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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

[REDACTED]

DATE: FEB 10 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:

[REDACTED]

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 an assistant pastor. The director determined that the petitioner had not established that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the petition.

Counsel for the petitioner submitted a brief in support of the appeal and requested an additional sixty days in which to supplement the brief. However, as of the date of this decision, more than twenty months after the brief was submitted, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

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 issue presented on appeal is whether the petitioner has established that the beneficiary worked continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m) provides that to be eligible for classification as a special immigrant religious worker, the alien must:

(4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed. 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. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

Therefore, the petitioner must show that the beneficiary worked 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 September 25, 2008. Accordingly, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

The 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 [Internal Revenue Service] documentation that the alien received a salary, such as an IRS Form W-2 [Wage and Tax Statement] 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.

The petitioner indicated on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, that the beneficiary arrived in the United States on January 31, 2000 and that his immigration status had expired. In its June 10, 2008 letter submitted in support of the petition, the petitioner stated that the beneficiary had been a member of its organization since October 2000, and "has taken on the responsibility of an Assistant Pastor since December 2000 on a volunteer basis" in charge of youth services and activities. The petitioner described the beneficiary's duties as:

He will be responsible for organizing and presiding over youth group services, conducting religious worship and performing other spiritual functions associated with the Presbyterian Church. He will provide spiritual and moral guidance to young children and teenagers in our youth groups, meeting with groups and individuals. He will lead group services, deliver sermons, and interpret religious doctrine. He will oversee the educational programs of our church and will be a confidant for teenagers in need. He is responsible for leading our youth in making moral choices in their actions and for teaching Bible classes for various groups. Education and guidance are intimately tied together in his work.

As the Assistant Pastor, he will work closely with the Pastor, other Assistants and teachers, who are mostly volunteers. He will have the responsibility of planning the curriculum and scheduling our education programs, schedule Bible meetings, decide on religious themes for the week, plan and conduct Christmas, Easter and other holiday pageants. He will review the material the teachers prepare and will assign readings to them. He will ensure that the work of the teachers is age-appropriate and according to religious doctrine. He will ensure that readings on different religious themes are age-appropriate.

The petitioner stated that although the beneficiary had performed the above duties on a volunteer basis in the past, it will pay him a salary of \$25,000 to work a 40-hour workweek. The petitioner submitted no documentation with the petition to establish that the beneficiary worked for the petitioning organization during the qualifying two-year period or that he was in a lawful immigration status during that period.

In a request for evidence (RFE) dated January 17, 2009, the director instructed the petitioner to submit additional documentation regarding the beneficiary's qualifying work history:

Provide experience letters written by the previous and current employers that include a breakdown of duties performed in the religious occupation for an average week. Include the employer's name, specific dates of employment, specific job duties, number of hours worked per week, form and amount of compensation, and level of responsibility/supervision. In addition, submit evidence that shows monetary payment, such as pay stubs or other items showing the beneficiary received payment. If any work was on a volunteer basis, provide evidence to show how the beneficiary supported himself during the two-year period or what other activity the beneficiary was involved in that would show support. If any of the experience was gained while working in the United States provide evidence that the beneficiary was employed while in lawful status.

The director also instructed the petitioner to submit copies of the beneficiary's federal tax returns.

In its February 23, 2009 response, the petitioner stated:

Although [the beneficiary] has been devoting full-time service to our church, he has maintained other employment on a less than full-time basis, and this is shown in his attached W-2 statements. He has been able to devote the required hours to our church by working in the evenings, weekends and after-school hours. Because his job involves youth services to a great extent, he has been able to perform in both positions.

