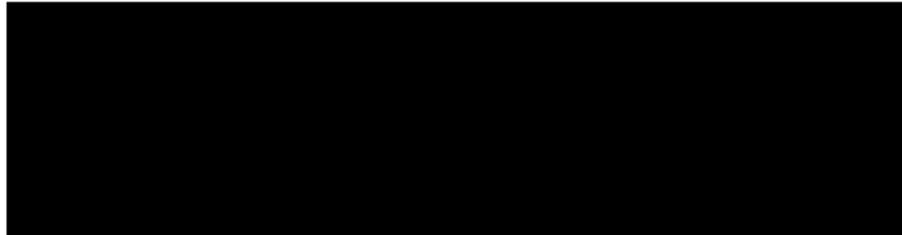


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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.

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 a religious minister. 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 brief from counsel, a letter from a board member of the petitioning church, 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 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 November 8, 2010. Therefore, the petitioner must establish that the beneficiary was continuously and lawfully performing qualifying religious work 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 petition and accompanying materials, the beneficiary entered the United States on May 23, 2007 in R-1 nonimmigrant status authorizing his employment with International Family Church until May 22, 2010. The record indicates that on August 28, 2009, the beneficiary filed a

Form I-485 Application to Register Permanent Residence or Adjust Status based on a previous Form I-360 petition filed on his behalf by International Family Church. The beneficiary was granted employment authorization pursuant to the pending Form I-485 application. However, on August 18, 2010, the beneficiary's application to adjust status was denied based on a denial of the underlying Form I-360 petition. International Family Church appealed the denial of the petition on September 15, 2010, and the AAO subsequently dismissed the appeal on April 24, 2012.

In a letter accompanying the Form I-360 petition, the petitioner stated that the beneficiary has served as a religious minister for International Family Church, USA since 2002. The petitioner submitted copies of the beneficiary's Forms W-2 for the years 2008, 2009 and 2010, indicating that he received \$17,992.00 in income from International Family Church in Columbia, South Carolina in each of those years. The petitioner additionally submitted copies of pay statements from International Family Church to the beneficiary, dated between October 1, 2010 and October 29, 2010, indicating weekly gross pay in the amount of \$581.00 during that period. However, on the petition, the petitioner indicated that the beneficiary is currently living in South Richmond Hill, New York. Several promotional flyers submitted with the petition indicated that the beneficiary is currently the pastor of the petitioning church in Richmond Hill, New York. The petitioner also submitted a letter from the Internal Revenue Service (IRS) dated December 29, 2004, which was addressed to the petitioning church "c/o Jatinder Prakash."

On the petition, the petitioner indicated that it is affiliated with "The General Councils of the Assemblies of God, Inc." The petitioner submitted letters from The General Council of the Assemblies of God in Springfield, Missouri, confirming the petitioner's affiliation with that organization.

On March 3, 2011, USCIS issued a Request for Evidence, in part requesting additional evidence regarding the beneficiary's work history. USCIS noted the evidence suggesting the beneficiary's employment with the petitioner in Richmond Hill, New York, and instructed the petitioner to indicate when such employment began and to submit evidence to show authorization for such employment. Additionally, the notice requested additional evidence of the beneficiary's qualifying employment during the two years immediately preceding the filing date of the petition including letters from previous and former employers and evidence of compensation in the form of IRS wage and income transcripts and federal tax return transcripts for the years 2008, 2009 and 2010. The notice also specifically instructed the petitioner to provide evidence that the beneficiary held lawful status and employment authorization during the qualifying period, and to account for any break in the continuity of the beneficiary's work during the qualifying period with an explanation and supporting evidence.

In a letter responding to the notice, counsel for the petitioner asserted that the petitioner is affiliated with International Family Church in Columbia, South Carolina, under an umbrella organization, International Family Church Ministries. Counsel argued:

Furthermore, the International Family Church was using the services of the Beneficiary primarily for their location in North Carolina. However, since the

Bethlehem Punjabi Church was a fledging [sic] organization it was requiring a part time pastor who could carry on the services of the congregation. As a sister church International Family Church utilized the services of the Beneficiary on a temporary basis in New York to propagate the word of God.

