedules for the beneficiary. These schedules do not indicate that the beneficiary will be teaching tennis or judo. Both of the beneficiary’s schedules and job functions are consistent with that of a pastor, and reflect that this will be a full time position. Further, there is nothing in the record to support the claim that the beneficiary was a tennis instructor or a judo instructor. The petitioner submitted a letter dated October 4, 2007 in which he described the beneficiary’s position, and teaching tennis and judo were not among the list of job functions. Given the inaccurate statements in the FDNS report referencing the beneficiary and the signatory as the same person as well as the language indicating that ██████████ was describing his own duties to the FDNS officer, the AAO finds that the record does not support the director’s determination.

The above discussion indicates that the petitioner has overcome the only stated basis for denial of the petition. The AAO will withdraw that basis and, therefore, the denial decision. Nevertheless, an issue remains which the director must resolve before a definitive resolution is possible.

The AAO may identify additional grounds for denial beyond what the Service Center identified 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 *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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.

The AAO will remand the petition in order for the director to determine whether the petitioner has satisfied the regulatory requirements at 8 C.F.R. § 204.5(m)(12). The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and the entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.