The record contains the beneficiary's IRS Form W-2 for the years 2006 and 2008 that were issued to him by [REDACTED]. The petitioner again submitted no documentation to establish that the beneficiary worked for the petitioning organization during the qualifying period. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The director denied the petition, finding that the petitioner had submitted no evidence to show that the beneficiary had been employed and compensated by the petitioner and that the beneficiary had authorization to work in the United States. On appeal, counsel argues that there is nothing in the regulation that requires that the qualifying work must be compensated employment and that the regulation at 8 C.F.R. § 204.5(m)(11)(iii) contemplates non-compensated positions. Counsel also cites an unpublished AAO decision holding that "neither the statute nor the regulations stipulate an explicit requirement that the work experience must have been full-time paid employment." The AAO notes that while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Furthermore, the petitioner submitted no documentation to establish that the beneficiary worked in any capacity for the petitioner during the qualifying period.

Counsel also asserts that “non-compensated efforts on behalf of one’s church do not require employment authorization. His work is ‘authorized’ to the extent that it is possible for an agency to authorize work that is not under it[s] purview.” Counsel further asserts:

In fact, [clause] (iii) [] indicates that other work may have provided the support necessary for the beneficiary to support himself. It does not require that this other work must have been authorized by immigration law. It cannot be said that the non-compensated work of the beneficiary was unauthorized. In fact, the immigration law, or any other federal law, is unable to authorize or forbid voluntary performance of religious work which is a form of religious exercise protected by the Constitution.

Counsel’s assertions are without merit. First, counsel assumes that the regulation permits the alien to satisfy the experience requirement by engaging in secular employment. In supplementary information published with the proposed rule in 2007, USCIS stated:

The revised requirements for immigrant petitions and nonimmigrant status require that the alien’s work be compensated by the employer because that provides an objective means of confirming the legitimacy of and commitment to the religious work, as opposed to lay work, and of the employment relationship. Unless the alien has taken a vow of poverty or similarly made a formal lifetime commitment to a religious way of life, this rule requires that the alien be compensated in the form of a salary or in the form of a stipend, room and board, or other support so long as it can be reflected in a W-2, wage transmittal statements, income tax returns, or other verifiable IRS documents. USCIS recognizes that legitimate religious work is sometimes performed on a voluntary basis, but allowing such work to be the basis for an R-1 nonimmigrant visa or special immigrant religious worker classification opens the door to an unacceptable amount of fraud and increased risk to the integrity of the program. In this rule, USCIS is proposing to implement bright lines that will ease the verification of petitioner’s claims in the instances where documentary evidence is required.

72 Fed. Reg. 20442, 20446 (April 25, 2007). When USCIS issued the final version of the regulation, the preamble to that final rule incorporated the above assertion by reference: “The rationale for the proposed rule and the reasoning provided in the preamble to the proposed rule remain valid and USCIS adopts the reasoning in the preamble of the proposed rule in support of the promulgation of this final rule.” 73 Fed. Reg. 72275, 72277 (Nov. 26, 2008).

Quoting 8 C.F.R. § 204.5(m)(11)(iii) again here with its prefatory clause from 8 C.F.R. § 204.5(m)(11):

If the alien was employed in the United States during the two years immediately preceding the filing of the application and . . . [r]eceived 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.

When read in context as a complete sentence, the regulation clearly refers to employment rather than volunteer work. Also, with respect to self-supporting aliens, the regulation lists types of documentation that the petitioner can submit to “show how support was maintained.” Evidence of secular employment is conspicuously absent from that list, and the AAO is not of the opinion that this omission was a mere oversight.

Clauses (i) and (ii) of 8 C.F.R. § 204.5(m)(11) refer repeatedly to IRS documentation of compensation. The AAO finds that clause (iii) would have included such references as well, unless there was reason to exclude them. The listed documents – “audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney” – all relate to an alien’s existing financial assets, and not to earned income from ongoing employment.

The AAO finds that 8 C.F.R. § 204.5(m)(11)(iii) refers to aliens who support themselves through their financial reserves, and not to aliens who volunteer at their local church while employed in secular jobs. The plain language of the regulation distinguishes between an alien who received a “salary” and an alien who “provided for his or her own support.” Clearly, in this context, earning a salary is not considered self-support; otherwise, the distinction would disappear. In this light, the AAO finds that the beneficiary did not provide for his own support during the qualifying period.

