

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 24 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 identifies itself as a religious organization belonging to Christian Fellowship Ministries. 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 the [REDACTED]. The director determined that the petitioner had not submitted sufficient evidence to establish: (1) its qualifying status as a tax-exempt religious organization; (2) the beneficiary's required two years of continuous, qualifying work experience immediately preceding the filing date of the petition; (3) the beneficiary's membership in the petitioner's religious denomination during that same period; or (4) how the petitioner intends to compensate the beneficiary.

On appeal, the petitioner submits a letter from an official of the petitioning organization and copies of numerous supporting documents.

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, 2015, 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, 2015, 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).

TAX-EXEMPT STATUS

The first stated basis for denial concerns the petitioner's tax-exempt status. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(8) requires the petitioner to submit:

- (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.

The petitioner filed the Form I-360 petition on March 13, 2012. Part 1, line 12 of the petition form instructed the petitioner to list its "IRS Tax #," also known as the employer identification number (EIN). The petitioner left the line blank. No supporting evidence accompanied the initial filing of the petition. On March 23, 2012, the director issued a request for evidence (RFE), instructing the petitioner to submit, among other evidence, an IRS determination letter to establish the petitioner's tax-exempt status.

The petitioner's response to the RFE included a copy of an IRS determination letter dated February 13, 1984, addressed to [REDACTED]. The letter bears the handwritten EIN [REDACTED]. The letter does not refer to subsidiary entities or state that the petitioner holds a group exemption that would cover such entities. The photocopy shows the petitioner's current mailing address in Tucson, Arizona, but this address was clearly not part of the original document. The address is in a visibly different typeface from the rest of the letter. Furthermore, most of the letter shows image degradation consistent with several generations of photocopying. The address does not show this degradation. Therefore, the evidence is consistent with the conclusion that an unidentified party added the Tucson address to a copy several generations removed from the original 1984 determination letter. The address appears to have been typed or printed onto a piece of paper, the upper edge of which appears visible above the address and below the name of the petitioning entity. (Similar alterations are evident on the petitioner's articles of incorporation, apparently reflecting a change of address by the incorporators.)

The director denied the petition on June 29, 2012, stating that USCIS was unable to verify the existence of "a viable non-profit organization" under the petitioner's name at the Arizona address claimed, the EIN shown on the letter, or at the address of the beneficiary's Maryland work site.

On appeal, [REDACTED] of the petitioning organization stated: "I have enclosed a page from our church's website indicating our relationship with our mother church, [REDACTED]. In the printout, the petitioner claims that [REDACTED] includes more than 1,400 congregations worldwide."

The petitioner submits another copy of the 1984 IRS determination letter addressed to [REDACTED]. This copy, like the one submitted previously, shows the handwritten EIN [REDACTED]. This copy, clearer than the first and therefore evidently a lower-generation copy, does not show the petitioner's current Tucson address. Instead, it shows the address as [REDACTED].

The petitioner also submits a copy of an October 3, 1984 letter from the IRS, addressed to [REDACTED]. The letter, which does not mention tax-exempt status, opens: "Your employer identification number is [REDACTED]. These letters, together, establish that [REDACTED] is not the same organization as [REDACTED]. Thus, the alteration of the IRS determination letter was not simply a matter of the petitioner seeking to update its own determination letter by providing a more recent address. Rather, the substitution sought to create a connection between the two entities that was not at all evident in the original, unaltered document.

The petitioner's submission of the altered letter raises obvious and serious questions of credibility. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92. Given these credibility issues, a printout from the petitioner's own web site cannot suffice as evidence of a qualifying affiliation between the two churches. Rather, it is a self-serving claim from a demonstrably compromised source.

The petitioner also submitted corporation documents from the State of Arizona, indicating that the petitioner "did incorporate on October 19, 1984." This date fell after the dates on both of the IRS letters. The petitioner submitted no independent, verifiable documentary evidence to show that the IRS considers [REDACTED]'s tax-exempt status to cover the petitioner (or the beneficiary's intended congregation in Maryland).

The petitioner submitted a photocopied booklet, the cover of which reads [REDACTED]. Pages from this document identify [REDACTED] as one of several members of [REDACTED] and also refers to a congregation in Silver Spring, Maryland, as well as an unnamed London congregation led by [REDACTED].

