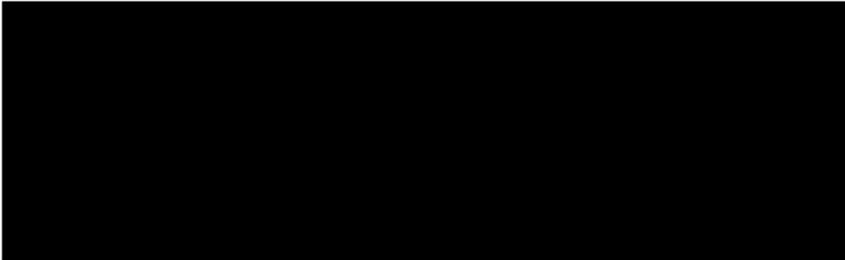


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



C1

Date: **DEC 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:



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.

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 withdraw the director's decision and remand the petition for further consideration and action.

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 religious minister. The director determined that the petitioner failed to establish that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing date of the petition. The director additionally found that the petitioner had not established that the beneficiary will be employed in a qualifying, full time position.

The petitioner submits no additional evidence on appeal.

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 U.S. 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 petition was filed

on October 3, 2011. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work in lawful immigration 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 Form I-360 petition and accompanying materials, the beneficiary entered the United States on June 6, 2008 in B-2 nonimmigrant visitor status and was subsequently granted R-1 nonimmigrant status authorizing his employment with the petitioner from May 19, 2009 until November 18, 2011. In a letter accompanying the petition, the petitioner indicated that the beneficiary has held the position of "International Staff Minister" since May of 2009. Attached to the letter, the petitioner submitted a "Current Schedule" and a "Proposed Schedule" for the beneficiary's position, each of which described the beneficiary's duties as follows:

Sunday 9:00AM until 1:30PM and 5:30PM until 9:30PM Worship Services –
Ministering Sacraments

Monday 8:30AM until 9:30PM

9:00AM – 9:45AM Conduct daily chapel service at the Christian School
11:00AM – 12:00AM Lead prayer services – Church
6:30PM – 8:30PM Prison Ministry

Other times available for counseling, correspondence with international ministries and visits to hospitals and parishioners

Tuesday 8:30AM until 5:00PM

9:00AM – 9:45AM Conduct daily chapel service at the Christian School
11:00AM – 12:00AM Lead prayer services – Church
Other times available for counseling, correspondence with international ministries and visits to hospitals and parishioners

Wednesday 8:30AM until 9:30PM

9:00AM – 9:45AM Conduct daily chapel service at the Christian School
11:00AM – 12:00AM Lead prayer services – Church
6:00PM – 9:30PM Wednesday night Worship Service – Ministering Sacraments
Other times available for counseling, correspondence with international ministries and visits to hospitals and parishioners

Thursday 8:30AM until 9:30PM

9:00AM – 9:45AM Conduct daily chapel service at the Christian School
11:00AM – 12:00AM Lead prayer services – Church
6:30PM – 8:30PM Prison Ministry
Other times available for counseling, correspondence with international ministries and visits to hospitals and parishioners

Friday 8:30AM until 5:00PM

9:00AM – 9:45AM Conduct daily chapel service at the Christian School
11:00AM – 12:00AM Lead prayer services – Church
Other times available for counseling, correspondence with international ministries and visits to hospitals and parishioners

The petitioner submitted a copy of the beneficiary's 2010 Form W-2, Wage and Tax Statement, which indicated that the beneficiary received \$22,153.41 from the petitioner during that year. Additionally, the petitioner submitted copies of monthly paystubs from May, June and July of 2011 indicating payments to the beneficiary at a rate of \$2,350 per month.

On January 4, 2012, USCIS issued a Request for Evidence, in part requesting additional evidence regarding the beneficiary's work history during the two-year qualifying period immediately preceding the filing date of the petition. The notice instructed the petitioner to submit experience letters providing details about the work performed as well as evidence of compensation received. The

petitioner was specifically instructed to submit copies of the beneficiary's Forms W-2 for 2009 and 2010.