The petitioner submitted a letter from International Family Church which asserted: "During his tenure with us [the beneficiary] was deputed to NY where he pioneered and established a church under the banner of Intl Family Church among the Punjabi speaking immigrants in NY." The letter also stated that the petitioning church is an individually operated "affiliate church" of International Family Church and that the beneficiary "has ministered in Bethlehem Punjabi Church on several occasions and has worked with them to organize several outreaches and crusades." The petitioner submitted an "Affiliation Agreement" between International Family Church and "Queens Intn'l Family Ministries," dated December 10, 2007, which was signed by the CEO of International Family Church and by the beneficiary, as "Pastor-in-Charge" of Queens International Family Ministries. The agreement stated that the affiliate of International Family Church is prohibited from having a partnership with any other entity or becoming an affiliate with another parent organization.

The AAO notes that the assertions by counsel and International Family Church that the petitioning church is an affiliate of that church are inconsistent with the previously submitted evidence that the petitioner is affiliated with The General Council of the Assemblies of God. Further, the assertions that the beneficiary worked for the petitioner "on several occasions" or "on a temporary basis" are inconsistent with the petitioner's Form 990-EZ tax returns, submitted in response to the Request for Evidence. The Forms 990 listed the beneficiary as the petitioner's only "Pastor" for 2008, 2009, and 2010, and both the 2008 and 2009 forms indicated that he worked 45 hours per week in that position. 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 copies of the beneficiary's IRS wage and income transcripts and account transcripts for 2008, 2009, and 2010, which indicated that the beneficiary earned \$17,992.00 from International Family Church in each of those years. The petitioner also submitted additional pay statements from International Family Church to the Beneficiary dated between December 10, 2010 and December 31, 2010.

On March 28, 2012, the director denied the petition based on the petitioner's failure to establish that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition. The director stated that, as the beneficiary's Form I-485 application was denied on August 18, 2010, the beneficiary lacked employment authorization and lawful immigration status for the portion of the qualifying period between that date and the filing of the petition.

On appeal, the petitioner asserts the following:

Between the months of August 2010 and November of 2010, [REDACTED] had a pending appeal regarding his first Adjustment of Status Application, and so he was in lawful status. However, he did not want to violate any rules regarding work authorization, so he engaged in religious training programs instead of full time employment for salary. We were happy to let [REDACTED] engage in religious training programs, because it would also be helpful for our congregation.

[REDACTED] pursued religious training such as missions among South Asian immigrant communities and evangelization through media. We assisted [REDACTED] with costs during this period, but he was not a salaried employee as he had been when he had work authorization.

Counsel for the petitioner argues that the pending appeal of the previous Form I-360 petition provided the beneficiary with lawful status during the period in question. Counsel further argues that the beneficiary's purported period of religious training meets the requirements of an acceptable break in religious work under 8 C.F.R. § 204.5(m)(4).

The AAO does not find these arguments persuasive. First, counsel does not cite any statute, regulation, or case law to support the claim that filing an appeal on an alien's behalf entitles the alien to lawful status while that appeal is pending. Counsel simply proceeds from that presumption. If that were the case, it would provide an obvious incentive for petitioners to file frivolous petitions and appeals for the sole purpose of obtaining or prolonging the respective beneficiaries' lawful immigration status. A decision pending on appeal is not "final" in the administrative sense, but that does not mean that USCIS treats a denied petition like an approval until the denial becomes "final." The AAO agrees with the director that the petitioner has not established that the beneficiary held any lawful immigration status or employment authorization during the portion of the qualifying period which followed the denial of his previous Form I-485 application.

