

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



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Date: **DEC 19 2012** Office: CALIFORNIA SERVICE CENTER FILE:

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,

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 Christian missionary organization. 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 minister for a congregation in Trumbull, Connecticut. The director determined that the petitioner had not established that the beneficiary will be working for a bona fide non-profit religious organization in the United States.

On appeal, the petitioner submits a letter from the petitioning organization, a letter from the Internal Revenue Service (IRS) confirming receipt of the petitioner's request for a group ruling regarding its tax exempt status, and copies of documents already in the record.

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)(3) provides that in order to be eligible for classification as a special immigrant religious worker, an alien must be coming to work for a bona fide non-profit religious organization in the United States, or a bona fide organization which is affiliated with the religious denomination in the United States. 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:

Bona fide non-profit religious organization in the United States means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the IRS confirming such exemption.

Bona fide organization which is affiliated with the religious denomination means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code and possessing a currently valid determination letter from the IRS confirming such exemption.

The regulation at 8 C.F.R. § 204.5(m)(8) states:

*Evidence relating to the petitioning organization.* A petition shall include the following initial evidence relating to the petitioning organization:

(i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or

(ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or

(iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, as something other than a religious organization:

(A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that

the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

On the Form I-360 petition, the petitioner indicated that the petitioning organization is located in Miami, Florida, and that it will employ the beneficiary as a [REDACTED]. Accompanying the petition, the petitioner submitted a determination letter from the IRS confirming that the petitioning organization in Miami, Florida is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code.

On the petition, the petitioner stated that it would provide the beneficiary with "the minimum non-compensation package to cover housing expenses, transportation expenses, utility bills, and other expenses." In a letter accompanying the petition, the petitioner stated:

He receives a non-salaried compensation package of a monthly stipend of \$600.00 and housing allowance of \$1,800 per month, which includes his utilities, car, gas, insurance, and medical needs. The approximate value of this non-salaried support varies, but is usually \$2,400.00 per month. Thus, the entire compensation package is valued at approximately 28,800.00 per year.

The petitioner submitted copies of the beneficiary's Forms 1099-MISC from 2009 and 2010, showing income received from the petitioning organization in Miami, Florida. The petitioner also submitted copies of processed checks issued to the beneficiary during 2008, 2009, and 2010. These included checks from the petitioning organization in Miami, Florida, as well as checks from [REDACTED]. Several of the checks from Connecticut included notations specifying that they were intended as pastor compensation.

On February 3, 2012, USCIS issued a Notice of Intent to Deny the petition (NOID) in part requesting additional information about the affiliation between the organization in Trumbull, Connecticut and the petitioning organization in Miami. The notice also instructed the petitioner to submit a currently valid determination letter from the IRS establishing that the organization in Trumbull, Connecticut is a tax-exempt organization.

In a letter responding to the NOID, the petitioner stated the following:

[REDACTED] is a tax-exempt non-profit organization, see attached as Exhibit B a currently valid determination letter from the IRS establishing CENTI as a tax-exempt organization. Our congregation, [REDACTED] is registered as a corporation in around 23 states of the United States, [REDACTED] located at [REDACTED] location. [REDACTED] is authorized to conduct business in Connecticut. As Exhibit C, attached please find a certificate of good standing from Florida and detail business summary taken from the Department of State of Florida and Connecticut.

The petitioner resubmitted a copy of its determination letter from the IRS. The petitioner submitted a certificate from the Florida Department of State confirming the petitioner's active status as a corporation, incorporated in Florida on August 16, 1994, as well as a printout from the Florida Department of State Division of Corporations providing entity details about the petitioner. Additionally, the petitioner submitted a printout from the Commercial Recording Division, Secretary of the State of Connecticut, indicating that the petitioning organization was incorporated or registered in Connecticut on May 2, 2002. The printout listed the organization's business address as the petitioner's address in Miami, Florida. The document also listed [REDACTED] (signatory of the instant petition) as a principal of the organization and gave his business address and residence address as [REDACTED]

