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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**

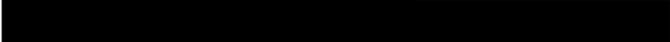
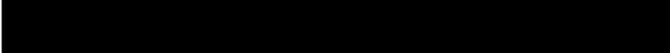


C,

Date: Office: CALIFORNIA SERVICE CENTER

FILE: 


AUG 13 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:

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 appeal will be dismissed.

The petitioner is a church that seeks classification for 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), as an associate pastor for its Kikuyu service. The director determined that the petitioner had not established its ability to compensate the beneficiary and that it would be employing the beneficiary on a full-time basis.

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 October 1, 2008, 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 October 1, 2008, 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 issues on appeal are whether the petitioner has established its ability to compensate the beneficiary and whether the petitioner has established that it will be employing the beneficiary on a full-time basis.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(10) provides that the petitioner must submit:

Evidence relating to compensation. Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS [Internal Revenue Service] documentation, such as IRS Form W-2 [Wage and Tax Statement] or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

On Part 8 of the petition, the petitioner stated that it would compensate the beneficiary \$24,000.00 a year. The petitioner submitted a letter dated August 19, 2010 signed by its [REDACTED] and by [REDACTED] indicating that both churches would be sharing the beneficiary's services. The petitioner's church would pay the beneficiary a yearly housing allowance of \$12,000.00 and the [REDACTED] would pay him yearly living expenses of \$13,762.95.

The director issued a Request for Evidence (RFE) to the petitioner on February 14, 2011, to which the petitioner responded on March 30, 2011. The director asked for specific evidence regarding how the petitioner intended to compensate the beneficiary, such as evidence of its past compensation of the beneficiary. The petitioner submitted copies of the beneficiary's 2008 and 2009 IRS Forms W-2 for work performed for the petitioner, each in the amount of \$12,000.00 for a housing allowance. The petitioner also submitted copies of the beneficiary's 2008 and 2009 IRS Forms W-2 for work performed for the [REDACTED], each in the amount of \$13,762.95 for wages. The petitioner submitted its 2011 budget reflecting that it had set aside \$12,000.00 for [REDACTED] as well as the above listed August 19, 2010 letter of agreement between the two churches to share the beneficiary's services. Based on the evidence submitted, the director concluded in her October 5, 2011 decision that the petitioner had failed to demonstrate that it would be solely responsible for compensating the beneficiary the full proffered salary and that it had the ability to compensate the beneficiary the full proffered salary.

The director also found that the petitioner had failed to establish that it would be employing the beneficiary on a full-time basis. The director noted that the petitioner had indicated in two separate letters submitted to USCIS that it would be sharing the beneficiary's services with the [REDACTED]

On appeal, the petitioner states that it will be solely responsible for compensating the beneficiary on a full-time basis and that it has the ability to do so. The petitioner submits a letter dated October 30, 2011 from [REDACTED] stating that the petitioner's church has always been in a position to compensate the beneficiary for his services. The petitioner also submits a 2010 financial statement regarding the financial strength of its church. The financial statement shows that the petitioner spent over \$159,000.00 in payroll expenses in 2010, that the petitioner possessed net assets of over \$383,000.00 at the end of that year, and that the petitioner possessed over \$241,000.00 in cash at the

end of that year. The financial report is based on the representations of management. The accountant offers no opinion or "any other form of assurance" regarding those representations. Therefore, the report is insufficient to establish the petitioner's financial standing. The petitioner submits copies of its 2011 bank statements, reflecting respective balances of over \$300,000.00 and just under \$10,000.00. However, eligibility must be established according to 8 C.F.R. § 103.2(b)(1) and (12) at filing. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). The petitioner did not establish its ability to compensate the beneficiary through past compensation as it only provided a partial amount of the claimed salary.

The petitioner also submits a lease agreement for its other church site located in Gwinnet County, Georgia. The petitioner claims that the beneficiary will serve this congregation on a full-time basis from October of 2011 onwards. The petitioner submits a copy of a brochure regarding this other church site's existence, which does not mention the beneficiary. The petitioner has failed to provide any evidence of the beneficiary's actual employment at this separate site or of its need for the beneficiary's services there on a full-time basis. The AAO therefore finds the petitioner's argument regarding its need of the beneficiary's services on a full-time basis not to be persuasive, as the petitioner only stated this information to USCIS after the director denied the petition. The AAO accordingly finds that the petitioner has failed to demonstrate that it will be employing the beneficiary on a full-time basis.

As an additional matter, the petitioner has indicated that the beneficiary worked for the [REDACTED] and has submitted IRS Forms W-2 for 2008 and 2009, each in the amount of \$13,762.95, for work performed by the beneficiary. The R-1 petition must be filed by the alien's prospective employer. 8 C.F.R. § 214.2(r)(7). In this instance, the petitioner filed the R-1 petition, not the [REDACTED] 8 C.F.R. § 214.2(r)(13).

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;

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 nonimmigrant constitutes a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act.

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. When the beneficiary began working for the [REDACTED] in accordance with the regulation at 8 C.F.R. § 214.1(e), he failed to maintain is status as an R-1 nonimmigrant. Accordingly, any work that he may have performed after that would have been in an unauthorized status and would interrupt the continuity of the qualifying work experience.

Finally, the AAO notes that the petitioner failed to sign Part 10 of the Form I-360. In this instance, no employee or officer of the [REDACTED] signed the Form I-360 petition. Pursuant to the regulation at 8 C.F.R. § 103.2(a)(7)(i), an application or petition which is not properly signed shall be rejected as improperly filed, and no receipt date can be assigned to an improperly filed petition. While the service center did not reject the petition, the AAO is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 at *3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Accordingly, the Form I-360 was never properly executed on behalf of the beneficiary and there is no lawful proceeding upon which to base the instant appeal. Therefore, if the appeal were not denied on its merits, it would be rejected.

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 (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 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.