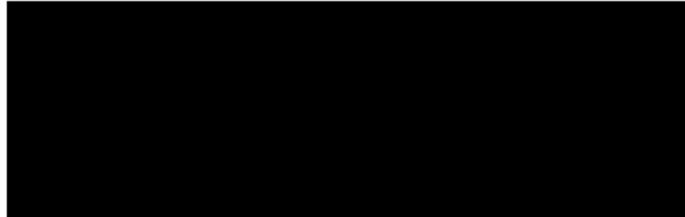


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



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:



**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 with the field office or service center that originally decided your case by filing a 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 appeal will be dismissed.

The petitioner is a shul. 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 rabbi of safrut. The director determined that the beneficiary did not perform two years of continuous, lawful employment immediately prior to the filing 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).

The issue presented on appeal is whether the beneficiary performed two years of continuous, lawful employment immediately prior to the filing of the petition.

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 petitioner filed the Form I-360 on September 10, 2010. 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.

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, the petitioner indicated that the beneficiary arrived in the United States on August 17, 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 indicated "Expired." U.S. Citizenship and Immigration Services (USCIS) records indicate that the beneficiary's R-1 nonimmigrant status expired on August 16, 2008.

In her May 9, 2011 decision, the director found that the beneficiary had engaged in unauthorized employment throughout the two years preceding the petition's filing date, as the beneficiary's R-1 nonimmigrant status had expired on August 16, 2008. The director highlighted that the petitioner had submitted an April 11, 2011 letter from [REDACTED], the Kashrus Administrator for the Orthodox Rabbinical Board (ORB) of Broward and Palm Beach Counties, indicating that the beneficiary was currently working there. The letter states that the beneficiary had worked for the ORB as a mashgiach who was responsible for "overseeing food preparation and handling at restaurants/caterers or at events which take place in the Jewish community" in accordance with Jewish law.

On appeal, counsel claims that the beneficiary has been a rabbi of safrut since 2001. Counsel concedes that the beneficiary's R-1 nonimmigrant status authorizing him to work for the ORB expired in August of 2008, but notes that the beneficiary possessed an Employment Authorization Document (EAD) allowing him to work between November of 2009 and March of 2010 when USCIS denied the beneficiary's Forms I-360 and I-485, which the ORB had filed on his behalf. Counsel does not assert that the beneficiary possessed authorization to work in the United States from March of 2010 onwards.

Counsel highlights the beneficiary's prior volunteer work in the Jewish community as a rabbi of safrut, for which he had written and reviewed scrolls in Hebrew. Counsel asserts that 8 C.F.R. § 204.5(m)(11) allows qualifying work experience to include unpaid work if the beneficiary is able to demonstrate his/her ability to provide for his/her own support. Counsel states that the beneficiary has provided and will provide for himself and for his family through an inheritance that he received upon his father's death, including money and real property.

On appeal, the petitioner submits various letters from employers, attesting to the fact that the beneficiary had worked for their organizations as a volunteer rabbi of safrut; 10 hours a week since December of 2007 for the Beit Edmond J. Safra Sephardic Synagogue of Turnberry, 15 hours a week since April of 2008 for Young Israel of Sunny Isles, 15 hours a week since July of 2008 for the petitioner, 10 hours a week since October of 2009 for the Congregation Sha'arey Ezra, and an unnamed number of hours a week since January of 2010 for the Chabad of Golden

Beach. The petitioner also submits Internal Revenue Service (IRS) Forms 1099-MISC from the ORB to the beneficiary for work performed in 2008 and 2009, which fell during the qualifying period, as well as a copy of the beneficiary's father's inheritance agreement.

The beneficiary's R-1 nonimmigrant status to work for the ORB expired on August 16, 2008, and his EAD allowed him to work only between November 10, 2009 and March of 2010. The AAO finds that the beneficiary was engaged in unauthorized employment for the ORB between August 17, 2008 and the time in which he received his EAD. The beneficiary was then engaged in unauthorized employment for the ORB from March of 2010 onwards. Further, the petitioner has submitted letters regarding the beneficiary's volunteer work as a rabbi of safrut from December of 2007 onwards. Even if the beneficiary had been able to work full-time for both the ORB as a mashgiach and for the previously mentioned Jewish organizations as a volunteer rabbi of safrut, the beneficiary's R-1 nonimmigrant status, which expired on August 16, 2008, only authorized him to work for the ORB.

The regulations at 8 C.F.R. § 214.2(r)(3)(ii)(E) as were in effect when the beneficiary was approved as an R-1 nonimmigrant, indicated that the beneficiary could only work for the specific organizational unit of the religious organization which would be employing and paying the beneficiary. Further, the regulation at 8 C.F.R. § 214.2(r)(6) indicated that "a different or additional organizational unit of the religious denomination seeking to employ or engage the services of a religious worker" shall file a new petition and that "any unauthorized change to a new religious organizational unit will constitute a failure to maintain status . . ."

Further, 8 C.F.R. § 274a.12(b) provides, in pertinent part:

*Aliens authorized for employment with a specific employer incident to status.* The following classes of non-immigrant aliens are authorized to be employed in the United States by the specific employer and subject to the restrictions described in the section(s) of this chapter indicated as a condition of their admission in, or subsequent change to, such classification...

(16) An alien having a religious occupation, pursuant to § 214.2(r) of this chapter. An alien in this status may be employed only by the religious organization through whom the status was obtained;

Finally, the regulation at 8 C.F.R. § 214.1(e) states, in pertinent part:

*Employment...* Any other nonimmigrant in the United States may not engage in an employment unless he has been accorded a nonimmigrant classification which authorizes employment or he has been granted permission to engage in employment in accordance with the provisions in this chapter. A nonimmigrant who is permitted to engage in employment may engage only in such employment as has been

authorized. Any unauthorized employment by a non-immigrant constitutes a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act.

As soon as the beneficiary began engaging in work as a rabbi of safrut for Jewish organizations other than the ORB from December of 2007 onwards, he effectively terminated his R-1 nonimmigrant status authorizing him to work with the ORB.

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 functions while in the United States. The record therefore reflects that the beneficiary was not in an authorized immigration status during the two years immediately preceding the filing of the visa petition.

Moreover, voluntary employment is not qualifying. First, 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).

While counsel alleges that the beneficiary provided for his own support through an inheritance, the self-support referred to in 8 C.F.R. § 204.5(m)(11)(iii) relates to nonimmigrant religious workers

who are part of an established missionary program. 8 C.F.R. § 214.2(r)(11)(ii). In this instance, the record does not establish that the beneficiary was in a missionary program. Accordingly, the petitioner's voluntary work in the United States does not count toward the two-year continuous work requirement.

The AAO concurs with the director's finding that the petitioner has failed to submit sufficient documentation to establish that the beneficiary worked continuously in a qualifying, lawful religious occupation or vocation for two full years immediately preceding the filing of the petition.

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.