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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

[redacted]

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Date: AUG 1 6 2012 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner:
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:

[redacted]

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 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.

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 on appeal is whether the petitioner has established that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

The United States 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 March 21, 2011. 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)(4) also sets forth the requirements for an acceptable break in the continuity of an alien's religious work as follows:

> 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 . . . .

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.

According to the Form I-360 petition and accompanying evidence, the beneficiary last entered the United States on June 10, 2010 as an F-1 nonimmigrant student.

The record of proceeding indicates that the beneficiary arrived in the United States on August 21, 2008, attended the International Theological Seminary from the fall of 2008 through the spring of 2011 while pursuing a doctorate in ministry, began doing religious volunteer work for the petitioner's church in March of 2009, completed the petitioner's training and ordination program in September of 2009 to be a volunteer pastor, traveled to India for a mission trip with members of the petitioner's church from June 11, 2009 to September 8, 2009, and then traveled to India for a mission trip with members of the petitioner's church from March 30, 2010 to June 10, 2010.

In her August 30, 2011 decision, the director noted that the beneficiary had served as a pastor at the Sharon Fellowship Church in India from 1998 until 2008 when he entered the United States. The director stated that the beneficiary maintained F-1 nonimmigrant student status in the United States from August 21, 2008 onwards. The director concluded that, because of the beneficiary's continuing studies, which started in the fall of 2008, the petitioner had failed to demonstrate that the beneficiary was performing full-time work as a pastor throughout the two years immediately preceding the petition's March 21, 2011 filing date.

On appeal, counsel asserts that, even though the beneficiary did not become ordained with the petitioner's church until the qualifying period had started, the regulations allow for other types of religious work. Counsel notes that the beneficiary traveled overseas during the qualifying period to receive religious training and to perform further religious work as a visiting pastor. Counsel highlights that the beneficiary's studies with the International Theological Seminary for his doctorate in ministry from September of 2008 until June of 2011 were an essential and necessary prerequisite for his duties as a minister for the petitioning church. Counsel asserts that the beneficiary was involved in theological studies to further his training and education for the position of minister and was involved in missions and sabbaticals throughout the qualifying period. Thus, counsel concludes that the beneficiary was still employed as a religious worker for the full two years preceding the filing of the petition.

Although counsel asserts on appeal that the beneficiary began performing religious work for the petitioner's church in March of 2009 and continuing throughout the qualifying period, including two overseas trips totaling over five-an-a-half months, the petitioner has not submitted documentary evidence to establish the continuity of the beneficiary's purported employment with its church or with any other church. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Moreover, the petitioner's claims that the beneficiary was performing voluntary employment are also disqualifying. 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).

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 USCIS regulation at 8 C.F.R. § 204.5(m)(4) allows for a break of two years or less in the continuity of an alien's religious work during the qualifying period for purposes of religious training. However, in addition to requiring that the "nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States," the regulation requires that the alien was "still employed as a religious worker" during the break. The petitioner has not evidenced that it considered the beneficiary to be an official employee during the period of his studies in the United States.

The AAO finds that the petitioner has failed to provide documentary evidence required under 8 C.F.R. § 204.5(m)(11) showing that the beneficiary was compensated in India or in the United States for his religious work during the qualifying period. Although the beneficiary was in the United States for religious schooling, the petitioner has failed to establish that the beneficiary was still employed and that such employment was authorized under the F-1 regulations.

In his F-1 status, the beneficiary would have been eligible for employment authorization only under limited conditions specified at 8 C.F.R. §§ 214.2(f)(9)-(11) and 274a.12(b)(6); the petitioner has not claimed or shown that the beneficiary met any of those conditions. 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. 8 C.F.R. § 214.1(e).

The petitioner has also clearly indicated that the work the beneficiary performed for its church was voluntary and therefore not qualifying. The AAO therefore agrees with the director's determination that the petitioner has not established that the beneficiary has the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition.

As an additional matter, the AAO finds that the Form I-360 was not properly filed. The Form I-360 identifies [redacted] as the petitioner. Prior counsel for the petitioner, [redacted]e, however signed the Form I-360 as the petitioner, not the petitioner. In this instance, no employee or officer of [redacted] signed the Form I-360 petition. The regulations do not permit any individual who is not the petitioner to sign Form I-360 on behalf of a U.S. employer.

The regulation at 8 C.F.R. § 204.5(c) provides:

> *Filing petition.* Any United States employer desiring and intending to employ an alien may file a petition for classification of the alien under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act. An alien, or any person in the alien's behalf, may file a petition for classification under section 203(b)(1)(A) or 203(b)(4) of the Act (as it relates to special immigrants under section 101(a)(27)(C) of the Act).

