

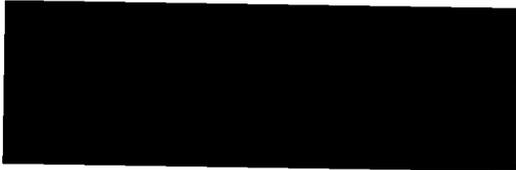
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

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 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 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, (“the director”) denied the employment-based immigrant visa petition on April 26, 2010. The petitioner timely filed an appeal to the denied petition. The matter is now before the Administrative Appeals Office (“AAO”) on appeal. The AAO will dismiss the appeal.

The petitioner is a Pentecostal 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 a minister. On February 22, 2010, the director sent a Request For Evidence (“RFE”) to the petitioner. On March 26, 2010, the petitioner responded. The director then denied the petition because the petitioner did not submit sufficient evidence to meet the burden of proof to approve the petition. There were two areas in particular that the director found to be insufficient. First, the director had requested that the petitioner submit evidence showing that it was a “religious denomination,” yet found the submission by the petitioner to be deficient. Second, the director had requested that the petitioner submit evidence relating to compensation, but also found the evidence submitted to be insufficient as to how the petitioner would be able to compensate the beneficiary for his employment in the United States.

On appeal, the petitioner submits further documentation in the two areas above to overcome the director’s decision.

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 overall issue here is whether the petitioner submitted enough evidence, both on appeal and in the record, to overcome the director's adverse decision. The first sub-issue is whether the petitioner submitted sufficient evidence to show that the beneficiary was part of the same valid religious denomination as the petitioner for the two years preceding the filing of the petition, pursuant to 8 C.F.R. § 204.5(m)(1). This regulation states:

(m) *Religious workers.* This paragraph governs classification of an alien as a special immigrant religious worker as defined in section 101(a)(27)(C) of the Act and under section 203(b)(4) of the Act. To be eligible for classification as a special immigrant religious worker, the alien (either abroad or in the United States) must:

(1) For at least the two years immediately preceding the filing of the petition have been a member of a religious denomination that has a bona fide non-profit religious organization in the United States.

Further, the regulation at 8 C.F.R. § 204.5(m)(5) further defines religious denomination as:

*Religious denomination* means a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes one or more of the following:

- (A) A recognized common creed or statement of faith shared among the denomination's members;
- (B) A common form of worship;
- (C) A common formal code of doctrine and discipline;
- (D) Common religious services and ceremonies;
- (E) Common established places of religious worship or religious congregations; or
- (F) Comparable indicia of a bona fide religious denomination.

In the denial decision, the director stated that the "petitioner was requested to submit a copy of the organizing instrument of the organization that specifies the purposes of the organization as well as organizational literature (e.g. books, articles, brochures, calendars, etc.) and other literature describing the religious purpose and nature of the activities of the organization. In response, the

petitioner submitted information about the organization abroad (i.e. Ambassadors Jesus Church).” To overcome the director’s adverse decision, the submitted the following documents:

- a) A statement of faith
- b) Non-profit organization status
- c) Calendar of events
- d) Excerpt of minister’s handbook

The AAO finds that the petitioner has submitted the evidence requested by the director. However, the AAO, when considering all of the evidence on record and on appeal, finds that the petitioner failed to establish that the two churches were part of the same religious denomination.

The records indicate that the beneficiary is not a part of the same religious denomination as the petitioner. The beneficiary, who is in Haiti, was ordained as a pastor for “the Church of Ambassadors of Jesus” on December 21, 1997.<sup>1</sup> In a letter from the petitioner dated June 22, 2009, the petitioner stated that “[the beneficiary] is a recognized minister of the [redacted].” Subsequently, the petitioner submitted an attestation letter from [redacted] who stated that, “the administration of the [redacted] certifies by the present that [redacted] is the [redacted] in a letter dated October 30, 2009, the petitioner explains that the [redacted] in Haiti is a part of Haitian Mission Service in Haiti.

