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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: **AUG 22 2012** Office: CALIFORNIA SERVICE CENTER



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 an assistant 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.

On appeal, the petitioner submits a statement from the petitioner and copies of documents already in the record.¹

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 On March 26, 2012, the AAO received a brief and additional evidence in support of the appeal from an attorney, [REDACTED]. The record does not contain a Form G-28, Notice of Appearance as Attorney or Representative, authorizing Mr. [REDACTED] to represent the petitioner. On May 29, 2012, the AAO sent a fax instructing Mr. [REDACTED] to submit a duly executed G-28. On August 7, 2012 the AAO contacted Mr. [REDACTED] by phone with the same request. As of this date, no G-28 has been received. Thus, the AAO considers the petitioner to be self-represented. Accordingly, Mr. [REDACTED] supplemental brief and evidence will not be considered.

The United States Citizenship and Immigration Service's (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 August 31, 2009. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work in lawful status throughout the two-year period immediately preceding that date. The 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 materials, the beneficiary entered the United States in B-1 nonimmigrant visitor status which expired on September 24, 2004. The petitioner submitted a Form I-797A, Notice of Action, which indicated that the petitioner filed a Form I-129 petition on behalf of the beneficiary on September 24, 2008 which was subsequently approved, granting the beneficiary R-1 nonimmigrant status authorizing his work for the petitioner with validity dates of May 19, 2009 to September 23, 2009. The petitioner did not indicate on the petition or in supporting materials whether it currently employed the beneficiary.

On the beneficiary's Form G-325, Biographic Information which accompanied his concurrently filed Form I-485, Application to Adjust Status, the beneficiary indicated that he was employed by Iglesia Arca de Jehova in Brooklyn, New York as a religious music director from December 2004 to the present. The Form G-325 was dated August 26, 2009.

On December 21, 2009, USCIS issued a Request for Evidence in part requesting evidence that the beneficiary worked continuously in a qualifying position for at least the two-year period immediately preceding the filing of the petition. The notice specifically instructed the petitioner to submit experience letters written by the beneficiary's previous and current employers that include "the employer's name, specific dates of employment, specific job duties, number of hours worked per week, form and amount of compensation, and level of responsibility/supervision." The notice also stated that "[e]ach experience letter must be written by an authorized official from the specific location at which the experience was gained." The petitioner was additionally instructed to submit evidence of compensation received by the beneficiary, including copies of the beneficiary's Forms W-2 for 2006 through 2008, as well as an explanation for any break in the continuity of the work during the qualifying period.

On the third page of a March 31, 2010 letter responding to the notice, the petitioner stated that the beneficiary worked for Iglesia Arca de Jehova in New York from September 2004 to May 2009, and then worked for the petitioning church as an assistant pastor from May 2009 to the present. The AAO notes that this timeline contradicts the employment history provided by the beneficiary on his Form G-325. Further, on the sixth page of the petitioner's March 31, 2010 letter, the petitioner listed the beneficiary's period of employment as "from 08/2008 to present." 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). The petitioner submitted a letter from [REDACTED] Pentecostal M.I Arca de Jehova, dated September 9, 2008, which stated that it hired the beneficiary as a musical director in 2004, but did not provide an end date for his employment. The petitioner also submitted a list of its paid and unpaid staff members, as well as copies of its "Payroll Register" for the period March 19 to 26, 2010, neither of which mentioned the beneficiary.

Additionally, the petitioner submitted the beneficiary's Internal Revenue Service (IRS) Account Transcripts for the years 2006 through 2009, which indicated that he and his wife jointly reported the following adjusted gross incomes: \$15,195 in 2006, \$5,065 in 2007, \$5,576 in 2008, and \$10,222 in 2009. The transcripts did not identify the source(s) of the income reported.

The petitioner also submitted a copy of an approval notice indicating that the beneficiary held R-1 nonimmigrant status authorizing his employment with "Iglesia de Dios Pent Arca" in Hollis, New York from September 26, 2006 to September 24, 2008.

On June 1, 2010, USCIS issued a second Request for Evidence again instructing the petitioner to submit additional evidence regarding the beneficiary's work history during the two-year qualifying period. The notice specifically requested additional evidence regarding the beneficiary's employment with Iglesia Arca de Jehova, including evidence of compensation or qualifying self-support. The notice also instructed the petitioner to submit copies of the beneficiary's Forms W-2 for the years 2007 to 2009 as well as an itemized record from the Social Security Administration (SSA). Additionally, the petitioner was instructed to submit "evidence of the beneficiary's immigration status between **September 24, 2008 and May 19, 2009**" (emphasis in original).

