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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]

C1

DATE: **AUG 29 2012** OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
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. Based on a site-visit to the petitioning organization, the director determined that the petitioner failed to demonstrate that the beneficiary was working in the capacity claimed at the time of filing.

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 petitioner has established that the beneficiary was working in the capacity claimed at the time of filing the petition.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(12) states:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an

interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

In the September 17, 2011 decision, the director stated that USCIS conducted a site check on June 9, 2010 at the petitioner's address listed on the petition. In the decision, the director noted that USCIS found certain discrepancies with regard to the validity of the petition, which the director previously noted in a June 14, 2011 Notice of Intent to Deny (NOID).

During the site-visit, USCIS found that the petitioner was not employing the beneficiary as a full-time pastor and that the beneficiary was engaging in separate secular employment. In the decision, the director stated that the petition's signatory, [REDACTED] told a USCIS officer during the site-visit that the beneficiary served as the principal of the [REDACTED] located in the same building as the petitioner's church since 2006. The director also stated that the petitioner failed to disclose this information on the petition filed on June 27, 2007. Although the petitioner previously indicated to USCIS that the beneficiary was working for its church full-time, [REDACTED] told the USCIS officer during the site-visit that the beneficiary instead worked for the [REDACTED] Monday through Friday from 7:00 AM to 3:00 PM and then for the petitioner's church.

A USCIS officer interviewed neighboring businesses during the site-visit. Those businesses were unable to confirm that the beneficiary was working at the address listed on the petition as a full-time pastor. USCIS also obtained a copy of the [REDACTED]'s payroll records from mid-May through the end of May 2010, which reflected that the beneficiary was a current employee there.

In the decision, the director noted that the petitioner had a separate Form I-360 religious worker beneficiary that it also employed during the time of the site-visit. The other beneficiary told the USCIS officer that he was engaged in employment as a taxi driver and as a self-employed real estate agent. This other beneficiary indicated that he previously volunteered for the petitioner's church for five years on a part-time basis as a youth pastor until being hired full-time as the petitioner's current associate pastor.

The director noted the information that the petitioner submitted on July 14, 2011 in response to the director's NOID. The director found the fact that the petitioner's website did not list the beneficiary, its purported full-time pastor, in the About Us section to be questionable. The director noted that the affidavits from the petitioner's members regarding the religious work of the beneficiary submitted in response to the NOID were merely form letters for which the members filled in the blanks, signed, and dated. The director highlighted that one affidavit was from a member since 2007 who was attempting to attest to the fact that the beneficiary served the parish

since 2006. The director noted that no affidavit states when in 2006 the beneficiary began working for the petitioner's church. The director did not find the affidavits to constitute persuasive evidence of the beneficiary's prior full-time employment for the petitioner's church as a pastor. The director also did not find the document submitted by the petitioner in response to the director's NOID stating that the beneficiary was an [REDACTED] to serve as persuasive evidence of his full-time prior religious work.

The director noted that the beneficiary possessed valid R-1 nonimmigrant status from March 1, 2006 to February 28, 2008 and stated that the beneficiary was not authorized to engage in secular employment for [REDACTED]. The director found the beneficiary's engagement in secular employment to violate the terms of his R-1 visa. As the beneficiary had been working full-time in secular employment as a principal for the [REDACTED] since 2006 and as the petitioner filed the Form I-360 on June 27, 2007, the director concluded that the petitioner failed to demonstrate that the beneficiary possessed two years of continuous full-time employment as a religious worker prior to the petition's filing date.

