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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:

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 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 a music director. The director determined 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 issue presented on appeal is 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 August 31, 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 August 20, 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 "B-2," a status that does not authorize employment in the United States. 8 C.F.R. § 214.1(e). The beneficiary then converted on January 14, 2009 to R-2 status as an unmarried child of an R-1 nonimmigrant religious worker under the age of 21. The AAO notes that the beneficiary was ineligible to work in the United States as an R-2 nonimmigrant. 8 C.F.R. § 214.2(r)(4)(ii)(B). The beneficiary's R-2 status expired on March 2, 2009.

The record of proceeding contains three letters documenting the beneficiary's past work experience. [REDACTED] of the [REDACTED] Church, Inc. in the Dominican Republic submitted a letter dated June 30, 2005. The letter states that the beneficiary worked there as the Music Director and as a pianist from April of 2003 until August of 2005. The AAO notes that the letter does not state whether or not the beneficiary was compensated for such services. The AAO further notes that the beneficiary completed this experience four years before the petitioner filed the Form I-360.

Another letter, dated August 15, 2009 from Pastor [REDACTED] of the [REDACTED] in Louisville, Kentucky, states that the beneficiary had played the piano and drums in various Christian services at that church. The AAO notes that the letter does not list the dates of the beneficiary's employment nor does it state whether or not he was compensated for such services.

A separate letter from [REDACTED], a member of the [REDACTED] in Elkhart, Indiana, dated August 10, 2009 states that the beneficiary served as a Music Director and pianist there. The AAO notes that the letter does not list the dates of the beneficiary's employment nor does it state whether or not he was compensated for such services. Furthermore, an employer of the beneficiary did not write the letter, but rather a church member. Thus, it does not constitute qualifying prior experience during the two years immediately preceding the petition according to 8 C.F.R. §§ 204.5(m)(4) and (11).

On appeal, the petitioner references a district court decision, *Ruiz-Diaz v. United States*, No. C07-1881RSL (W.D. Wash. June 11, 2009). The petitioner contends that *Ruiz-Diaz* permits persons who had filed I-360 petitions and who had fallen out of status due to not being permitted to file concurrent I-485 applications to have periods of unlawful presence and unauthorized employment waived.

As the petitioner indicates, the decision referred to unlawful presence and unauthorized employment that aliens accrued while a Form I-360 was pending, affecting certain aliens' ability to adjust status. At issue here, however, is unauthorized employment and a lack of status before the filing of the Form I-360. The *Ruiz-Diaz* decision did not uniformly waive unlawful presence or unauthorized employment prior to the filing of the petition. Significantly, when the district court issued the *Ruiz-Diaz* decision in June 2009, the regulations at 8 C.F.R. §§ 204.5(m)(4) and (11) were already in effect, but the court did not strike down, limit, or modify the application of those regulations. The decision did not require U.S. Citizenship and Immigration Services (USCIS) to approve petitions for aliens who failed to meet the lawful status and/or employment authorization requirements at the petition stage. The *Ruiz-Diaz* decision does not retroactively provide the beneficiary with lawful status, work authorization, or any other benefit. As applied to the instant case, the provisions of *Ruiz-Diaz* only tolled unlawful presence and unauthorized employment from the date of the filing of the petition to September 9, 2009, a period of one week.

Accordingly, the petitioner failed to establish the beneficiary's continuous work in lawful status during the requisite two-year period.

The record also fails to demonstrate that the beneficiary had worked for the petitioner during the qualifying two-year period. 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 petitioner has not provided any 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 an amount similar to that of other religious workers in similar positions. Due to the fact that the petitioner has not submitted financial information or even the beneficiary's proposed salary itself, 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.