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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]

C1

DATE: **FEB 24 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)

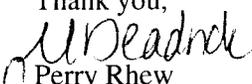
ON BEHALF OF PETITIONER:

[REDACTED]

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 pastor. The director determined that the petitioner had not established its ability to compensate the beneficiary the proffered wage. Based on a site-visit to the petitioning church, the director also highlighted the fact that the petition's signatory, Reverend [REDACTED] had fraudulently signed and endorsed another petition, thus calling into question the validity of the instant 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 presented on appeal are whether the petitioner has established its ability to compensate the beneficiary the proffered wage and whether the petition's signatory, [REDACTED] fraudulently signed and endorsed another petition, thus calling into question the validity of the instant petition.

The regulation at 8 C.F.R. § 204.5(m)(10) reads:

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 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.

In a signed letter dated June 15, 2008, the petitioner stated that it was paying the beneficiary \$2,500.00 per month for full-time work as a pastor. The AAO affirms the director's finding that the petitioner has failed to establish that it paid the beneficiary the full proffered wage of \$2,500.00 per month (\$30,000.00 per year) from 2006 through 2008.

As evidence of the petitioner's past compensation of the beneficiary, the petitioner submitted the beneficiary's Internal Revenue Service (IRS) W-2 Wage and Tax Statements for 2006 and 2007, each in the amount of \$21,600.00. The petitioner did not submit a Form W-2 for the beneficiary for 2008.

The petitioner also submitted checks that it had issued to the beneficiary for past work performed. The AAO finds that the checks establish that the petitioner consistently paid the beneficiary from August of 2006 until March of 2008 with the exception of February of 2007 and August of 2007. However, the petitioner did not submit any checks for the beneficiary from April of 2008 until the date of filing the petition in August of that year. Moreover, the checks reflect that beneficiary was generally paid \$1,662.30 per month, which is substantially less than the proffered wage of \$2,500.00 per month. These checks also add up to below the claimed yearly amount of \$21,600.00 as claimed by the petitioner on the submitted Forms W-2. Accordingly, the AAO finds that the petitioner's past payments to the beneficiary for work performed do not constitute evidence of its future ability to pay the proffered wage of \$30,000.00 per year.

In her decision, the director noted that the petitioner failed to submit recent audits, tax returns, or signed and certified financial statements as she had requested in her May 1, 2009 request for evidence (RFE) and Notice of Intent to Deny (NOID). Counsel asserts that the regulations do not require the submission of this type of financial information in order to establish the ability to compensate the beneficiary. Counsel stated that such an audit would be too expensive for the petitioner and unnecessary. Rather, counsel contends that the petitioner has already been paying the beneficiary at a rate greater than or equal to the proffered wage. As previously stated, the beneficiary's 2006 and 2007 W-2s from the petitioner list that the petitioner paid the beneficiary \$8,400.00 less than the proffered wage for those years, and the petitioner did not submit a W-2 for the beneficiary for 2008. The AAO notes that the petitioner submitted a copy of its 2007 budget on appeal. The budget shows that the petitioner budgeted \$33,600.00 that year to pay for two pastors' salaries. However, the petitioner's IRS

Forms 941 for 2007 and 2008 state that it only employed one person for those years. Furthermore, the Forms 941 indicate that the petitioner paid only \$21,600.00 and \$26,400.00 total in wages respectively for those years, which fell below the proffered wage of \$30,000.00.

Also in her decision, the director noted that the petitioner had submitted a copy of its bank account statement from Center Bank on June 12, 2009, indicating a balance of \$14,123.30 as of May 28, 2009. The director highlighted that the petitioner had just opened the bank account on April 2, 2009, thus calling into question the account's validity. Additionally, the petitioner has not provided any evidence to demonstrate how this bank account relates to payment of the beneficiary. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971).

On appeal, the petitioner submits a copy of its bank account statement from Center Bank, indicating a balance for a separate account of \$8,032.47 as of January 30, 2009. The statement reflects that the petitioner opened this separate account on December 8, 2003. Although the petitioner may have demonstrated that it maintained a bank account since 2003, it has not demonstrated that it paid the beneficiary the proffered wage throughout the entire two-year period preceding the filing of the petition.

Furthermore, had the petitioner wanted this evidence considered, it should have submitted it in response to the director's RFE or NOID. The purpose of the RFE or NOID 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.

Also at issue on appeal is whether or not the petitioner has overcome the derogatory findings of the U.S. Citizenship and Immigration Services (USCIS) site visit regarding this petitioner. The regulation at 8 C.F.R. § 204.5(m)(12) states:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers

pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

Within her decision, the director noted that [REDACTED] had permitted another party to sign his name on another immigration petition submitted to USCIS, attesting to its validity. On appeal, counsel does not refute any of the director's claims regarding the fraud. Rather, she indicates that Reverend Yeunchul could not respond to the allegations of fraud contained in the NOID because he was deceased. Counsel submitted a copy of [REDACTED] death certificate.

Counsel then argues that denying the instant petition on findings related to a separate petition is a misinterpretation of the regulation at 8 C.F.R. § 204.5(m)(12). Counsel contends that the petitioner is a "corporate entity" and that the sole purpose of the on-site inspection is to determine whether "the petitioner existed as an entity at the address that it alleges in the documentation." Contrary to counsel's statements, however, the regulation at 8 C.F.R. § 204.5(m)(12) indicates that the purpose of USCIS' investigation is to verify all of the supporting evidence submitted. In addition to observing the petitioner's claimed locations, USCIS may verify any of the organization's records, including compliance with immigration laws.

The record contains a signed declaration from [REDACTED] dated October 2, 2006, witnessed by a USCIS immigration officer, in which [REDACTED] attests to the fact that he permitted another party to sign his name on a separate immigration petition submitted to USCIS. In the instant case, a signature purported to be that of [REDACTED] is listed on the Form I-360 petition. This signature is also the sole signature on the petitioner's June 15, 2008 job offer letter, which contains claims regarding the beneficiary's qualifying employment during the preceding two-year period, his proposed full-time work, and the proffered wage. Finally, it is the sole signature on the petitioner's June 15, 2008 letter of support submitted with the petition.

The petitioner has contended that Reverend [REDACTED] committed rogue actions, which are not representative of the petitioner's church. However, as the petitioner has offered no evidence to overcome [REDACTED] statement and to affirm that no fraud existed in this instance, the AAO finds that such derogatory evidence casts doubt on the legitimacy of the job offer.

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.

Accordingly, the AAO finds that the petitioner has failed to submit sufficient evidence of qualifying tax-exempt status. The AAO emphasizes that this is not a finding that the petitioner is not a church or that the petitioner does not qualify for tax-exempt status. At issue, here, is whether the petitioner has met its burden of proof by submitting specific, valid documentation identified in the regulations. The petitioner has not met that burden.

The AAO additionally finds that, beyond the decision of the director, the beneficiary did not maintain valid immigration status from June 10, 2008 onwards. On the Form I-360 petition, the petitioner indicated that the beneficiary arrived in the United States on January 18, 2005. 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 "R-1." However, the beneficiary's R-1 status expired on June 10, 2008. The record contains no evidence that the beneficiary has ever held lawful nonimmigrant status since the 2008 expiration of his R-1 status. Thus, the beneficiary was not authorized to work during part of the two-year qualifying period prior to the filing of the petition. The regulations at 8 C.F.R. §§ 204.5(m)(4) and (11) requires that the beneficiary's qualifying experience in the United States must have been "in lawful immigration status in the United States" and "authorized under United States immigration law."

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.