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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: AUG 07 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:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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-represented petitioner is a church.¹ 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 of Hispanic ministries. The director determined that the petitioner had not established that the beneficiary had 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 FedEx tracking results, copies of documents already in the record, a copy of the district court order in *Ruiz-Diaz v. United States of America*, No. C07-1881RSL (W.D. Wash. June 11, 2009), and a communication from United States Citizenship and Immigration Services (USCIS) regarding that court order.

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).

¹ An official with the petitioner signed the Form I-290B, Notice of Appeal or Motion. While the director sent a copy of the final notice of denial to the petitioner's attorney, the record does not contain a new Form G-28, Notice of Entry of Appearance as Attorney or Representative, authorizing the attorney's representation of the petitioner on appeal. Thus, the AAO considers the petitioner self-represented. See 8 C.F.R. § 292.4(a).

The USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary 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 petitioner filed the petition on October 12, 2010. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work 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.

On the Form I-360 petition and in supporting materials, the petitioner asserted that the beneficiary has worked as [REDACTED] (a/k/a [REDACTED]) since 7/17/2002 and Pastor of [REDACTED] since 2007," and that both of these missions were started by the beneficiary. A letter dated October 2010 from [REDACTED] located at the same address as the petitioner, stated, "Rev. [REDACTED] is employed with our Church like a Senior Pastor, and is currently making \$600/monthly – we make payments in cash." A letter from the First Baptist Church of Glenpool dated August 28, 2009 stated:

Please be advised that First Baptist Church of Glenpool supplements the monthly salary of [REDACTED] pastor of the Hispanic church, a mission of First Baptist Glenpool, in the amount of \$200.00. The Hispanic church supplements his monthly salary in the amount of \$700.00.

The petitioner submitted copies of the beneficiary's Forms 1099-MISC and tax returns for the years 2008 and 2009. These documents indicated that in 2008, the beneficiary earned \$8,400 from First Baptist Church of Glenpool, Hispanic Mission, \$2,400 from First Baptist Church of Glenpool, and \$650 from Golden Gate Baptist Theological Seminary. In 2009, the beneficiary earned \$8,400 from First Baptist Church of Glenpool, Hispanic Mission, \$2,400 from First Baptist Church of Glenpool, and \$1,400 from Golden Gate Baptist Theological Seminary. The petitioner also submitted copies of paystubs from the First Baptist Church of Glenpool.

According to the materials submitted in support of the Form I-360 petition and the record, the beneficiary entered the United States on September 19, 2001 in B-2 nonimmigrant visitor status and subsequently held R-1 nonimmigrant status authorizing his employment with Agape Metro Baptist Church from July 17, 2002 to July 17, 2005. On May 16, 2005, a previous Form I-360 petition was filed on behalf of the beneficiary by Cornerstone Community Church. That petition was approved on August 31, 2005. On August 31, 2009, the beneficiary filed a Form I-485, Application to Adjust Status based on the Form I-360 petition, along with a Form I-765 Application for Employment Authorization. The Form I-765 was approved with validity dates of November 16, 2009 to November 15, 2011. However, on June 18, 2010, the Form I-360 petition was revoked and the Form I-485 application denied. In the denial notice for the Form I-485 application, the director noted that "any advanced parole or work authorization documents issued to you are now terminated as of the date of this notice."

Regarding the beneficiary's lawful immigration status and employment authorization during the two-year qualifying period immediately preceding the filing of the petition, the record does not indicate that the beneficiary held any lawful status which would have authorized his employment prior to the approval of his employment authorization on November 16, 2009, or after the termination of that authorization on June 18, 2010. Accordingly, any work performed during these periods would not be considered qualifying experience.

The AAO notes that, in a document accompanying the Form I-360 petition, the petitioner alleged that there were "significant errors and misstatements" in the final decision revoking the previous I-360 petition. However, that decision was not appealed by the Cornerstone Community Church and the validity of the revocation is not at issue in the instant matter.

On June 21, 2011, USCIS issued a Request for Evidence, in part instructing the petitioner to submit additional evidence regarding the beneficiary's work history during the two years immediately preceding the filing of the petition, including evidence that the beneficiary was authorized to accept employment. The notice also requested experience letters from previous and current employers, each written by an authorized official from the specific location at which the experience was gained, providing details about the nature and dates of the work performed.

In response to the request for evidence regarding the beneficiary's employment authorization during the qualifying period, counsel for the petitioner argued that the beneficiary qualified for protection from the accrual of unlawful status and unauthorized employment for a portion of the qualifying period under the *Ruiz-Diaz* litigation, referring to *Ruiz-Diaz v. United States of America*, No. C07-1881RSL (W.D. Wash. June 11, 2009). Counsel asserts that, under the court order in that case, the filing of the

beneficiary's Form I-485 application on August 31, 2009 "authorized all employment retroactively from the date of filing of the I-360 petition through the final adjudication of the petition."

Counsel refers to a case in which the district court invalidated the USCIS regulation at 8 C.F.R. § 245.2(a)(2)(i)(B), which barred religious workers from concurrently filing the Form I-485, Application to Register Permanent Resident or Adjust Status, with the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. On June 11, 2009, the court ordered that the accrual of unlawful presence, unlawful status, and unauthorized employment time against the beneficiaries of pending petitions for special immigrant visas be stayed for 90 days to allow time for beneficiaries and their families to file adjustment of status applications and/or applications for employment authorization. The court specified that unlawful presence and unauthorized work would be tolled "[f]or purposes of 8 U.S.C. § 1255(c) and § 1182(a)(9)(B)." The former statutory passage relates to adjustment of status and the latter relates to unlawful presence in the context of inadmissibility.