In a response letter dated August 16, 2010, the petitioner stated the following:

At 'Arca de Jehova', Beneficiary received compensation mostly in cash, though checks were used for some time (Exhibit C). The church, as a 501(c)(3) organization does not have to file tax returns with the IRS and not W-2 were issued.

Beneficiary however, reports his income for tax and social security purposes as self-employed, as required by IRS (Publication 517, (Exhibit D). he is also reporting compensation from our organization as self-employed.

The petitioner submitted a letter from [REDACTED] identified as "Accountant for the Freeport Bible Center." Mr. [REDACTED] stated the following:

[REDACTED] receives compensation in the form of a Housing Allowance for services rendered to the Freeport Bible Center. For the calendar year ended 12/31/08 he received \$5,576 and for the year ended 12/31/09 he received \$10,222.

The petitioner also submitted photocopies of processed checks from Iglesia de Dios Pentecostal "Arca de Jehova" to the beneficiary. The checks were for \$350 each and included two checks dated in January 2005 as well as 24 checks dated between September 6, 2005 and March 29, 2006.

The petitioner submitted uncertified copies of the beneficiary's tax returns for the years 2007 through 2009. The tax returns did not indicate the source of the income. Additionally, the petitioner submitted the beneficiary's SSA record covering the years 2004 to 2009. The SSA record showed the following amounts of income, reported as self-employment: \$7,532 in 2004, \$15,127 in 2005, \$15,100 in 2006, \$5,034 in 2007, \$5,542 in 2008, and \$7,850 in 2009.

On January 28, 2011, the director denied the petition, noting that the beneficiary lacked authorization to work for the petitioner between September 25, 2008 and May 18, 2009. The director concluded that the petitioner failed to establish the beneficiary's continuous, qualifying employment in lawful immigration status for at least the two years immediately preceding the filing of the petition.

In a statement submitted on appeal, the petitioner argues the following:

On September 9, 2006 USCIS received I-129 Application to classify [REDACTED] as an R-1 Religious worker.

The approval was issued on June 9, 2008 and was valid retroactively from 9/26/2006 to 9/24/2008

On September 24, 2008 USCIS received an I-129 Application to extend the R-1 status of Beneficiary from 9/24/2008 to 9/23/2009.

The approval was issued on May 21, 2009 and valid from 05/19/2009-to-9/23/2009.

Approvals of I-129 extensions filed within the period of valid employment are considered '*nunc pro tunc*' which effectively bridge the time of approval to the date of filing (Matter of Dacanay 16 I&N Dec. 238 BIA 1977)

Accordingly, these two 'valid period of R-1 employment' are contradictory in that the first granted employment authorization from the moment of filing and the second one only grants employment authorization from the time of approval.

The AAO notes that the case cited by the petitioner precedes the current regulations. Further, the AAO is not persuaded by the petitioner's argument. The regulation at 8 C.F.R. § 274a.12(b)(20) states that aliens whose status has expired but who have filed a timely application for an extension of stay "are authorized to continue employment **with the same employer** for a period not to exceed 240 days beginning on the date of expiration of the authorized period of stay" (emphasis added). There is no provision for a nonimmigrant religious worker to begin working for a different or additional employer without receiving prior approval as required under 8 C.F.R. § 214.2(r)(13). Therefore, the AAO agrees with the director that the beneficiary lacked authorization to work for the petitioner prior to May 19, 2009.

The petitioner has made conflicting assertions regarding the start date of its employment of the beneficiary, including an assertion that the beneficiary's period of employment began in September 2008, which would constitute unauthorized employment and a failure to maintain status as the beneficiary was only authorized to work for Iglesia Arca de Jehova at that time. Likewise, the beneficiary asserted on his Form G-325 that he was employed by Iglesia Arca de Jehova until August 2009, which would also constitute unauthorized employment and a failure to maintain status

as he was only authorized to work for the petitioner as of May 19, 2009. Accordingly, the AAO finds that the petitioner has not established that the beneficiary maintained lawful status and engaged in only authorized employment during the qualifying period as required under 8 C.F.R §§ 204.5(m)(4) and (11).

Additionally, the petitioner has not resolved the inconsistencies in the record regarding the beneficiary's dates of employment with the petitioner and Iglesia Arca de Jehova to establish the continuity of the beneficiary's employment during the two years immediately preceding the filing of the petition. 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). Further, the IRS and SSA documentation submitted by the petitioner does not identify the source of the beneficiary's income and the petitioner has not submitted comparable verifiable evidence to show that the beneficiary's employment was compensated throughout the qualifying period as required under 8 C.F.R. § 204.5(m)(11). 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)).

For the reasons discussed above, the AAO agrees with the director's determination that the petitioner has not established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing 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.