The petitioner submitted a letter providing an overview of the petitioning organization. In the letter, the petitioner stated that the international headquarters of the organization is based in Miami, Florida and that the signatory of the instant petition oversees all international locations and makes "placement recommendations." The letter stated that the petitioner provides funding for the establishment of new church plantings, "including the support of the Pastor establishing the new congregation." The letter further stated that, "[o]nce the new congregation is established, the planted church also offers tithes and offerings in support of the church and [REDACTED]"

On March 15, 2012, USCIS issued a Request for Evidence (RFE) instructing the petitioner to submit evidence that the organization in Trumbull, Connecticut qualifies as a tax-exempt nonprofit religious organization. The RFE noted that the determination letter submitted by the petitioner is not a group exemption letter which recognizes the exemption of subordinate organizations. Rather, the submitted letter indicates only that the petitioning organization in Miami, Florida is tax-exempt.

In a letter responding to the RFE, the petitioner indicated that it had filed a request with the IRS for "the necessary documentation," but had not yet received a response. The petitioner requested an additional 30 days to respond to the notice.

On June 6, 2012, the director denied the petition, finding that the petitioner failed to establish that the organization in Trumbull, Connecticut qualifies as a bona fide non-profit religious organization. The director noted that the petitioner had not submitted an IRS determination letter recognizing the tax-exempt status of the Trumbull, Connecticut church and that the regulation at 8 C.F.R. § 103.2(b)(8) does not allow the granting of additional time to respond to a request for evidence.

On appeal, the petitioner asserts that it is a bona fide non-profit religious organization which is recognized as tax-exempt by the IRS. The petitioner also asserts that it has applied for a Group Exemption Letter from the IRS and submits a letter from the IRS confirming receipt of the petitioner's request for a group ruling.

The petitioner has submitted evidence that the petitioning organization in Miami, Florida qualifies as a bona fide non-profit religious organization. Although the petitioner has submitted evidence that the beneficiary received some income from the petitioner in Miami, the petitioner also submitted copies of checks showing compensation from the church in Connecticut for the beneficiary's services as pastor. Further, in the organizational overview letter submitted in response

to the NOID, the petitioner indicated that it provides support to a pastor while a church is being planted, but that the new church then raises support through tithing and offerings.

The AAO finds that the petitioner has not established that the beneficiary will in fact be employed by the petitioning organization, rather than by the church in Trumbull, Connecticut. The petitioner has not submitted evidence to establish that the Connecticut church is recognized by the IRS as tax-exempt under section 501(c)(3), either individually or under a group exemption. Accordingly, the AAO agrees with the director's determination that the petitioner has not established that the beneficiary will be working in a qualifying position for a bona fide religious organization.

As an additional matter, the AAO finds that the beneficiary engaged in unauthorized employment with the church in Trumbull, Connecticut, thereby failing to maintain lawful status. Accordingly, 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.

The AAO may deny an application or petition that fails to comply with the technical requirements of the law 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 (9<sup>th</sup> 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 USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the alien 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 petition was filed on October 25, 2011. Therefore, petitioner alien must establish that the beneficiary was continuously performing qualifying religious work in lawful status throughout the two-year period immediately preceding that date.

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 record, the beneficiary entered the United States on June 1, 2007 in R-1 nonimmigrant status which authorized his work for the petitioning organization in Miami, Florida "to establish new church in Rockville, Maryland." The petitioner later filed a Form I-129, Petition for a Nonimmigrant Worker on behalf of the beneficiary which was approved with validity dates of November 2, 2009 to May 1, 2012. In a letter accompanying the petition, the petitioner stated that it had employed the beneficiary as a minister "for our church in different cities of Dominican Republic, Florida and now Connecticut" since 1997.