[REDACTED] states: "we have initiated steps to obtain our own IRS 501(c)(3) [determination letter] to guarantee that there is no future confusion." Thus, on appeal, the petitioner admits that no such letter yet exists. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

It is possible that a qualifying relationship exists between [REDACTED] and the petitioner, such that the parent church's tax exemption covers the petitioner and the beneficiary's intended church. The petitioner, however, has not submitted sufficient evidence of that relationship. The instructions to Form I-360 identify the IRS letter as required evidence, but the petitioner's initial submission included no evidence at all. The director requested the letter in the RFE, and the petitioner submitted an altered determination letter that made no reference to a group exemption. At each step of the process, the petitioner's submissions have raised more questions than they have answered. The AAO concludes that the petitioner has not met its burden of proof in this regard, and will affirm the director's finding that the petitioner did not submit a qualifying IRS determination letter to establish its tax-exempt status.

## EXPERIENCE

The second basis for denial concerns the beneficiary's past experience. The 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 USCIS regulation at 8 C.F.R. § 204.5(m)(11) reads:

*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.

On Part 3, line 13 of the Form I-360 petition, the petitioner indicated that the beneficiary entered the United States on December 2, 2011, and that his current nonimmigrant status is that of a "visitor." The petitioner did not specify whether the beneficiary was a B-1 nonimmigrant visitor for business or a B-2 nonimmigrant visitor for pleasure. On Part 4, line 2f of the petition form, the petitioner stated that the beneficiary had never worked in the United States without authorization.

On line 5c of the employer attestation that accompanied the petition, the petitioner stated that the beneficiary "has four years of experience as pastor and director of [REDACTED]"

In the March 23, 2012 RFE, the director instructed the petitioner to document the beneficiary's past employment. The director specifically instructed the petitioner to "submit evidence that shows monetary payment, such as pay stubs," and, if the beneficiary worked in the United States during

that period, evidence of the beneficiary's employment authorization. The director also instructed the petitioner to explain any break in the continuity of the petitioner's work during the relevant period.

In response, the petitioner submitted a letter from [REDACTED] stated:

[The beneficiary] worked as a staff member [REDACTED] for two years before being launched to pioneer a church in Brixton, which he pastored for four years.

After successfully pastoring this church, he was then launched out as an Evangelist, which he did very productively for two years.

[REDACTED] provided no dates or other specific details about the beneficiary's claimed prior employment. The petitioner submitted no evidence of payment, and no information at all about the beneficiary's activities in the United States between his December 2011 arrival and the March 2012 filing of the petition. The petitioner did not submit evidence of employment or employment authorization during that period, nor did the petitioner explain why that period did not constitute a disqualifying interruption in the continuity of the petitioner's employment during the two-year qualifying period.

In the denial notice, the director cited the petitioner's failure to submit required information and evidence regarding the beneficiary's employment during the two years immediately preceding the filing date of the petition. On appeal, the petitioner submits a new letter from [REDACTED], a "Summary of Employment History" spreadsheet, copies of British bank records and copies of "Monthly Reports" from the Maryland Church for the early months of 2012.

Where, as here, the director has notified the petitioner of a deficiency in the evidence and given the petitioner an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). The RFE provided the petitioner with the opportunity to submit the required evidence, and the petitioner's failure to provide that evidence in response to the RFE is grounds for denial of the petition.

Submission of only some of the requested evidence will be considered a request for a decision on the record. 8 C.F.R. § 103.2(b)(11). Where an applicant or petitioner does not submit all requested additional evidence and requests a decision based on the evidence already submitted, a decision shall be issued based on the record. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the benefit request. 8 C.F.R. § 103.2(b)(14). Once the petitioner has forfeited the opportunity to supplement the record by submitting an incomplete response to an RFE, untimely submission of the requested evidence on appeal cannot remedy the deficiency. The director can only base the decision on the evidence that the petitioner chooses to make available at the time of the decision. Submission of the evidence on appeal does

not show that the director made the incorrect decision; it shows only that the petitioner withheld required evidence.

The petitioner's response to the RFE did not include sufficient details about the beneficiary's past work, evidence of payment, evidence of employment authorization, or an explanation of the nature of the beneficiary's work in the United States. The AAO finds that the director made the correct finding in light of these multiple deficiencies. Submission of some (but, still, not all) of the required materials on appeal does not overcome the denial, because the denial did not make a definitive finding that the beneficiary did not work during the relevant period. Rather, the director made a procedural finding that the petitioner failed to submit required evidence when instructed to do so.

