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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

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[REDACTED]

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DATE: **JAN 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 appeal will be dismissed.

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 an associate pastor for outreach and mission extension. The director determined that the beneficiary had engaged in unauthorized employment and that the petitioner had failed to establish that the beneficiary 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 presented on appeal are whether the beneficiary had engaged in unauthorized employment and whether the petitioner has established that the beneficiary worked continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the visa petition.

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 the beneficiary 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 September 15, 2009. Accordingly, the petitioner must establish that the beneficiary 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 the petitioner indicated that the beneficiary arrived in the United States on April 14, 1992. 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 did not provide a response. The record shows that the beneficiary entered the United States as an F-1 student and then converted to R-1 status in September of 1998. The beneficiary's R-1 status expired on September 1, 2003.

The record of proceeding contains various letters regarding the beneficiary's past work experience. The AAO will address the documentation relevant to the two-year period immediately preceding the filing of the petition on September 15, 2009. Pastor [REDACTED] of [REDACTED] submitted a letter dated July 3, 2009. Pastor [REDACTED] stated that the beneficiary was currently working for his church and that the church "will remunerate [REDACTED] the amount of \$2000.00 per month." The letter does not state that [REDACTED] had been paying the beneficiary that amount, just that it would in the future. The pastor goes on to state that [REDACTED] Baptist Church had released the beneficiary from employment in December of 2005 for economic reasons and that the beneficiary had then worked with the [REDACTED] Baptist Church as an Associate Pastor until April of 2006. Pastor Streett states that the beneficiary then ministered at various churches in the area, "at times even working on a voluntary basis." Within the letter, the pastor never states when the beneficiary began working for [REDACTED] Baptist Church.

Pastor [REDACTED] submitted an additional letter on December 9, 2009 explaining that the petitioner employed the beneficiary on a full-time basis, but that the beneficiary also provides part-time, non-remunerated additional assistance to [REDACTED] Baptist Church in the form of preaching, teaching Sunday School, and helping to plan missionary activities. In this letter, the pastor failed to state when the beneficiary began his work for [REDACTED] Baptist Church.

The petitioner submitted a letter dated December 9, 2009 from its pastor, [REDACTED] stating that its church had hired the beneficiary as an Associate Pastor for Outreach and Mission Extension with a salary of \$24,000.00 per year on August 26, 2009, less than one month before the filing of the petition. The petitioner submitted pay stubs for the beneficiary for work performed in the second half of 2009. The AAO notes that the petitioner only paid the beneficiary \$5,461.85 for his services that year. The beneficiary purportedly began working there in August of 2009.

The beneficiary submitted his family's Internal Revenue Service (IRS) Forms 1040 for 2007 and 2008. The tax returns state that the beneficiary and his wife earned \$59,141.00 and \$39,943.00 respectively for those years and that they received an Earned Income Credit (EIC) for being part of the clergy in 2008. However, the AAO notes that the tax returns do not state whether the beneficiary or his wife earned those amounts and what entities they may have worked for during those years. Accordingly, these IRS tax returns do not demonstrate the beneficiary's continued employment during the two-year qualifying period.

Furthermore, if the beneficiary did at times work as a volunteer from April of 2006 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 beneficiary 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 beneficiary's R-1 status expired on September 1, 2003, over six years before the petitioner filed the Form I-360 petition on his behalf. The regulations at 8 C.F.R. §§ 204.5(m)(4) and (11) require the beneficiary's prior employment to have been lawful and authorized. Notwithstanding, the petitioner has failed to provide evidence demonstrating that the beneficiary completed two years of qualifying experience immediately prior to the filing of the petition according to 8 C.F.R. § 204.5(m)(11).

On appeal, counsel states that [REDACTED] Baptist Church filed a Form I-360 for the beneficiary on May 29, 2002 and then filed a Form I-485 for the beneficiary the following month. Counsel states that USCIS had the Form I-485 petition pending fingerprint checks for over seven years until it denied the petition on August 7, 2009. Counsel asserts that USCIS mistakes caused the beneficiary to fall out of status and that the beneficiary should have had the opportunity to adjust under the American Competitiveness in the Twenty-First Century Act (AC21), Pub. L. No. 106-313, 114 Stat. 1251 (Oct. 17, 2000).

Counsel cited to no provision of AC21 to support his contention. The plain language of AC21 indicates that it does not apply to petitions filed under section 203(b)(4) of the Act, 8 U.S.C. § 1153(b)(4). *See* section 106 of AC21 referring to subsection (a)(1)(D) of the Act (subsequently redesignated as section 204(a)(1)(F) of the Act).

The record shows that the beneficiary only worked for the petitioner for less than one month before the filing of the petition during the qualifying two-year period and does not adequately establish his work experience prior to that. Further, the record does not demonstrate the beneficiary's lawful status during the requisite period. Accordingly, the petitioner has failed to submit sufficient documentation to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the petition.

Beyond the decision of the director, the AAO finds that the petitioner has not provided sufficient information demonstrating its ability to compensate the beneficiary. 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.

On Part 8 of the petition, the petitioner stated that it would compensate the beneficiary \$2,000.00 a month (\$24,000.00 a year). As previously stated, the petitioner only compensated the beneficiary \$5,461.85 for his work as an associate pastor for [REDACTED] extension between August and December 2009. The petitioner submitted a proposed budget for its church for 2009, which did not include funding for an [REDACTED] Extension. The petitioner also did not submit information regarding its proposed budget allowances for such a position in the future. Accordingly, the AAO finds that the petitioner has failed to meet the requirements of 8 C.F.R. § 204.5(m)(10).

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.