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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: OFFICE: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: FEB 24 2012 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. The AAO will dismiss the appeal.

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 a children's minister for its Filipino outreach ministry. The director determined that the petitioner had not established that the beneficiary's intended position qualifies as a religious occupation. The director also determined that, as the beneficiary had engaged in unauthorized employment, the petitioner had failed to establish that the beneficiary had worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition.

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 on appeal are whether the petitioner has established that the beneficiary's intended position qualifies as a religious occupation and whether the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(5) defines "religious occupation" as an occupation that meets all of the following requirements:

> (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.
>
> (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.
>
> (C) The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible.
>
> (D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

The petitioner filed the Form I-360 petition on October 1, 2009. On the petition, the petitioner listed the beneficiary's duties as:

- Working with pastoral staff to evangelize to the Filipino families in the community;
- Overseeing ministry efforts to help Filipino-American children and families; and
- Teaching Bible study groups.

The director denied the petition on April 21, 2010, finding that the record lacks documentation establishing that the position is a recognized religious occupation related to a traditional function within this denomination. The director noted that the petitioner had not submitted bylaws, letters from authorized officials of the religious organization in the United States, or other documentary evidence indicating that the duties of this position are directly related to the religious creed of this denomination as the director had requested in her February 11, 2010 request for evidence (RFE). The director concluded that the record of proceeding does not demonstrate that the proposed duties of the position are sufficiently specialized in a theological doctrine in order to constitute a religious occupation.

On appeal, the petitioner discusses the beneficiary's prior work for its church which involved:

- Coordinating church outreach events;
- Organizing and leading Bible studies;
- Teaching Bible classes on Sundays;
- Ministering to Filipino men; and
- Participating in all church ministry projects.

The petitioner additionally describes the proffered position's objectives and responsibilities:

I. Objectives:

- Leading the church's ministry within the growing Filipino community;
- Teaching Filipino families about worshipping God;
- Designing programs to pursue, evangelize, and assimilate people from the Filipino community within the church;
- Working closely with other church members; and
- Guiding Filipino families in maintaining Christian homes.

II. Responsibilities:

- Teaching Bible classes for Filipino people at the petitioner's church;
- Attending weekly staff meetings;
- Overseeing Filipino Bible study groups;
- Coordinating Filipino retreats and activities;
- Sharing gifts and talents with the ministry; and
- Setting a good example with regard to relationships, commitment, and responsibility.

The AAO finds that the petitioner has not demonstrated on appeal that beneficiary's intended position is a religious occupation. The beneficiary was previously working for the petitioner as a volunteer. The petitioner has not submitted any schedule listing the beneficiary's hours. Thus, the petitioner has not established that it traditionally recognizes the proffered position to be a paid occupation instead of an occasional duty typically relegated for volunteer work from a member of the congregation.

Even if the beneficiary's duties did relate to a traditional religious function, it does not necessarily follow that those duties amount to an occupation. For example, attending church services and singing hymns are traditional religious functions within many Christian denominations, but these activities do not constitute engagement in a religious occupation. The petitioner has submitted no objective, documentary evidence to show that the beneficiary's position is traditionally a compensated occupation within the petitioning organization.

Also at issue on appeal is whether the beneficiary had engaged in unauthorized employment and had therefore not worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition

The 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. As previously stated, the petitioner filed the

petition on October 1, 2009. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work throughout the two years immediately prior to that date from October 1, 2007 onwards.

The USCIS regulation at 8 C.F.R. § 204.5(m)(11) reads:

> (11) *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 AAO notes that the petitioner has not provided any evidence that it paid the beneficiary for prior worked performed. Rather, the petitioner has asserted that the beneficiary's father-in-law has paid for his and his wife's living expenses. The petitioner has stated that it will pay the beneficiary the proffered wage if and when USCIS approves the petition.

On the Form I-360 petition, the petitioner indicated that the beneficiary arrived in the United States on June 23, 2006. Therefore, the beneficiary was in the United States throughout the entire two-year qualifying period. On the Form I-360, under "Current Nonimmigrant Status," the petitioner wrote "VISITOR." The record shows that the beneficiary entered the United States as a B-2 nonimmigrant visitor, a status that does not authorize employment in the United States. 8 C.F.R. § 214.1(e). The beneficiary's B-2 nonimmigrant status expired on December 22, 2006. The record contains no evidence that the beneficiary has ever held lawful nonimmigrant status after the expiration of his nonimmigrant visitor status in 2006. The director denied the petition on April 21, 2010, finding that the

petitioner had failed to establish that the beneficiary maintained continuous employment in the two years preceding the filing of the petition.

On appeal, the beneficiary submits a signed letter that he had written dated June 4, 2010. Similar to the petitioner, he asserts that he is ignorant of U.S. immigration laws. He states that he only fell out of legal immigration status due to the fault of his prior immigration attorney upon whom he had depended. He does not, however, dispute his unlawful status in the United States during the qualifying period.

The USCIS regulation at 8 C.F.R. § 204.5(m)(11)(iii) states that, if a beneficiary received no salary and provided for his or her own and dependents' support, then the petitioner must show how that support was maintained. The petitioner must submit 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.

On appeal, the petitioner also submitted a notarized and signed affidavit dated May 21, 2010 from the beneficiary's father-in-law, a purportedly wealthy business owner living in the Philippines. The affidavit states that he has supported his daughter and the beneficiary in their religious pursuits in the United States since 2006. The petitioner submits further evidence regarding the financial strength of the beneficiary's father-in-law's business in the Philippines, including share ownership information and bank account statements. The AAO notes that 8 C.F.R. § 204.5(m)(11)(iii) calls for such information to be submitted with the petition, not subsequently on appeal.

The AAO finds that the petitioner's claim of the beneficiary's voluntary employment to be disqualifying. In supplementary information published with the proposed rule in 2007, U.S. Citizenship and Immigration Services (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 regulation clearly refers to employment rather than volunteer work. 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 missionary program. Accordingly, the beneficiary's voluntary work in the United States does not count toward the two-year continuous work requirement.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the AAO will dismiss the appeal.

**ORDER:** The appeal is dismissed.