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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

Date: **FEB 22 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:

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 dismissed a subsequent motion to reconsider. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO subsequently remanded the petition to the director for a new decision based on revised regulations. After issuance of a Notice of Intent to Deny, the director again denied the petition and certified the decision to the AAO. The AAO will affirm the director's decision.

The self-petitioner seeks classification 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 pastor at the Church of God in Lynn, Massachusetts. The director determined that the petitioner had not established that he had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

The self-petitioner does not submit a brief or any additional evidence on certification.

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 February 5, 2008. Therefore, the self-petitioning alien must establish that he was continuously performing qualifying religious work throughout the two-year period immediately preceding that date.

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.

The issue in this case is whether the self-petitioning alien engaged in unauthorized employment during the two-year qualifying period, thereby failing to maintain lawful status and failing to meet the requirements of 8 C.F.R. §§ 204.5(m)(4) and (11).

The regulations at 8 C.F.R. §§ 214.2(r)(3)(ii)(E) as were in effect in 2005 and 2007 when the beneficiary was approved as an R-1 nonimmigrant, indicated that the beneficiary could only work for the specific organizational unit of the religious organization which would be employing and paying the beneficiary. Further, the regulation at 8 C.F.R. § 214.2(r)(6)(2006) indicated that “a different or additional organizational unit of the religious denomination seeking to employ or engage the services of a religious worker” shall file a new petition and that “any unauthorized change to a new religious organizational unit will constitute a failure to maintain status . . .”

Further, 8 C.F.R. 274a.12(b) provides, in pertinent part:

*Aliens authorized for employment with a specific employer incident to status.* The following classes of non-immigrant aliens are authorized to be employed in the United States by the specific employer and subject to the restrictions described in the section(s) of this chapter indicated as a condition of their admission in, or subsequent change to, such classification...

(16) An alien having a religious occupation, pursuant to § 214.2(r) of this chapter. An alien in this status may be employed only by the religious organization through whom the status was obtained;

On the "Index of Documents" submitted with the Form I-360 petition under "Proof of Financial Compensation," counsel for the self-petitioner states [REDACTED] 2006, 2005, and 2004 income tax returns (please note that [REDACTED] earns a small weekly wage and housing allowance from the church each week and that he works on the side at the construction company [REDACTED] so that he is able to earn money to send back to his wife and children in Guatemala)." The 2006 W-2 form for the self-petitioner from [REDACTED] Inc. confirms that he was employed by that company and lists his compensation as \$16,280 for that year. The same amount is listed as the total under "Wages, salaries, and tips" on the self-petitioner's 1040EZ form for that year, with his occupation listed as "General Help."

In the certified denial, issued June 16, 2010, the director cites unauthorized employment as the reason for denying the petition, noting:

In pertinent part, 8 C.F.R. 214.1(e) states:

(e) ... Any other nonimmigrant in the United States may not engage in any employment unless he has been accorded a nonimmigrant classification which authorizes employment or he has been granted permission to engage in employment in accordance with the provisions of this chapter. A nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status within the meaning of the section 241(a)(1)(C)(i) of the Act.

As stated above, the petition in this case was submitted on February 5, 2008, so the qualifying period consists of the two-year period immediately prior to that date. The record indicates that the alien was first granted R-1 status on August 4, 2004, which provided the beneficiary with authorization to work only for the [REDACTED]. There is no indication in the record that the alien had any other authorization or held any other status that would have permitted him to lawfully work for the construction company during the two-year period in question. It is clear that the self-petitioner's work for [REDACTED] was unauthorized and therefore a failure to

maintain lawful status under 8 C.F.R. § 214.1(e). Furthermore, even if he had not failed to maintain lawful status, the self-petitioner's R-1 status expired on November 7, 2007, so he was out of lawful status and unauthorized to work for the church after that date. Therefore, we affirm the director's decision.

Beyond the director's decision, the AAO finds the petition deficient for several reasons. The AAO may deny an application or petition that fails to comply with the technical requirements of the law 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 AAO finds that the self-petitioner has failed to establish his prior employment during the two-year qualifying period was continuous and compensated.

First, the 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. Specifically, the self-petitioner has not submitted sufficient evidence to establish his continuous employment throughout the two years immediately preceding the filing of the petition. The letter submitted from the [REDACTED] states that it "has requested the employment of the [REDACTED] as [REDACTED] and goes on to describe the proffered job as "a full-time position" requiring at least 40 hours per week. However, the letter makes no statements regarding the self-petitioner's prior employment with the church. An affidavit from the self-petitioner, dated June 1, 2007, states that he started the [REDACTED] in 1996, and that he is currently an [REDACTED] and "in charge of" that church. In an undated letter, also from the self-petitioner, he describes his job duties and also states that he works with people from the church and is "available to them for four hours daily, from 5-10pm." The "Minister's Monthly Report Forms," mentioned above, add further details about the work performed by the self-petitioner, but they do not specify hours worked and they relate to the period from November, 2004, to November, 2006, which covers less than a year of the relevant two-year qualifying period.

Further, the regulation at 8 C.F.R. § 204.5(m)(11) states:

*Evidence relating to the alien's prior employment.* ... 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.

The self-petitioner claims that the [REDACTED] provided him with a weekly wage and a housing allowance. Photocopies of “Minister’s Monthly Report Forms” for the period of November, 2004, to November, 2006, were submitted in support of the petition indicating that the church compensated the alien in the range of \$1,000 to \$2,000 during that period. However, no tax documents were submitted for 2007 or 2008 and the Form 1040 EZ that was submitted for 2006 shows only the amount of earned from the construction company, therefore reflecting no compensation from the church for that year. We find this evidence insufficient to establish that the self-petitioner’s prior employment as a minister during the relevant period was compensated as required by the regulations.

Additionally, we find the evidence insufficient to establish the employer’s ability to compensate the self-petitioner. 8 C.F.R. § 204.5(m)(10) states:

*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 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 self-petitioner has provided no explanation for the lack of IRS documentation of compensation from his employer. As evidence of his employer’s ability to compensate, he has submitted copies of bank account statements from April and May of 2007 as well as a statement from another account covering December, 2006, to May, 2007. A letter from [REDACTED] of the [REDACTED] in [REDACTED], states that the church is “in the complete disposition to give a weekly salary of \$400 to our Pastor [REDACTED],” while the letter from the [REDACTED] [REDACTED] states that the self-petitioner “will receive a salary of \$600 weekly and housing allowance.” This discrepancy, combined with the fact that compensation from the church was not reflected on the 2004, 2005 or 2006 tax returns even though the alien was working for the church throughout those years, leads us to question the employer’s ability and willingness to compensate the self-petitioner.

The AAO will affirm the certified denial 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 sustained that burden.

**ORDER:** The director's decision of June 16, 2010 is affirmed. The petition is denied.