In a letter responding to the notice, counsel for the petitioner asserted that the beneficiary has been employed by the petitioner from May 19, 2009 to the present and referred to the petitioner's letter submitted with the petition. The petitioner also submitted the beneficiary's Form W-2 for 2009, indicating that he earned \$11,100 from the petitioner during that year, as well as copies of the beneficiary's tax returns from 2009 and 2010 which included total wages matching those listed on the Forms W-2 for those years. The petitioner additionally submitted a copy of its "Payroll Journal" records of the beneficiary's earnings for 2011, showing total wages of \$25,700 for the year.

The director denied the petition on May 4, 2012, in part finding that the petitioner failed to establish that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition. The director cited the beneficiary's current work schedule submitted with the petition and stated:

The current schedule shows that the beneficiary performs his religious duties for an average of 24.45 hours per week. (Sundays – 8.5 hours; Mondays – 3.45 hours; Tuesdays – 1.45 hours; Wednesdays – 5.15 hours; Thursdays – 3.45 hours; Fridays – 1.45 hours)

The director therefore found the evidence "insufficient to substantiate that the beneficiary has performed religious work continuously for at least the two-year period immediately preceding the filing of the petition."

On appeal, counsel argues that the director's calculation of the beneficiary's hours includes only the "itemized" portions of the schedule and disregards the petitioner's explanation that the other listed hours of the beneficiary's work days include time spent on "counseling, correspondence with international ministries and visits to hospitals and parishioners." Counsel additionally asserts that the petitioner's evidence of past wages is consistent with "the indicated full-time salary."

The AAO agrees with counsel's assessment. While the work schedule submitted included only 24.45 hours of specifically scheduled activities, the petitioner indicated on the schedule that the beneficiary worked well over 35 hours per week and provided a description of the ministerial duties to be performed in addition to the scheduled activities. As the evidence submitted is otherwise consistent with the petitioner's assertion on the petition and in supporting materials that the beneficiary has been continuously employed as a minister throughout the qualifying period, the AAO will withdraw the director's finding on this issue.

As an additional ground for denial, the director found that the petitioner failed to demonstrate that the beneficiary will be employed in a qualifying, full time position.

The 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 director's finding on this issue was based on the "Proposed Schedule" submitted with the Form I-360 petition. The director again found that the schedule showed only 24.45 hours per week, and therefore found the evidence failed to establish that the beneficiary will be working in a full time position as required under 8 C.F.R. § 204.5(m)(2).

As discussed above, the AAO disagrees with the director's calculation of the beneficiary's work hours which includes only scheduled activities and disregards the listed hours spent on "counseling, correspondence with international ministries and visits to hospitals and parishioners." Accordingly, the AAO will withdraw the second basis and, therefore, the denial decision.

Nevertheless, additional obstacles remain which the director must resolve before a definitive resolution is possible. The AAO may identify additional grounds for denial beyond what the Service Center identified 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 USCIS regulation at 8 C.F.R. § 204.5(m)(12) reads:

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.

The AAO will remand the petition in order for the director to determine whether the petitioner has satisfied the regulatory requirements at 8 C.F.R. § 204.5(m)(12). The director may request any

additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time.

Additionally, the AAO finds a discrepancy in the petitioner's evidence which must be resolved. 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 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 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.

On the Form I-360 petition, the petitioner indicated that the beneficiary would be employed as a minister. In the letter accompanying the petition, the petitioner stated that the beneficiary "was ordained by our organization on February 27th, 2003 (see Ordination Certificate) at Ministerio Verbo Vivo in Belo Horizonte, Brazil." However, the signed Ordination Certificate submitted by the petitioner stated that the beneficiary was ordained "at Spindale, North Carolina" on February 27, 2003. The petitioner must resolve this discrepancy through objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-92.

For the reasons discussed above, the AAO will remand this matter for further action and consideration. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As

always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing. A new decision, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.