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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

[redacted]

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DATE: FEB 14 2012 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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 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. The matter is now before the Administrative Appeals Office (AAO) on appeal.[1] The appeal will be dismissed.

The petitioner is a messianic 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 messianic minister. The director determined that the petitioner had failed to provide requested translations of submitted foreign language documents, had failed to provide an Internal Revenue Service (IRS) 501(c)(3) tax exempt status letter, and had failed to demonstrate that it would be compensating the beneficiary for his prospective employment.

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 issues presented on appeal are whether the petitioner has provided requested translations of submitted foreign language documents, has provided an IRS 501(c)(3) tax exempt status letter, and has demonstrated that it will be compensating the beneficiary for his prospective employment.

The regulation at 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to U.S. Citizenship and Immigration Services (USCIS) be accompanied by a full English language

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[1] The record of proceeding contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, signed by the petitioner. The representative on the Form G-28 is not accredited. Therefore, the AAO will not recognize the representative in this proceeding. *See* 8 C.F.R. §§ 1.1(j), 103.2(a)(3), 292.

translation that is certified as complete and accurate by the translator. The petitioner has submitted various documents regarding its organization that contain passages in English, Hebrew, and Spanish. On appeal, the petitioner states that it has made a great effort to submit its teaching materials in English. The petitioner asserts that all of its materials are bilingual. The petitioner also submits two certificates stating that its successfully passed a bilingual Spanish and English examination at Bakersfield College on December 5, 2008. The AAO notes that whether or not the petitioner's is deemed bilingual in these two languages has no bearing upon the fact that the petitioner has not submitted certified and complete English translations of all of its submitted foreign language documents. Furthermore, some of the documentation is in Hebrew, and the petitioner has not demonstrated its rabbi's proficiency in that language.

The AAO finds that the petitioner has failed to submit any certification that the translations are complete and correct. The petitioner has also failed to submit translations for some if the documents that it had previously submitted. Thus, the petitioner has failed to meet the requirements of 8 C.F.R. § 103.2(b)(3).

The USCIS regulation at 8 C.F.R. § 204.5(m)(8) reads, in full:

> *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
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> (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;
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> (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.

The petitioner has failed to submit an IRS 501(c)(3) letter establishing its qualifying tax-exempt status. On appeal, the petitioner states that it did not feel that it needed 501(c)(3) tax exempt status before filing the petition on behalf of the beneficiary. The petitioner asserts that the U.S. government should not have the final say in which organization is or is not a religious organization and that church and state should remain separate. The petitioner states that it recognizes that such tax exempt status is a prerequisite for the approval of religious worker petitions, so it has filed an application with the IRS for such status. The petitioner states, however, that it did not know that a fee of $850.00 was required, so the IRS had put its application on hold. The petitioner asserts that it subsequently remitted the applicable fee. The AAO finds that the petitioner has failed to demonstrate its tax exempt status and has therefore failed to meet the requirements of 8 C.F.R. § 204.5(m)(8).

The AAO emphasizes that this is not a finding that the petitioner is definitely not a religious organization or that the petitioner definitely does not qualify for tax-exempt status. At issue, here, is whether the petitioner has met its burden of proof by submitting specific documentation identified in the regulations. The petitioner has not met that burden.

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;
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> > (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 petitioner filed the Form I-360 on July 2, 2009. 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.
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> > (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 the Form I-360 petition, the petitioner indicated that the beneficiary arrived in the United States on September 29, 2002. Therefore, the beneficiary was in the United States throughout the entire two-year qualifying period.

As the director noted in her decision, the petitioner did not provide the beneficiary with any salary for his religious work preceding the petition's filing date. Rather, the petitioner has indicated that the beneficiary had worked for its organization as a volunteer. The petitioner additionally revealed that the beneficiary had been concurrently maintaining a separate secular job. The director noted that the petitioner had not submitted any tax return for the beneficiary's purported outside employment as she had requested in her December 15, 2009 request for evidence (RFE).

On appeal, the petitioner submitted the beneficiary's 2007 and 2008 tax return transcripts and his 2009 1040A, indicating that he and his wife received at least $28,000.00 in compensation for each of those years. The petitioner additionally submitted the beneficiary's Form W-2 Wage and Tax Statement from Gless Ranch, Inc. for work performed in 2008 in the amount of $30,951.00.

The AAO notes that the director had specifically requested that the petitioner submit the beneficiary's federal tax returns and Forms W-2 within her request for evidence. However, the petitioner only submitted these documents on appeal.

The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given 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 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not, and does not, consider the sufficiency of the evidence submitted on appeal.

Regardless, as the director stated in her decision, the petitioner has failed to demonstrate how the beneficiary managed to maintain this outside secular employment while purportedly working for the petitioner as a messianic minister in a full-time capacity as well.

On appeal, the petitioner states that it does not maintain any paid staff. Thus, it has not submitted any tax returns demonstrating its prior compensation of the beneficiary. Rather, the petitioner asserts that the beneficiary has been supporting himself by means of his outside secular employment.

The AAO finds the petitioner's claim of the beneficiary's prior voluntary employment for its organization by means of his self-support to be insufficient to establish eligibility. 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).

The AAO quotes 8 C.F.R. § 204.5(m)(11)(iii) again here, along 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.

The self-support here relates to nonimmigrant religious workers who are part of an established missionary program. 8 C.F.R. § 214.2(r)(11)(ii). In this instance, the record does not establish that the beneficiary was in a specific missionary program. On appeal, the petitioner specifically states that it does not maintain a missionary program. Accordingly, the beneficiary's voluntary work in the United States does not count toward the two-year continuous work requirement.

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

The AAO notes that 8 C.F.R. § 204.5(m)(10) states that an employer must intend to compensate the beneficiary for performance of the proffered position in the future. Such compensation may be salaried or non-salaried. The petitioner stated on the petition that it would not be providing any monetary compensation for the beneficiary's future work as a messianic minister. The AAO highlights the fact that future self-support as an immigrant is not qualifying.

Beyond the decision of the director, the AAO notes that, on the Form I-360, under "Current Nonimmigrant Status," the petitioner wrote "B1/B2." The record shows that the beneficiary's visitor status expired on April 10, 2010. The beneficiary's visa specifically provides that the beneficiary's employment in the United States was not authorized. The USCIS regulation at 8 C.F.R. § 214.1(e) states that unauthorized employment by a nonimmigrant constitutes a failure to maintain status. Thus, the beneficiary's work in the United States during the two years preceding the filing date has not met the requirements of 8 C.F.R. § 204.5(m)(4)(iii).

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO 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 (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 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.