On appeal, counsel states that the beneficiary worked for the petitioner both as a pastor and as an [REDACTED]. Counsel asserts that the beneficiary's duties were to assist the zonal parish, including working for the [REDACTED]. Counsel claims that the beneficiary still performed his duties for the petitioner's church. Counsel states that various groups of the church report to the beneficiary as pastor, including the children's department. Counsel claims the USCIS regulation at 8 C.F.R. § 204.5(m)(5) indicates that the position of minister includes some incidental administrative duties. Counsel states that the petitioner's denomination recognizes the beneficiary's oversight of a Christian day care facility to be in-line with his [REDACTED] responsibilities as it enhances his role as the formulator of spiritual growth for his congregants. Further, counsel asserts that the director should not have discounted the affidavits the petitioner submitted in response to the NOID, as they verified that the beneficiary was engaged in pastoral activities by a preponderance of the evidence.

The AAO finds that counsel has failed to establish that the beneficiary was working in the capacity claimed as a full-time pastor for the petitioner's church. Based on the site-visit conducted by USCIS on June 9, 2010, it appears that the beneficiary was engaged in full-time secular employment as the [REDACTED] employment which the petitioner did not indicate when it submitted the petition. The petitioner has failed to provide persuasive evidence of how the beneficiary could have worked full-time for the petitioner's church while also performing these other duties seven hours a day, five days a week for the school. No nearby businesses were able to confirm the beneficiary's religious employment during the site-visit. The petitioner has also failed to explain why the beneficiary was on the [REDACTED] payroll in May of 2010 instead of on the petitioner's church's payroll if these other duties for the school were to have been ancillary to his work as a pastor. The director noted that another religious worker for the petitioner's church admitted to USCIS to be doing unauthorized, non-religious work. Similar to the director, the AAO does not find the submitted affidavits to constitute persuasive evidence of the beneficiary's work as a pastor for the petitioner's church due to the above noted discrepancy regarding one member's statement and due to the affidavits' formulaic nature. Further,

the AAO finds that counsel has failed to explain how the beneficiary's full-time duties as a school principal constituted only incidental administrative duties pursuant to 8 C.F.R. § 204.5(m)(5). *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988), states:

[i]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence. Attempts to explain or reconcile the conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.

Based on the record, it appears that the beneficiary was engaged in unauthorized secular employment.

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, once the beneficiary began working for the [REDACTED] in 2006, he was not in an authorized immigration status. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status. 8 C.F.R. § 214.1(e). Thus, the petitioner has failed to establish that the beneficiary performed authorized religious work throughout the two-year period immediately preceding the filing of the visa petition.

Beyond the decision of the director, the AAO highlights the USCIS regulation at 8 C.F.R. § 204.5(m)(7), which states:

[a]n authorized official of the prospective employer of an alien seeking religious worker status must complete, sign and date an attestation prescribed by USCIS and submit it along with the petition. If the alien is a self-petitioner and is also an authorized official of the prospective employer, the self-petitioner may sign the attestation. The prospective employer must specifically attest to all of the following:

- (i) That the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation;
- (ii) The number of members of the prospective employer's organization;
- (iii) The number of employees who work at the same location where the beneficiary will be employed and a summary of the type of responsibilities of those employees. USCIS may request a list of all employees, their titles, and a brief description of their duties at its discretion;

- (iv) The number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past five years by the prospective employer's organization;
- (v) The number of special immigrant religious worker and nonimmigrant religious worker petitions and applications filed by or on behalf of any aliens for employment by the prospective employer in the past five years;
- (vi) The title of the position offered to the alien, the complete package of salaried or non-salaried compensation being offered, and a detailed description of the alien's proposed daily duties;
- (vii) That the alien will be employed at least 35 hours per week;
- (viii) The specific location(s) of the proposed employment;
- (ix) That the alien has worked as a religious worker for the two years immediately preceding the filing of the application and is otherwise qualified for the position offered;
- (x) That the alien has been a member of the denomination for at least two years immediately preceding the filing of the application;
- (xi) That the alien will not be engaged in secular employment, and any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer; and
- (xii) That the prospective employer has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges, and that funds to pay the alien's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization.

The AAO finds that the petitioner has failed to submit a detailed employer attestation as required by 8 C.F.R. § 204.5(m)(7).

The petition will be denied for the above stated reasons. 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.

ORDER: The appeal is dismissed.