What the petitioner fails to establish, however, is a comparable affiliation between those churches and the petitioning Church. In an attempt to link the two churches, the petitioner submitted a pamphlet entitled “Ministers Directory.” The full title on the inside is, “2009-2010 [redacted] [redacted]” The pastor then states [redacted] is also listed on page 33 noted as [redacted] the United States. [redacted] is the point of contact. [redacted] y is also listed in that same book on page 36 under [redacted]” The AAO will not accept this as an affiliation. The petitioner failed to link “Mission Voice” to “Haiti Mission Service.” The AAO has no way of knowing that these two organizations are the same organization or are affiliated, and without further documentation, cannot connect [redacted] AAO also notes that the record contains a letter dated March 18, 2010, in which the [redacted] tried to link the petitioner’s and the beneficiary’s organizations together. This letter states in part that:

---

<sup>1</sup> The AAO notes here that the petitioner submitted the beneficiary’s marriage certificate without an English translation and that the translation of the beneficiary’s ordination certificate lacks a certificate of translation. These documents are not translated properly pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), which states that:

*Translations.* Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.

Through [REDACTED] has met [REDACTED] since 1984. Since then, the Lord has called them to work together in the ministry. Sharing ideas, the same faith, some years later, [REDACTED] has invited him to come to see the work that God has given him to do in Haiti.

The AAO cannot accept this as substantive proof that the two organizations are connected to the same faith rather than working together in an informal partnership with each other. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Furthermore, in the I-290B the petitioner stated that, "[REDACTED] practices the Pentecostal religion." The term "Pentecostal" refers not to a specific denomination, but rather to a class of denominations. Within that class, there are numerous denominational organizations, as well as independent nondenominational churches. The petitioner has submitted a copy of its own statement of faith and doctrine, but the petitioner has not shown that the A [REDACTED] in Haiti, or the Haitian Mission Service in Haiti embraces identical precepts, or that any kind of formal affiliation exists between the churches. Without further evidence, we cannot find that the beneficiary was a member of the petitioner's religious denomination during the two years immediately before the petition's filing date.

The second issue is whether the petitioner has the ability to compensate the beneficiary. 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.

According to the Form I-360 petition, the proffered wage for the position is \$250 per week plus room and board. The director subsequently sent an RFE to the petitioner on February 22, 2010 in which he requested that the petitioner "submit evidence of how the petitioner intends to compensate the alien" and cited the regulation listing the type of evidence that the petitioner should submit. The director denied the Form I-360 petition because all that the petitioner submitted in response to the RFE was a letter dated March 18, 2010 stating the beneficiary's compensation would be \$200 per week as well as room and board. The director found that the evidence was insufficient to establish

that the petitioner would be able to compensate the beneficiary for his employment in the United States.

The AAO initially notes that the letter promising to compensate the beneficiary \$200 per week plus room and board conflicts with the Form I-360 petition. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988), states:

It is incumbent on 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.

Regardless of whether the salary is \$200 or \$250 per week, it is still remarkably low. The petitioner also indicated that the beneficiary would work full-time, defined as at least an average of 35 hours per week, as required by the USCIS regulation at 8 C.F.R. § 204.5(m)(2). A 35-hour work week adds up to about 1,820 hours per year, which would make the beneficiary's proposed salary roughly \$6.25 per hour. At the time the petitioner filed the petition, Maryland's minimum wage for small employers not engaged in interstate commerce in 2010 was \$7.25 per hour.<sup>2</sup> Therefore, the low level of the beneficiary's compensation implies either an unlawfully low wage, or part-time employment.