Furthermore, in the supplementary information for the final rule, as it relates to self-support, the rule stated:

*Compensation Requirements*

USCIS proposed to add a requirement that the alien’s work, under both the immigrant and nonimmigrant programs, be compensated by the employer. Specifically, the rule proposed amending the definition of “religious occupation” to require that an occupation be “traditionally recognized as a compensated occupation within the denomination.” Commenters were concerned that the proposed rule would exclude many religious workers who do not receive salaried compensation, but may receive stipends, room, board, or medical care, or who may rely on other resources such as personal savings, rather than salaried or non-salaried compensation.

In response to the commenters’ concerns, USCIS is clarifying that compensation can include either salaried or non-salaried compensation. Under the Internal

Revenue Code, non-salaried support, such as stipends, room, board, or medical care, qualifies as taxable compensation unless specifically excluded.

\* \* \*

Several commenters stated that the proposed compensation requirement would exclude programs that traditionally utilized only self-supporting religious workers from participating in the R-1 visa program. The comments noted that religious workers who are self-supporting receive neither salaried nor non-salaried compensation; instead, they may rely on a combination of resources such as personal or family savings, room and board with host families in the United States, and donations from the denomination's local churches. Additionally, the comments noted that self-supporting religious workers are currently admitted under the R-1 visa program. In response, the final rule will continue to allow these aliens to be admitted under the R-1 visa classification. USCIS will, however, to preserve its ability to prevent fraud, permit self-supporting religious workers only under very limited circumstances, and, consistent with other provisions of the final rule, require specific types of documentation.

The change provides that if the nonimmigrant alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work within the organization, which is part of a broader, international program of missionary work sponsored by the denomination.

USCIS again notes that the religious worker visas are not the exclusive means by which an alien may be admitted to the United States to perform self-supported religious work, including missionary work. Current regulations specifically provide for the admission of missionaries under the general visitor for business visa . . . .

73 Fed. Reg. at 72281-72282. *See also* Fed. Reg. at 72278.

As specifically provided for in the final rule, the only religious workers who may rely on self-support under clause (iii) rather than actual salary or in-kind support as evidence of their prior employment are those workers in an established missionary program under an R-1 or B-1 nonimmigrant visa. In this instance, the record does not establish that the petitioner was in a missionary program or that he was an R-1 or B-1 nonimmigrant. The petitioner's voluntary work in the United States is not qualifying. As indicated in the supplementary information for the proposed rule:

USCIS recognizes that legitimate religious work is sometimes performed on a voluntary basis, but allowing such work to be the basis for an R-1 nonimmigrant visa or special immigrant religious worker classification opens the door to an unacceptable amount of fraud and increased risk to the integrity of the program.

72 Fed. Reg. 20442, 20446 (Apr. 25, 2007).

Accordingly, the petitioner has failed to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the visa petition.

Counsel also states:

Moreover, the beneficiary . . . is able to adjust under Section 245(i) and has demonstrated this ability with the submission of receipts demonstrating that a petition was filed prior to the date that would allow for 'grandfathering' of eligibility. However, the I-360 is not dependent upon the ability of the beneficiary to adjust, but is adjudicated according to its own requirements.

The record reflects that the beneficiary is also the beneficiary of an approved Form I-130, Immigrant Petition for Relative, Fiancé(é) or Orphan, USCIS receipt number [REDACTED] with a priority date of March 13, 2001. The reasoning behind counsel's statement regarding this approved petition is unclear as it, as noted by counsel, has no bearing on the adjudication of the instant petition.

Counsel also asserts that "the petitioner cannot be faulted because of his lack of knowledge, when completing the I-360, of the nature of the beneficiary's employment." The petitioner bears the burden of submitting documentation to establish eligibility for the benefit sought. Guidance for submitting the required documentation is set forth in the regulations as well as on the petition form. Counsel's assertion is without merit.

The petitioner has failed to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition.

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.