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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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Date: **JUL 05 2012** Office: CALIFORNIA SERVICE CENTER

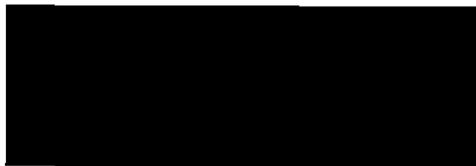


IN RE: Petitioner:
Beneficiary:



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:

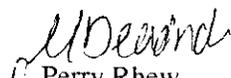


INSTRUCTIONS:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 Christian missionary society. 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 media specialist. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits a brief from counsel, a letter from the petitioner, and copies of documents related to the beneficiary's R-1 nonimmigrant visa application filed in 2007. These include copies of Forms DS-156, Nonimmigrant Visa Application, and DS-157, Supplemental Nonimmigrant Visa Application, a Nonimmigrant Visa Interview Confirmation, a Visa Application Fee Receipt, two letters from Dr. [REDACTED] petitioner, and a copy of a Freedom of Information Act (FOIA) request for records relating to the R-1 visa application. The petitioner also submits a copy of the beneficiary's R-1 nonimmigrant visa from October 9, 2002, excerpts from two publications of the petitioning organization during 2006, and an excerpt from the U.S. Department of State Foreign Affairs Manual.

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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the alien 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. The petition was filed on October 22, 2010. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work in lawful status throughout the two-year period immediately preceding that date.

The USCIS 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 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 issue in this case is whether the beneficiary engaged in unauthorized employment during the two-year qualifying period, thereby failing to maintain lawful status and failing to meet the requirements of 8 C.F.R. §§ 204.5(m)(4) and (11).

In a supplement to the Form I-360 petition and in an accompanying letter, the petitioner stated that it has employed the beneficiary as a media specialist since March of 2008. In both documents, the

petitioner also indicated that it had previously been affiliated with two different Southern Baptist churches, first with Waldo Baptist Church of Brookport, Illinois, and later with First Baptist Church of Muscle Shoals in Muscle Shoals, Alabama, which subsequently changed its name to Grace Life Church of the Shoals. The petitioner stated on the supplement that, since relocating to Virginia, the petitioning organization is “not currently affiliated directly with a Southern Baptist Church” but is in the process of beginning a new Baptist congregation.

According to the evidence accompanying the petition, the beneficiary entered the United States on March 11, 2008 and on several subsequent dates in R-1 nonimmigrant status valid until May 5, 2010. The beneficiary’s visa, issued on January 11, 2008, lists his authorized employer as “First Baptist Church of Muscle Shoals.” The petitioner submitted a copy of the beneficiary’s September 1, 2010 paystub for \$1,520.32 from Heartcry Missionary Society in Christiansburg, Virginia. The petitioner also submitted a copy of the beneficiary’s Form W-2 for 2009, which indicated that he was paid \$39,481.68 by Grace Life Church in Muscle Shoals, Alabama, and his Form 1040 tax return for 2009 listing the same amount of total income. Additionally, the petitioner submitted a copy of the beneficiary’s 2008 Form 1040 which did not identify the source of his income for that year.

The regulations at 8 C.F.R. §§ 214.2(r)(3)(ii)(E) as were in effect when the beneficiary was approved as an R-1 nonimmigrant, required an authorized official of the organization to provide the “name and location of the **specific organizational unit** of the religious organization” for which the alien would work (emphasis added). The regulation at 8 C.F.R. § 214.2(r)(6) stated:

Change of employers. A different or additional organizational unit of the religious denomination seeking to employ or engage the services of a religious worker admitted under this section shall file Form I-129 with the appropriate fee ... Any unauthorized change to a new religious organizational unit will constitute a failure to maintain status...”

Further, the regulation at 8 C.F.R. § 214.1(e) provides that a nonimmigrant may engage only in such employment as has been authorized. Any unlawful employment by a nonimmigrant constitutes a failure to maintain status.

On February 28, 2011, USCIS issued a Request for Evidence, in part requesting additional evidence regarding the beneficiary’s work history and immigration status and noting that the visa submitted by the petitioner indicates that the beneficiary was authorized to work for the First Baptist Church of Muscle Shoals.

In response, the petitioner submitted a copy of the beneficiary’s Forms W-2 for the years 2008 to 2010, which indicated that the beneficiary earned income of \$29,486.75 from Grace Life Church in 2008, \$39,481.68 from Grace Life Church in 2009, and in 2010 he received \$22,628.08 from Grace Life Church of the Shoals and \$15,750.00 from HeartCry Missionary Society in Christiansburg, Virginia. In a letter responding to the Request for Evidence, the petitioner stated the following:

Since [REDACTED] entered the United States in the R-1 religious worker visa status on March 11, 2008, he has been solely employed by HeartCry Missionary Society, then a ministry arm of Grace Life Church of Shoals (formerly known as First Baptist Church of Muscle Shoals). ...

Between May 2006 and July 2010 we shared the office location with and sought ecclesiastical oversight by First Baptist Church of Muscle Shoals. ... HeartCry functioned as one of the auxiliary ministries of First Baptist Church of Muscle Shoals to ensure financial accountability and oversight. The payroll and all tax matters of HeartCry were accomplished by First Baptist Church of Muscle Shoals. Although [REDACTED] was on the hosting church's payroll, all other aspects of his work was supervised by HeartCry and was performed to further the mission and purposes of HeartCry. He worked for and at HeartCry; HeartCry has had control over the employment of [REDACTED] during the entire period of employment.