#### DENOMINATIONAL MEMBERSHIP

The third stated ground for denial concerns the beneficiary's denominational membership, which the USCIS regulation at 8 C.F.R. § 204.5(m)(5) defines as "membership during at least the two-year period immediately preceding the filing date of the petition, in the same type of religious denomination as the United States religious organization where the alien will work."

As noted above, the petitioner asserts that the beneficiary worked for [REDACTED] before joining the petitioning organization and [REDACTED] signed a religious denomination certification, certifying that the petitioner belongs to [REDACTED] but the certification did not mention [REDACTED]. Elsewhere, line 4 of the employer attestation indicated that the petitioner and [REDACTED] UK are sister organizations under the umbrella of [REDACTED].

In the RFE, the director instructed the petitioner to submit "documentary evidence to establish whether a connection exists between [the petitioner] and any other church the beneficiary has worked at between March 13, 2010 and March 13, 2010." The director also requested "documentary evidence to show how [REDACTED] in the United Kingdom abroad is connected with the petitioner's religious denomination in the United States."

The petitioner's response included [REDACTED] letter, discussed earlier. That letter includes a [REDACTED] logo in the lower right corner, thereby asserting a connection but offering no details. The same letter showed a logo graphic depicting a globe and a flame. The same globe/flame logo appears in the background of the beneficiary's ordination certificate, signed by [REDACTED], thus providing another subtle indication of affiliation.

The petitioner submitted a copy of its bylaws, but that document never mentions [REDACTED]. The phrase [REDACTED] appears only within the name of the petitioner's own affiliated church, called [REDACTED]. Article VII of the bylaws, "Affiliated [REDACTED]" makes no mention of the petitioner's membership in a parent organization. Rather, the wording indicates that the petitioner itself is the parent organization, to which a minister or church that "desires to be affiliated with [the petitioner] must submit an application" (Article VII, section 1). Article VII, section 6 states that the petitioner's

“Statement of Faith must be included in the by-laws of each member Church or each member Church must have its Statement of Faith approved by the [petitioner’s] Board of Directors.” Nothing shows a similar arrangement between the petitioner and [REDACTED]

The director, in the denial notice, found: “The evidence is insufficient to establish the beneficiary has the 2 years membership in the same denominational organization 2 years immediately preceding the filing of the I-360.”

On appeal, [REDACTED] states that the petitioning organization sent “a pastoral couple, [REDACTED] and [REDACTED] from Tucson, AZ” to found [REDACTED] and his successor, [REDACTED] repeat this claim. Before the appeal, the petitioner made no claim to have established the Potter’s House.

A flier for [REDACTED] listed several participating preachers including [REDACTED], [REDACTED], [REDACTED] and the beneficiary. [REDACTED] took place in the petitioner’s home city of Tucson; speakers included [REDACTED] and [REDACTED]

The evidence submitted on appeal is consistent with some type of denominational affiliation between the petitioner and [REDACTED]. The AAO will consider this evidence because the director, in the RFE, issued only a vague call for evidence of affiliation; the director provided no details about what sort of evidence would suffice. The petitioner has overcome this particular basis for denial, although the others remain.

#### COMPENSATION

The fourth and final basis for denial concerns the beneficiary’s intended compensation. The USCIS regulation at 8 C.F.R. § 204.5(m)(10) reads as follows:

Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

The petitioner stated, on line 5d of the employer attestation, that the beneficiary “will be remunerated at \$4000 per month.”

In the RFE, the director quoted from the above regulation, making it clear that the petitioner needed to submit IRS documentation or explain its absence. Nevertheless, the petitioner’s response to the RFE included none of the required evidence, and no explanation for its absence. The director, in

denying the petition, correctly found that the petitioner had not submitted any of the documentation required under the regulation at 8 C.F.R. § 204.5(m)(10).

On appeal, the petitioner submitted various financial compilations and bank documents indicating that the petitioner has supported the beneficiary's Maryland church in past years. As stated previously, the director's RFE contained detailed instructions regarding what financial documentation the petitioner had to submit. The petitioner's response to that RFE was the petitioner's opportunity to submit the required documents. By responding to the RFE without submitting those materials, under the regulation at 8 C.F.R. § 103.2(b)(11), the petitioner effectively requested a decision based on the incomplete evidence. Under *Soriano*, the AAO will not consider this evidence following its untimely submission on appeal. The purpose of the appeal is to show error by the director, not to perfect the record by submitting documentation that the petitioner should have submitted earlier.

The AAO will dismiss the appeal 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. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.