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U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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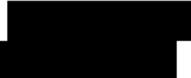


U.S. Citizenship  
and Immigration  
Services



C1

Date: Office: CALIFORNIA SERVICE CENTER

FILE: 

**FEB 21 2012**

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 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. The appeal will be dismissed.

The petitioner is church that seeks classification for 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), as a pastor. The director determined that the petitioner had not established that the position qualifies as that of a religious worker or that the petitioner had established its ability to compensate the beneficiary.

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 October 1, 2008, 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 October 1, 2008, 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 on appeal are whether the petitioner has established that the position qualifies as that of a religious worker and whether the petitioner has established its ability to compensate the beneficiary.

On appeal, the petitioner delineated as it had done in the past the beneficiary's duties as a pastor with [REDACTED] since 1995. At the time of filing and consistently thereafter, the petitioner has identified the beneficiary's position as pastor. The beneficiary's key job duties include:

- Preaching the gospel,
- Overseeing the spiritual life of the congregants,
- Performing weddings, funerals, baptisms, and communion,
- Engaging in religious teaching,
- Establishing a missionary program,
- Delivering sermons and lectures on the Bible,
- Preparing religious conferences and retreats for the congregation,
- Performing administrative church functions,
- Preparing annual reports, and
- Engaging in other ministerial activities with the community.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(5) contains the following relevant definitions:

*Minister* means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

*Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

8 C.F.R. § 204.5(m)(9) states that a petitioner must submit evidence relating to the qualifications of a minister, including a copy of the alien's certificate of ordination or similar documents and documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination by having completed a course of prescribed theological education at an accredited theological institution. For denominations that do not require a prescribed theological education, a petitioner must submit evidence of the denomination's requirements for ordination to minister, the duties allowed to be performed by virtue of ordination, the denomination's levels of ordination if any, and the alien's completion of the denomination's requirements for ordination.

The petitioner stated on appeal that the requirements within its denomination for ordination to minister are based on "satisfactory examination of the Christian experience, Divine call to the ministry and views of Bible doctrine." The petitioner stated that the beneficiary has been ordained by its organization since September 14, 2002 and has held a license as an ordained minister since 2003. The petitioner submitted copies of the applicable documentation. The petitioner further explains that, based upon his position as an ordained minister, the beneficiary is authorized to

perform and administer weddings, baptisms, and communion. The AAO finds that the petitioner has sufficiently demonstrated that the position qualifies as that of a religious worker.

Notwithstanding, the AAO agrees with the director's finding that the petitioner has not provided sufficient information demonstrating its ability to compensate the beneficiary. The regulation at 8 C.F.R. § 204.5(m)(10) provides that the petitioner must submit:

*Evidence relating to compensation.* 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 [Internal Revenue Service] documentation, such as IRS Form W-2 [Wage and Tax Statement] 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.

On Part 8 of the petition, the petitioner stated that it would compensate the beneficiary \$2,500.00 a month (\$30,000.00 a year) and provide housing allowances for him and for his family. In her decision, the director noted that the petitioner failed to submit sufficient evidence regarding its compensation of the beneficiary in 2006 and 2007 as she had requested in her January 28, 2009 RFE. Notably, the petitioner failed to address the issue of its ability to compensate the beneficiary on appeal. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); see also *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

The record of proceeding contains an annual finance report for the petitioner's church, which has not been translated from Spanish into English. The regulation at 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to USCIS be accompanied by a full English language translation that is certified as complete and accurate by the translator. The record of proceeding also contains eight pay stubs from the petitioner to the beneficiary for work performed in 2008. The AAO notes that seven of the pay stubs that the petitioner submitted are numbered [REDACTED] through [REDACTED] without a break in their sequence. The AAO presumes that the petitioner had other expenses during this six-month period and questions why these receipts regarding the beneficiary's purported payment are numbered sequentially. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988), states:

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.

The petitioner failed to submit any Internal Revenue Service (IRS) Form W-2 Wage and Tax Statements for the beneficiary for 2006 and 2007 as requested. The AAO notes that the petitioner submitted the beneficiary's uncertified tax return for 2008, which did not reflect the petitioner's claimed past or intended compensation of the beneficiary of \$30,000.00 a year.

The petitioner also did not submit information regarding its proposed budget allowances for the beneficiary's position in the future. Accordingly, the AAO finds that the petitioner has failed to meet the requirements of 8 C.F.R. § 204.5(m)(10). Beyond the decision of the director, the AAO finds that the petitioner did not demonstrate its past compensation of the beneficiary and therefore did not establish that it had met the requirements of 8 C.F.R. § 204.5(m)(11).

Also beyond the decision of the director, the AAO notes that 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
- (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;
  - (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 petitioning entity is located in Lexington, Nebraska. However, the IRS 501(c)(3) letter that the petitioner submitted is for the section of its organization located in Van Nuys, California. The AAO notes that the 501(c)(3) letter does not provide a group exemption, but rather a tax exemption for the part of the petitioner's organization located in California only. Additionally, the petitioner listed its Employer Identification Number (EIN) as [REDACTED] on the petition, but the EIN listed on the letter is [REDACTED]

Accordingly, without further explanation, the AAO finds that the petitioner has failed to submit the required evidence of qualifying tax-exempt status. The AAO emphasizes that this is not a finding that the petitioner is definitely not a church, 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.

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 (9<sup>th</sup> 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.

**ORDER:** The appeal is dismissed.