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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 09 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:

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 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 pastor. The director determined that the beneficiary had engaged in unauthorized employment during the two-year period immediately preceding the filing date of the petition.

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).

At issue on appeal is whether or not the beneficiary had engaged in unauthorized employment during the two-year period immediately preceding the filing date of the petition.

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 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 April 6, 2011. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work throughout the two years immediately prior to that date.

The USCIS regulation at 8 C.F.R. § 204.5(m)(11) reads:

(11) *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 petition, the petitioner stated that it would be providing the beneficiary with an allowance for board and lodging. The petitioner indicated that the beneficiary last arrived in the United States on August 12, 2005. Therefore, the beneficiary was in the United States throughout the entire two-year qualifying period. On the Form I-360, under "Current Nonimmigrant Status," the petitioner wrote "B1/B2" with an expiration date of February 8, 2006. The record indicates that the beneficiary began working for the petitioner's church in the United States in 2005 as a pastor.

The director denied the petition on August 1, 2011, finding that the beneficiary had engaged in unauthorized employment as a volunteer for the petitioner from 2005 onwards. The director stated that the beneficiary's B-2 nonimmigrant status expired on January 1, 2006. The director found that the petitioner had failed to establish that the beneficiary was performing authorized, full-time work as a pastor for at least the two-year period immediately preceding the filing of the petition.

On appeal, the petitioner asserts that the beneficiary worked as a pastor in Gabon and in South Africa for more than two years prior to his arrival in the United States. The petitioner resubmits letters from the [REDACTED] in Gabon and in South Africa attesting to the fact that he worked as a trained minister between 1993 and 1997 in Gabon and between 2003 and 2005 in South Africa. The AAO finds that the chronicled dates of the beneficiary's overseas employment did not fall during the two-year qualifying period immediately before the petition's April 6, 2011 filing date.

The petitioner claims that the beneficiary's B-2 visa expired on February 8, 2006 and that it had filed a previous Form I-360 on behalf of the beneficiary on January 30, 2006. The record of proceeding reveals that the petitioner filed a Form I-360 ([REDACTED]) on behalf of the beneficiary on January 30, 2006, which was denied on March 17, 2009. Further, the dates listed on the beneficiary's B-2 visa in which he could enter the United States did not affect the dates in which the U.S. government had actually granted the beneficiary his B-2 nonimmigrant status. The AAO agrees with the director's finding that the beneficiary's B-2 nonimmigrant status had expired as of January 1, 2006. The USCIS regulation at 8 C.F.R. § 214.1(e) states that a B-2 nonimmigrant may not engage in any employment and that any unauthorized employment by a nonimmigrant constitutes a failure to maintain status.

The petitioner concedes that the beneficiary did not possess work authorization or a Social Security number. The petitioner then asserts that the beneficiary's ministerial duties for its church did not constitute employment contravening the terms of his status because they were voluntary.

The AAO finds that the petitioner's claims of voluntary employment are disqualifying. In supplementary information published with the proposed rule in 2007, USCIS stated:

The revised requirements for immigrant petitions and nonimmigrant status require that the alien's work be compensated by the employer because that provides an objective means of confirming the legitimacy of and commitment to the religious work, as opposed to lay work, and of the employment relationship. Unless the alien has taken a vow of poverty or similarly made a formal lifetime commitment to a religious way of life, this rule requires that the alien be compensated in the form of a salary or in the form of a stipend, room and board, or other support so long as it can be reflected in a W-2, wage transmittal statements, income tax returns, or other verifiable IRS documents. USCIS recognizes that legitimate religious work is sometimes performed on a voluntary basis, but allowing such work to be the basis for an R-1 nonimmigrant visa or special immigrant religious worker classification opens the door to an unacceptable amount of fraud and increased risk to the integrity of the program. In this rule, USCIS is proposing to implement bright lines that will ease the verification of petitioner's claims in the instances where documentary evidence is required.

72 Fed. Reg. 20442, 20446 (April 25, 2007). When USCIS issued the final version of the regulation, the preamble to that final rule incorporated the above assertion by reference: "The rationale for the proposed rule and the reasoning provided in the preamble to the proposed rule remain valid and

USCIS adopts the reasoning in the preamble of the proposed rule in support of the promulgation of this final rule.” 73 Fed. Reg. 72275, 72277 (Nov. 26, 2008).

For purposes of establishing qualifying work experience for the instant visa classification, the regulation at 8 C.F.R. § 204.5(m)(11) requires that the past employment must be compensated either through salaried or non-salaried compensation. Although the regulation at 8 C.F.R. § 204.5(m)(11)(iii) provides that a beneficiary could be self-supporting, such support is only allowed in very limited circumstances outlined at 8 C.F.R. § 214.2(r)(11)(ii), which involve the beneficiary’s participation in an established program for temporary, uncompensated missionary work. The petitioner has not shown or claimed that the beneficiary participated in such a program. Accordingly, the petitioner’s claim of the beneficiary’s volunteer work during the requisite period is non-qualifying.

Furthermore, while the petitioner argues that the beneficiary was essentially a volunteer as he was not paid for his services, the petitioner indicated that the beneficiary was provided with housing and other necessities. The Board of Immigration Appeals (BIA) held that an alien who “receives compensation in return for his efforts on behalf of the church” is “employed” for immigration purposes, even if that compensation takes the form of material support rather than a cash wage. *See Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982). Even if the petitioner were able to establish its non-salaried compensation of the beneficiary, the petitioner would be unable to establish that its employment of the beneficiary was authorized.

The regulation at 8 C.F.R. § 204.5(m)(4) prohibits USCIS from considering work that was not “in lawful immigration status” and any “unauthorized work in the United States.” The regulation at 8 C.F.R. § 204.5(m)(11) requires that “qualifying prior experience . . . must have been authorized under United States immigration law.” Therefore, the regulations, separately and together, require that USCIS must have affirmatively authorized the beneficiary to perform any claimed religious employment while in the United States. The record reflects that the beneficiary was not in an authorized immigration status allowing him to work in the two-year period immediately preceding the filing of the visa petition.

Under 8 C.F.R. §§ 204.5(m)(4) and (11), the petition cannot be approved, because the beneficiary’s religious employment in the United States during the qualifying period was not authorized under United States immigration law.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the AAO will dismiss the appeal.

**ORDER:** The appeal is dismissed.