On appeal, to overcome the director's decision, the petitioner submitted another letter dated May 22, 2010 and a recent bank statement. The AAO notes that the letter cannot be "proof that the room and board were provided," especially considering that the beneficiary is from Haiti. The letter merely states that the beneficiary will receive free housing (room and board) at the Pastor's residence, and will be compensated in the amount of \$250.00 per week. The letter was signed by the pastor. The petitioner also submitted a letter from Wachovia for the business checking account to show that it could compensate the beneficiary. The AAO will not accept this as sufficient proof. First, the period of the bank account was from April 1, 2010 to April 30, 2010, which is after the I-360 petition was submitted. This was not during the two years prior to the petition being filed. A petitioner must establish the elements for the approval of the petition at the time of filing. A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). Second, the bank account is only a snapshot into the petitioner's finances, only covering the period of April, 2010. Bank statements show the amount in an account on a given date, and cannot show the sustainable ability to compensate the beneficiary. The petitioner submitted none of the evidence suggested by the regulation, such as IRS documentation, past evidence of documentation for similar positions, or any explanation for its absence. The petitioner, in fact, indicated that it was a new position. However, the petitioner showed no proof of budget set aside, and no verifiable evidence of room and board.

---

<sup>2</sup> Source: <http://www.laborlawcenter.com/t-State-Minimum-Wage-Rates.aspx>, accessed on February 15, 2012 and incorporated into the record of proceeding.

The evidence submitted does not establish that the beneficiary was part of the petitioner's same denomination for the two years prior to filing, or that will be able to compensate the beneficiary for his employment in the United States. Therefore, the appeal will be dismissed.

Beyond the director's decision, the AAO also finds that petitioner failed to establish that the beneficiary was compensated for the two years prior to filing the petition; that the beneficiary will be working as a minister in the United States; and the beneficiary's qualifications. 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).

First, the regulation 8 CFR § 204.5(m)(11) requires that the petitioner submit evidence of compensation from the beneficiary's prior employment for the two years immediately preceding the petition. The evidence in the record does not show any evidence of past compensation to the beneficiary. The only evidence found is a letter from Reverend [REDACTED] which states that between 2007 and 2008, the beneficiary was paid 7,550 gourds, or \$187. The AAO notes a minor inconsistency here, as the reverend wrote 7,550, but put in parentheses 7,500. From 2008 to 2009, the beneficiary was paid 10,000 gourds, or \$248<sup>3</sup>. Although the beneficiary has been living and working in Haiti, the regulation requires verifiable documents to show that the beneficiary has been getting paid this amount. The petitioner has not even submitted pay stubs to show that the beneficiary has been paid this amount as well. For this additional reason, the petition will be denied.

Further, on appeal, the petitioner submitted the beneficiary's work schedule. From this schedule, it appears that the beneficiary will not be working as a minister. This does not comport with the definition of a minister under 8 C.F.R. § 204.5(m)(5). On the Form I-360, Question 5 of the employer attestation, the petitioner stated that the beneficiary would work as a minister. Under detailed description of the alien's proposed duties, it was listed as [REDACTED] will be preaching during Church services and teach bible during bible study and teach in the school of the Prophets." However, in the letter submitted on appeal dated May 22, 2010, his job functions appear to be only teaching, independent study, and pastoral study time. This does not appear to be the calling of a minister, which is to lead services. Further, there is no documentation in the record stating that the petitioner would be doing any other forms of ministerial work, such as baptism or sermons. Therefore, from the record it is unclear that the beneficiary will be working as a minister in the United States pursuant to the definition under 8 C.F.R. § 204.5(m)(5).

Finally, pursuant to 8 C.F.R. § 204.5(m)(9), the record shows that the beneficiary's qualifications are lacking. In the record, the only documents pertaining to the beneficiary's background as a minister is a certificate from the Church of the Ambassadors of Jesus which state that the beneficiary was

---

<sup>3</sup> Given that the average annual salary in Haiti is about \$200 per year, the AAO will not question whether the beneficiary worked full time during the two year qualifying period in Haiti.

ordained as a minister on December 21, 1997. While the petitioner submitted a letter in response to the director's RFE on March 18, 2010 in which they claim they do not require documentation for proof of ability, they have not shown evidence required by the regulation at 8 C.F.R. § 204.5(m)(9)(iii)(A-D). There is nothing in the record about his education, or in lieu of that: the denomination's requirements for ordination to minister, the duties allowed to be performed by virtue of ordination, the denomination's levels of ordination, and the alien's completion of the denomination's requirements for ordination. Therefore, the petitioner has not sustained his burden of showing the beneficiary's qualifications for this position as a minister.

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.