

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

**PUBLIC COPY**

[REDACTED]

C1

DATE: Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

JAN 06 2012

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:

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, approved the employment-based immigrant visa petition on November 30, 2009 and then revoked approval of the decision March 3, 2010. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is senior pastor who 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). The director determined that the petitioner had engaged in unauthorized employment and that the petitioner had failed to establish that he had worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition. The director also determined that the petitioner had failed to demonstrate his organization's ability to compensate him for performance of the proffered position.

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 had engaged in unauthorized employment and whether the petitioner has established that he had worked continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the visa petition. The other issue on appeal is whether the petitioner has demonstrated his organization's ability to compensate him for performance of the proffered position.

The regulation at 8 C.F.R. § 204.5(m) provides that to be eligible for classification as a special immigrant religious worker, the alien must:

(4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed. A break in the continuity of the work during the preceding two years will not affect eligibility so long as:

(i) The alien was still employed as a religious worker;

(ii) The break did not exceed two years; and

(iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

Therefore, the petitioner must show that he worked 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 petitioner filed the Form I-360 on March 10, 2009. Accordingly, the petitioner must establish that he was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

The 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 [Internal Revenue Service] documentation that the alien received a salary, such as an IRS Form W-2 [Wage and Tax Statement] 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.

On the Form I-360 petition, which the petitioner filed on March 10, 2009, the petitioner indicated that he arrived in the United States on May 6, 2001. Therefore, the petitioner was in the United States throughout the entire two-year qualifying period. On the Form I-360, under "Current Nonimmigrant Status," the petitioner provided a response of "N/A." The record shows that the beneficiary entered the United States as a B-2 visitor and that his status expired on November 5, 2001.

The record of proceeding contains a letter from Challenge for [REDACTED] dated April 21, 2010 submitted on appeal regarding the beneficiary's past work experience. The letter states that the petitioner founded the ministry in 2001 and has served as a pastor there since 2005. Challenge for [REDACTED] states that the petitioner never received any salaried compensation. Rather, the ministry has given him and his family a monthly allowance, and the church congregation has given them love offerings, donations, and gifts, all purportedly amounting to approximately \$14,200.00 per year.

8 C.F.R. § 204.5(m)(11) requires that the beneficiary's qualifying experience in the United States "must have been authorized under United States immigration law." There is no provision in the regulations that allows a B-2 visitor to work in the United States in one of the positions described in 8 C.F.R. § 204.5(m)(2). Furthermore, the beneficiary's B-2 status expired approximately four years before he began working for Challenge for [REDACTED] as a pastor.

An alien seeking classification as a special immigrant minister must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought and must intend to be engaged solely in the work of a minister of religion in the United States. See *Matter of Faith Assembly Church*, 19 I&N 391, 393 (Comm'r 1986). The Ninth Circuit Court of Appeals, within whose jurisdiction this proceeding arose, has upheld the AAO's interpretation of the two-year experience requirement. See *Hawaii Saeronam Presbyterian Church v. Ziglar*, 2007 WL 1747133 (9<sup>th</sup> Cir., June 14, 2007).

The above case law indicates that to be continuously carrying on the religious work means to do so on a full-time basis. While there have been numerous legislative extensions and amendments to the special immigrant religious worker program since 1990, at no time has Congress legislatively modified or overruled this agency's understanding of the term "continuous" as

shaped by the case law described above. The petitioner's B-2 status expired on November 5, 2001 approximately seven and a half years before the petitioner filed the Form I-360 petition on March 10, 2009.

Under 8 C.F.R. §§ 204.5(m)(4) and (11), the petition cannot be approved, because the petitioner's employment in the United States during the qualifying period was not authorized under United States immigration law.

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.

The Form I-360 petition states that Challenge for [REDACTED] intends to compensate the petitioner \$1,458.00 per month (\$17,496.00 per year). The petitioner submitted his family's Internal Revenue Service (IRS) tax return transcripts for 2005 to 2008. The tax return transcripts state that the beneficiary and his wife earned \$13,200.00, \$16,785.00, \$11,381.00, and \$7,740.00 respectively for those years. Challenge for [REDACTED] IRS Form 990 tax return for 2007 reflects that the church paid for the petitioner's housing that year. The AAO notes that the petitioner's tax return transcripts for 2007 and 2008 state that he received wages. This information contradicts Challenge for [REDACTED] assertion that the petitioner never received any salaried compensation. *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.

Furthermore, if the petitioner did work as a volunteer from 2001 onwards, his voluntary employment would have been disqualifying. First, 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 petitioner was in a missionary program. Accordingly, the petitioner's voluntary work in the United States does not count toward the two-year continuous work requirement.

The petitioner did submit a budget for Challenge for [REDACTED] for 2009, which states that the organization plans to pay \$35,417.00 in salaries for that year. However, the AAO affirms the director's finding that Challenge for [REDACTED] has failed to provide evidence that it has funds saved and set aside for such purposes. 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)).

The petitioner's B-2 status expired on November 5, 2001, approximately seven and a half years before he filed the Form I-360 petition. Under 8 C.F.R. § 214.1(e), a nonimmigrant may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status. The regulations at 8 C.F.R. §§ 204.5(m)(4) and (11) require the petitioner's prior employment to have been lawful and authorized. The petitioner has failed to provide evidence demonstrating that he completed two years of qualifying experience immediately prior to the filing of the petition. The AAO additionally finds that the petitioner has not provided sufficient information demonstrating Challenge for [REDACTED] ability to compensate him.

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.

**ORDER:** The appeal is dismissed.