The AAO notes that on August 20, 2010, the Ninth Circuit Court of Appeals reversed and remanded the district court's decision. *Ruiz-Diaz v. U.S.*, 618 F.3d 1055 (9th Cir. 2010). Nonetheless, in accordance with the district court's decision, USCIS implemented a policy tolling the accrual of unlawful status and unauthorized employment until September 9, 2009. Like the district court's ruling, the USCIS policy waives the accrual of unlawful presence in relation to adjustment applications. It does not waive or nullify the regulations at 8 C.F.R.(m)(4) and (11), which require an alien's qualifying experience in the United States to have been authorized under United States immigration law. In this case, the beneficiary lacked employment authorization and lawful immigration status during portions of the two-year qualifying period immediately preceding the filing of the petition.

In the letter responding to the notice, counsel for the petitioner also asserted that, although the previous I-360 was approved on August 31, 2005, an approval notice was not provided at that time and "all participants involved were led to believe by USCIS that the case was still pending well after its approval." The petitioner submitted a copy of a letter from USCIS, dated May 24, 2006, responding to an inquiry regarding the status of the I-360 petition filed by Cornerstone Community Church on behalf of the beneficiary and stating that: "We are actively processing this case."

The AAO notes that, regardless of whether the beneficiary had applied for and obtained work authorization earlier based on the approved Form I-360 petition, he was nonetheless without lawful status or employment authorization for a portion of the two-year qualifying period as his work authorization was terminated as of the date of the revocation of that petition, June 18, 2010.

In response to the request for evidence regarding the beneficiary's work history during the qualifying period, counsel asserted that the beneficiary has been working as a minister within the Baptist denomination for more than the two years immediately preceding the filing of the petition and that none of the work was performed on a volunteer basis. The petitioner submitted a letter from its pastor, [REDACTED], stating that the beneficiary "is on staff as the Hispanic Ministries Pastor" and receives a monthly salary of \$2,300. Pastor [REDACTED] also stated that the mission Palabras de Vida operated out of the petitioner's church location from March 2007 to November 2007, and again from March 2010 to the present. A letter from [REDACTED], senior pastor of Centro Familiar de Adoracion, stated that [REDACTED] was located at that church for the period of January 2008 to February 2010. The

petitioner also submitted a letter from [REDACTED] church secretary of the First Baptist Church of Glenpool, which stated that the beneficiary "is pastor of Cristo La Respuesta (First Baptist Church Hispanic Church)," of which First Baptist Church of Glenpool is the "sponsoring church." Both the letters from Pastor [REDACTED] and [REDACTED] stated that an attached weekly schedule "accurately represents" the details of his employment during the periods discussed. The same schedule was attached to each letter with the heading "Rev. [REDACTED] Glenpool Hispanic Mission – Christ is the Answer (Cristo la Respuesta) and Words of Life (Palabras de Vida) – Tulsa." The petitioner additionally submitted copies of the beneficiary's 2010 tax return and Forms W-2 and 1099-MISC, which indicated that the beneficiary earned \$8,400 from First Baptist Church of Glenpool, Hispanic Mission, \$2,400 from First Baptist Church of Glenpool, \$650 from Golden Gate Baptist Theological Seminary, \$1,250 from the petitioner, and \$4,000 from Cornerstone Community Church.

The petitioner did not provide an explanation for the beneficiary's income from the Golden Gate Baptist Theological Seminary and the Cornerstone Community Church as reflected on the beneficiary's tax documents. Further, although the Iglesia Bautista Hispana Palabras de Vida had asserted at the time of filing that it was paying the beneficiary a salary of \$600 per month, such income was not reflected on the beneficiary's 2010 tax records. 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).

On December 6, 2011, the director denied the petition, finding that the petitioner failed to establish that the beneficiary had been lawfully employed as a religious worker for at least the two-year period immediately preceding the filing of the petition. The director noted that the beneficiary was without lawful immigration status and employment authorization from June 17, 2005, the date his R-1 nonimmigrant status expired, until November 16, 2009, when he received employment authorization based on his pending Form I-485 application. The director stated:

The beneficiary filing was under the [REDACTED] decision. This allowed the beneficiary's status to be considered lawful presence due to the pending I-485 application. However, when the beneficiary's I-360 (SRC0515850489) was revoked for cause, the beneficiary's status was not [sic] longer considered lawful presence. Although the beneficiary had acquired unlawful presence from July 17, 2005 through November 16, 2009. The issuance of the Employment Authorization Card (I-765) allowed the beneficiary to resume lawful employment from November 16, 2009 through November 15, 2011. ...

In Summary:

Lawful status from November 18, 2008 through November 16, 2009 has not been established (no status can be validated)

The AAO notes that, contrary to the findings of the director, the beneficiary's Employment Authorization Card only provided employment authorization until June 18, 2010, the date of revocation of the underlying petition. Further, to the extent that the director found that the *Ruiz-Diaz*

litigation provided the beneficiary with lawful status and employment authorization for the purposes of 8 C.F.R. § 204.5(m)(4) and (11), the AAO disagrees with that finding.

On appeal, the petitioner notes errors in the director's statement of facts and argues that the beneficiary had authorized employment throughout the qualifying period based on protection under the *Ruiz-Diaz* litigation.

As discussed above, the court order in *Ruiz-Diaz* and the USCIS policy regarding that litigation do not waive or nullify the regulations at 8 C.F.R.(m)(4) and (11), which require an alien's qualifying experience in the United States to have been authorized under United States immigration law. Rather, they waive the accrual of unlawful presence and unauthorized employment in relation to adjustment applications.

Regardless of errors in the director's statement of facts, for the reasons discussed above, the AAO agrees with the director's conclusion that the petitioner has not established that the beneficiary 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.