The petitioner submitted a copy of the beneficiary's 2009 Form 1099-MISC, which indicated that he received \$1,273.68 as "Housing Allowance" from the petitioner during that year, as well as a copy of the beneficiary's 2009 Tax Return Transcript listing \$1,273.68 as his total income for that year. The petitioner submitted a copy of the beneficiary's 2010 Form 1099-MISC, which indicated that he received \$19,400.00 from the petitioner during that year. The petitioner also submitted copies of processed checks which were issued to the beneficiary from the petitioning organization in Miami in 2008, 2009, and 2010, as well as from [REDACTED] in Hartford and Trumbull, Connecticut in 2009 and 2010. As noted above, several of the checks from Connecticut specified that they were intended as pastor compensation. The AAO notes that the total amount listed on checks from the petitioner in Miami during 2009 far exceeds the \$1,273.68 reported on the Form 1099-MISC. The petitioner provided no explanation for why the additional amounts from the petitioner and the payments from the church in Connecticut were not reported as income on the beneficiary's 2009 tax return transcript. 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).

In the February 3, 2012 NOID, USCIS requested additional evidence regarding the beneficiary's immigration status. Specifically, USCIS noted that the evidence indicated that the beneficiary was employed by the church in Trumbull, Connecticut "without the benefit of an approved Form I-129." The notice also instructed the petitioner to submit an itemized record of the beneficiary's earnings from the Social Security Administration (SSA).

In a letter responding to the NOID, the petitioner stated, in part:

Pastor/Minister [REDACTED] came to the U.S. to serve as a [REDACTED] locations then, due to the need and a growth in the congregation in Connecticut, Pastor/Minister [REDACTED] was transfer [sic] to the [REDACTED] location to serve as the only Pastor/Missionary working at the [REDACTED] location. As stated above, [REDACTED] is authorized to

conduct business in Connecticut. Therefore, [REDACTED] is not a different or additional organizational unit of the religious denomination, but the branch in [REDACTED] organization.

The petitioner submitted a record of the beneficiary's earnings from the SSA. The record listed total earnings of \$1,176.00 in 2009 and \$13,041.00 in 2010, with earnings from both years reported as self-employment. The petitioner did not provide an explanation for why the amounts listed on the SSA record do not match the amounts listed on the Forms 1099-MISC, or why they do not include the additional amounts of earnings reflected on the processed checks discussed above. 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. at 591-92.

The regulations at 8 C.F.R. § 214.2(r)(3)(ii)(E), as were in effect when the beneficiary was first approved as an R-1 nonimmigrant, required an authorized official of the organization to provide the "name and location of the specific organizational unit of the religious organization" for which the alien would work. The regulation at 8 C.F.R. § 214.2(r)(6) stated:

*Change of employers.* A different or additional organizational unit of the religious denomination seeking to employ or engage the services of a religious worker admitted under this section shall file Form I-129 with the appropriate fee .... Any unauthorized change to a new religious organizational unit will constitute a failure to maintain status ...."

Similarly, the current regulation at 8 C.F.R. § 274a.12(b)(16) states that "[a]n alien having a religious occupation, pursuant to § 214.2(r) of this chapter ... may be employed only by the religious organization through whom the status was obtained." The regulation at 8 C.F.R. § 214.2(r)(2) provides that "[a]n alien may work for more than one qualifying employer as long as each qualifying employer submits a petition plus all additional required documentation as prescribed by USCIS regulations."

Further, the regulation at 8 C.F.R. § 214.1(e) provides that a nonimmigrant may engage only in such employment as has been authorized. Any unlawful employment by a nonimmigrant constitutes a failure to maintain status.

The AAO disagrees with the petitioner's argument that a different "branch" location of an organization is not a different organizational unit of that organization. Regardless of any relationship between the petitioning church in Miami and the church in Trumbull, Connecticut, the beneficiary was not authorized to engage in employment with any employer other than the named R-1 employer without first obtaining authorization through the filing of a separate Form I-129 petition. The record does not indicate that the church in Trumbull, Connecticut has ever filed a Form I-129 petition on the beneficiary's behalf. Furthermore, as the Connecticut church does not possess a valid determination letter from the IRS, it does not qualify as a bona fide non-profit religious organization and therefore could not meet the requirements for an R-1 petitioning organization under 8 C.F.R. § 214.2(r)(9).

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.