Regarding the purported break in the beneficiary's work for religious training, the regulation at 8 C.F.R. § 204.5(m)(4) requires that an alien remain employed as a religious worker throughout a qualifying break, and the regulation at 8 C.F.R. § 204.5(m)(11) requires that any qualifying employment in the United States must be authorized. Accordingly, the beneficiary's lack of employment authorization prevents any break in his work from meeting the requirements under the regulations. Furthermore, the AAO notes that the beneficiary's "break" was asserted for the first time on appeal, despite specific instructions in the March 3, 2011 Request for Evidence to account for any break in the continuity of the beneficiary's work during the qualifying period, thus calling into question the credibility of the assertion. The petitioner states that the beneficiary "engaged in religious training programs instead of full time employment for salary" so as not to engage in unauthorized employment. However, the petitioner previously submitted pay statements indicating that the beneficiary received weekly salaried and non-salaried compensation from International Family Church during October 2010, part of the period in question. 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. Additionally, the petitioner has not submitted any documentary evidence in support of the assertion that the beneficiary engaged in religious training programs between August and November of 2010. 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)).

Further, the AAO finds that, prior to being granted employment authorization pursuant to the filing of his I-485 application, the beneficiary engaged in unauthorized employment in violation of his R-1 status. As discussed above, the record indicates that the beneficiary entered the United States on May 23, 2010 in R-1 nonimmigrant status authorizing his employment with International Family Church in Columbia, South Carolina until May 22, 2010.

The regulation at 8 C.F.R. § 214.2(r)(3)(ii)(E), as was in effect when the beneficiary was 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 (emphasis added). 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...."

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.

In this instance, the beneficiary's R-1 status only authorized his employment with the named employer, International Family Church, at the named location in Columbia, South Carolina. Regardless of any relationship between that church and the petitioning church, the beneficiary was not authorized to engage in employment with any affiliated organization or organizational unit without first obtaining authorization through the filing of a separate Form I-129 petition. The petitioner submitted evidence that the beneficiary was employed by International Family Church during the qualifying period. However, the evidence also indicates that the beneficiary worked at the petitioning church and Queens International Family Ministries during that time. Such work constituted unauthorized employment and a failure to maintain his lawful R-1 status.

Counsel alternately argues on appeal that section 245(k) of the Act provides an exception to the requirement that the beneficiary maintain lawful status and work authorization during the two years immediately preceding the filing of the Form I-360 petition. Section 245(k) of the Act reads:

An alien who is eligible to receive an immigrant visa under paragraph (1), (2), or (3) of section 203(b) (or, in the case of an alien who is an immigrant described in

section 101(a)(27)(C), under section 203(b)(4)) may adjust status pursuant to subsection (a) and notwithstanding subsection (c)(2), (c)(7), and (c)(8), if –

(1) the alien, on the date of filing an application for adjustment of status, is present in the United States pursuant to a lawful admission;

(2) the alien, subsequent to such lawful admission has not, for an aggregate period exceeding 180 days –

(A) failed to maintain, continuously, a lawful status;

(B) engaged in unauthorized employment; or

(C) otherwise violated the terms and conditions of the alien's admission.

Although section § 245(k) of the Act does enable a person who is adjusting status in an employment-based category to adjust status even if he or she has been out of status or worked without authorization for less than 180 days, at issue in this proceeding is whether the beneficiary is eligible for approval of the special immigrant petition. The law governing adjustment of status does not address the eligibility requirements for an immigrant petition, but rather presupposes an already approved petition. Without an approved petition, the beneficiary has no basis for adjustment of status, and therefore section 245(k) never comes into play. Any discussion of eligibility for adjustment of status is premature. At this time, the petitioner must establish that the beneficiary meets all of the requirements for 8 C.F.R. §204.5(m), which requires two years of lawful continuous employment.

For the reasons discussed above, the AAO agrees with the director's finding that the beneficiary lacked employment authorization and lawful immigration status during portions of the two years immediately preceding the filing of the petition. Therefore, the petition does not meet the regulatory requirements of 8 C.F.R. §§ 204.5(m)(4) and (11).

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.