

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: **DEC 18 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:

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,


Ron Rosenberg
Acting 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 minister music at the petitioning church, minister to the Latino community, and teacher at Cathedral Bible College. The director determined that the petitioner failed to establish that the beneficiary will be working in a qualifying, full time position.

On appeal, the petitioner submits two letters from the signatory of the petition, [REDACTED]

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 United States Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(2) provides that in order to be eligible for classification as a special immigrant religious worker, an alien must:

(2) Be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position in one of the following occupations as they are defined in paragraph (m)(5) of this section:

- (i) Solely in the vocation of a minister of that religious denomination;
- (ii) A religious vocation either in a professional or nonprofessional capacity; or
- (iii) A religious occupation either in a professional or nonprofessional capacity.

The regulation at 8 C.F.R. § 204.5(m)(5) states, in pertinent part:

(5) Definitions. As used in paragraph (m) of this section, the term:

Minister means an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct such religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and
- (D) Works solely as a minister in the United States, which may include administrative duties incidental to the duties of a minister. ...

Religious occupation means an occupation that meets all of the following requirements:

- (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.
- (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

(C) The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible.

(D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

Religious worker means an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister.

The petitioner filed the Form I-360 petition on October 25, 2011. In Part 2 of the petition, Classification Requested, the petitioner indicated that the beneficiary will be working as a minister. On the petition, the petitioner listed the title of the proffered position as "Minister music at Cathedral church, minister to [REDACTED]" and described the proposed daily duties as follows:

1. Hold services in the community for Spanish speakers.
2. Teach classes at the Bible College operated by the [REDACTED] of [REDACTED]
3. Oversee the Praise and Worship of the Services.
4. Perform weddings, funerals, and other ministerial responsibilities when needed.

In a letter accompanying the petition, the petitioner stated that, "[a]s an associate pastor [the beneficiary] fulfills all the expected activities of a minister including occasional preaching, as well as serving as Minister of Music." The petitioner also indicated that the beneficiary was "licensed to the ministry" in 2007 and ordained in February of 2010. The petitioner submitted copies of the beneficiary's License Certificate and Certificate of Ordination.

On November 16, 2011, USCIS issued a Request for Evidence which, in part, instructed the petitioner to submit additional information regarding the proffered position as follows:

Proffered Position: What is the beneficiary's job title? Provide a **detailed description** of the work to be done including specific job duties, level of responsibility/supervision, and number of hours per week to be spent performing each duty. Include a daily and weekly schedule for the proffered position. List the minimum education, training and experience necessary to the job and submit documentary evidence to show that the beneficiary has met such requirements. Further, explain how the duties of the position relate to a traditional religious function.

The petitioner's response to the notice included an undated letter from [REDACTED] stated, in pertinent part:

[REDACTED] is very much needed at [REDACTED] as a teacher. He is one of the best teachers that we have. He has the ability to present the material in such a way that it is clear to the students. As academic Dean of the college, I am able to trust [REDACTED] with courses that not everyone can teach. He is a very necessary member of our faculty.

In a separate letter, dated January 15, 2012, the petitioner described the beneficiary's duties as follows:

[REDACTED] has been working in the following areas:

1. Minister to the Hispanic community which [has] included holding services in Spanish and counseling and performing ministerial responsibilities with them as a representative of [REDACTED] 4 hours per week.
2. Associate Minister to the Senior Pastor: includes preaching and teaching and assisting with Ministerial duties such as water baptism... 7 hours per week.
3. Minister of Music: leading praise and worship, training and working with singers and other musicians. 6 hours per week.
4. Administrative aid to the President of the College offering Spanish translation and other similar work as needed. 3 hours per week

[REDACTED] will continue to work with the Church and Bible College in the manner that he has done. Upon completion of his Doctorate he will be offered additional hours and compensation to continue to do the work he has done.

The AAO notes that both the Form I-360 petition and the letter from [REDACTED] indicated that the beneficiary would teach classes [REDACTED] as part of his prospective position with the petitioning church. However, the job duties listed in the petitioner's January 15, 2012 letter did not include teaching classes at [REDACTED]. 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).