The regulations promulgated on November 26, 2008 modified the filing requirements for the Form I-360 petition, providing at 8 C.F.R. § 204.5(m)(6) that "A petition must be filed . . . either by the alien or by his or her prospective employer."

Additionally, the regulation at 8 C.F.R. § 204.5(a)(1) provides that a petition is properly filed if it is accepted for processing under the provisions of 8 C.F.R. § 103. The regulation at 8 C.F.R. § 103.2(a)(2) provides:

> *Signature.* An applicant or petitioner must sign his or her application or petition. However, a parent or legal guardian may sign for a person who is less than 14 years old. A legal guardian may sign for a mentally incompetent person. By signing the application or petition, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the application or petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. Unless otherwise specified in this chapter, an acceptable signature on an application or petition that is being filed with the USCIS is one that is either handwritten or, for applications or

> petitions filed electronically as permitted by the instructions to the form, in electronic format.

An earlier version of the regulation at 8 C.F.R. § 204.1(d), as in effect in 1991, provided, in pertinent part:

> Before the petition may be accepted and considered properly filed, the petitioner *or authorized representative* shall sign the visa petition (under penalty of perjury) in the block provided on the form. [Emphasis added.]

The regulation at 8 C.F.R. § 204.1(d) no longer includes language that would allow an authorized representative to sign a petition, although the AAO acknowledges that this provision now relates only to immediate relative and family based petitions. In contrast, the filing requirements for employment-based immigrant petitions are now found at 8 C.F.R. § 204.5(a). The regulation at 8 C.F.R. § 204.5(a)(1) provides that such petitions must be accepted for processing under the provisions of 8 C.F.R. § 103. As stated above, the regulation at 8 C.F.R. § 103.2(a)(2) provides that the petitioner must sign the petition and does not include the "or authorized representative" language that previously existed until 1991. Had the legacy Immigration and Naturalization Service (INS), now USCIS, intended to continue to allow authorized representatives to sign Form I-360 petitions, the language expressly allowing them to do so would not have been removed.

There is no regulatory provision that waives the signature requirement for a petitioning U.S. employer or that permits a petitioning U.S. employer to designate an attorney or accredited representative to sign the petition on behalf of the U.S. employer. The petition has not been properly filed because the petitioning U.S. employer, Rock of the Nations, did not sign the 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).

USCIS and legacy INS have required that an authorized employee of the U.S. petitioning employer must sign the Form I-360 petition on behalf of the petitioning employer since 1991 when legacy INS removed the "or authorized representative" language. Practically, the signature requirement reflects a genuine Form I-360 program concern regarding the validity of the permanent job offers contained in Form I-360 petitions. To this end, the employer's signature serves as certification under penalty of perjury that the petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct.

The signature line on the Form I-360 for the petitioner provides that the petitioner is certifying, "under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it are all true and correct." To be valid, 28 U.S.C. § 1746 requires that declarations be "subscribed" by the declarant "as true under penalty of perjury." *Id.* In

pertinent part, 18 U.S.C. § 1621, which governs liability for perjury under federal law, mandates that "Whoever in any declaration under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true is guilty of perjury." 18 U.S.C. § 1621.

The probative force of a declaration subscribed under penalty of perjury derives from the signature of the declarant; one may not sign a declaration "for" another. Without the petitioner's actual signature as declarant, the declaration is completely robbed of any evidentiary force. *See In re Rivera*, 342 B.R 435, 459 (D. N.J. 2006); *Blumberg v. Gates*, NO. CV 00-05607, 2003 WL 22002739 (C.D. Cal.) (not selected for publication).

An entirely separate line exists for the signature of the preparer declaring that the form is "based on all information of which [the preparer] has knowledge." Thus, the Form I-360 itself acknowledges that a preparer who is not the petitioner cannot attest to the contents of the petition and supporting evidence. Rather, the preparer may only declare that the information provided is all the information of which he or she has knowledge. Moreover, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Thus, an attorney's unsupported assertions on the petition and the job offer have no evidentiary value.

The integrity of the immigration process depends on the actual employer signing the official immigration forms under penalty of perjury. Allowing an attorney to sign all petitions, appeals, and all employment offers on behalf of the petitioner based on authorization granted by a Form G-28 would leave the immigration system open to fraudulent filings. While the AAO does not allege any malfeasance in this matter, the AAO notes prior examples where attorneys have been convicted of various charges, including money laundering and immigration fraud, after signing forms of which the alien or employer had no knowledge. *United States v. O'Connor*, 158 F.Supp.2d 697, 710 (E.D. Va. 2001); *United States v. Kooritzky*, Case No. 1:02CR00502 (E.D. Va. December 11, 2002).

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.