On May 4, 2012, the director denied the petition, finding that the petitioner failed to establish that the beneficiary would be working in a full time position. The director stated:

Based on [REDACTED] description of the proffered position, the job duties appear to be that of a valid religious worker position; however, the number of hours per week performing these duties is equivalent to only 20 hours. A full time position is interpreted by the USCIS as an average of at least 35 hours per week.

The director therefore found the evidence insufficient to establish that the beneficiary would be working in a qualifying position under 8 C.F.R. § 204.5(m)(2).

On appeal, the signatory of the petition, [REDACTED] asserts that the failure to list the beneficiary's full prospective work load of 38 to 45 hours per week was due to a misunderstanding as follows:

The reason we gave a description of the work and hours that [REDACTED] gives is due to his present status as an F1 student. Our understanding of Immigration law concerning an F1 student is that they are limited to on campus work of only 20 hours a week, and we have sought to obey this law and not give [REDACTED] more than 20 hours of work. This is why we showed only 20 hrs. on the petition. We were under the false understanding that by applying for the R1 that it was already assumed that our need was a full time need of 35 hours or more, and in giving this description, we were only going by what he has been doing.

In a separate letter, [REDACTED] sets forth the following amended breakdown of the beneficiary's prospective weekly duties:

Cathedral has a need for [REDACTED] to work in the ministry for a total of 38-45 hours per week. His responsibilities during these hours will be:

1. Minister to the Hispanic Community which includes holding Spanish worship services, counseling and performing ministerial responsibilities with them as a representative of our ministry. This is estimated to take 8-10 hours.
2. Associate Minister to the Senior Pastor includes preaching and teaching and assisting with Ministerial duties with the [REDACTED] such as water baptism ... serving Holy Communion, etc. It is estimated that these responsibilities will take about 15 hours a week including the service times.
3. Ministry of Music: leading Worship, training of other worship leaders and workers. It is estimated this will take 10 hours per week.
4. Aide to the President of the Bible College offering Spanish translation and other similar work as needed. Estimated to take 5-10 hours per week.

The AAO notes that, in its January 15, 2012 letter, the petitioner indicated that an increase in the beneficiary's 20 hour per week schedule would take place "[u]pon completion of his Doctorate."

Therefore, the petitioner's assertion on appeal that it believed a prospective schedule of at least 35 hours per week "was already assumed" by the filing of the Form I-360 petition is not convincing. According to the January 15, 2012 letter, the change in the beneficiary's schedule was dependent on his completion of a Doctorate degree, not on the approval of the Form I-360 petition. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). As the beneficiary had not completed his Doctorate degree at the time of filing, it is not clear that the petitioner immediately intended to employ him in a full time position. Also, the description of duties submitted on appeal again failed to mention teaching duties at the Cathedral Bible College as listed in the petition or to resolve this inconsistency. *Matter of Ho*, 19 I&N Dec. at 591-92.

Additionally, to the extent that the director found that the "job duties appear to be that of a valid religious worker position," the AAO disagrees with this finding. The regulation at 8 C.F.R. § 204.5(m)(2) requires that an alien be coming to the United States to work "solely in the vocation of a minister of that religious denomination" or in a qualifying religious vocation or occupation. Further, the regulation at 8 C.F.R. § 204.5(m)(5) defines minister as one who works "solely as a minister in the United States, which may include administrative duties incidental to the duties of a minister." The petitioner has indicated that the beneficiary will be working in a ministerial position for the petitioning church, but also as a "teacher" and/or and "administrative aid" [REDACTED] a school affiliated with the petitioning church. The petitioner has not established that teaching or performing translation duties for a Bible college qualify as "administrative duties incidental to the duties of a minister." Accordingly, the beneficiary cannot be considered to be employed "solely in the vocation of a minister," as required under 8 C.F.R. §§ 204.5(2) and (5).

For the reasons discussed above, the AAO agrees that the petitioner has failed to establish that the proffered position is a qualifying one.

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.