In fact, when Jonathan Green applied for an R-1 visa imprint at the U.S. Embassy in London, HeartCry submitted a letter of "Request for Employment of Jonathan Green." The R-1 visa imprint indicates First Baptist Church of Muscle Shoals (now known as Grace Life Church of Shoals) as the sponsor because we identified ourselves as a ministry of the hosting church, but we clearly informed the US Embassy in London that Jonathan Green would be working to further the purpose of HeartCry.

The petitioner submitted a letter from Grace Life Church of the Shoals confirming that the beneficiary was employed by HeartCry Missionary Society while that organization served as a "ministry arm" of the church. The letter stated that the petitioner "was financially responsible for wages of its own employees," but "the payroll was done through the church for accountability purposes." The letter also stated that the church changed its name from First Baptist Church of Muscle Shoals, Inc. to Grace Life Church of the Shoals in 2008. The petitioner also submitted a copy of an online record of the 2008 name change from the Alabama Secretary of State website.

Additionally, the petitioner submitted two letters from its mission coordinator to the Department of Homeland Security at the U.S. Embassy in London, both dated December 18, 2007 and typed on HeartCry Missionary Society letterhead. One of the letters confirmed the petitioner's request to employ the beneficiary and the other letter provided a description of a proffered position with the following heading:

Job Description
Religious Media Specialist
HeartCry Missionary Society, Inc.
A Ministry of First Baptist Church of Muscle Shoals
Muscle Shoals, AL 35661

On April 18, 2011, the director denied the petition. The director found that the beneficiary was only authorized to work for the employer First Baptist Church of Muscle Shoals, later renamed Grace Life Church of the Shoals. The director stated that the beneficiary therefore engaged in unauthorized employment by working for the petitioner during the qualifying period. The director concluded that the petitioner failed to establish that the beneficiary has been performing religious work in lawful immigration status for at least the two-year period immediately preceding the filing of the petition.

On appeal, counsel for the petitioner acknowledges that “the R-1 visa notation states First Baptist Church of Muscle Shoals instead of HeartCry Missionary Society,” but asserts that the visa application “unambiguously indicated HeartCry Missionary Society as the employer.” Counsel argues that “the clerical omission on the part of a consular officer should not deny the employment authorization expressly and impliedly granted to the true R-1 visa sponsor whose name was explicitly mentioned on the Form DS-156.” The petitioner submits a copy of the beneficiary’s Form DS-156 Nonimmigrant Visa Application, which lists his intended U.S. employer as “HeartCry Missionary Society, 1915 East Avalon Avenue, Muscle Shoals, Alabama, 35661 USA.” The petitioner additionally submits additional forms and communications relating to the visa application, including the two letters to the embassy originally submitted in response to the Request for Evidence.

The petitioner has shown that “HeartCry Missionary Society” was identified as the beneficiary’s intended employer on the visa application. However, the AAO disagrees with the assertion that the beneficiary has been “solely employed” by the petitioner since entering the United States on March 11, 2008. Copies of the beneficiary’s Forms W-2 for the years 2008 to 2010 clearly indicate that the beneficiary earned wages from two distinct employers during the two-year qualifying period immediately preceding the filing date of the petition. A Form W-2 from 2010 identifies the “Employer’s name” as HeartCry Missionary Society and the “Employer’s identification number” as 20-4593210, that of the petitioner, while Forms W-2 from 2008, 2009, and 2010 list the beneficiary’s “Employer’s name” as Grace Life Church and the “Employer’s identification number” as 63-0729724. Despite the petitioner’s assertion that, during its affiliation with Grace Life Church, the petitioner maintained control over all aspects of the beneficiary’s employment other than payroll, the evidence indicates that the beneficiary was an employee of Grace Life Church.

Regardless of the former affiliation between the petitioner and Grace Life Church of the Shoals, formerly First Baptist Church of Muscle Shoals, the beneficiary’s R-1 nonimmigrant status did not authorize his employment with multiple employers. As stated above, the regulation at 8 C.F.R. § 214.2(r)(6) required each additional organizational unit of the religious denomination to file a separate Form I-129 petition on behalf of the beneficiary. Therefore, by working for multiple employers without first obtaining authorization through a separate Form I-129 petition, the beneficiary engaged in unauthorized employment during the qualifying period.

Accordingly, the AAO agrees with the director's conclusion that the petitioner failed to establish that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition.

As an additional matter, the AAO finds that the petitioner has not established that the proffered position of media specialist qualifies as a religious occupation. The AAO may deny an application or petition that fails to comply with the technical requirements of the law 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 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.

On the Form I-360 petition, the petitioner indicated that the beneficiary was being offered the position of "Media Specialist," and provided the following description:

The Religious Media Director & Publications Specialist's overall responsibility is to oversee and execute all media projects, photographic, audio media, and visual presentations including, but not limited to: digital internet streaming, CD, DVD and MP3/MP4 editing and production, brochures, presentation units (banners and event booths, etc.), publication assistance, and website building, development and maintenance. *Continued on supplementary documentation.*

The supplement to the petition specified that "[a]ll these activities are to further the purpose of HeartCry Missionary Society, Inc." The supplement also provided a weekly schedule of the beneficiary's duties, including descriptions of the following tasks: "Audio/Video Setup and

management,” “Recording Church Services,” “Archiving Sunday Morning’s church services,” “Digital unit maintenance,” “Website maintenance,” “Website development,” “Media Development,” “Journals and/or Blogs,” “Preaching/Mission trip response,” “Virtual/online Bible Institute,” “Visual Design,” “Media production and distribution,” “Provide Technical Support,” “Work with the Missions Coordinators,” and “General office services.” In a letter accompanying the petition, the petitioner explained the importance of digital media to its organization and stated:

The stated purpose of the website as media gateway is as follows: “Our website has been created with the following purposes in mind: (1) to glorify God and honor His Son; (2) to educate the body of Christ regarding indigenous missions; (3) to make known the works that God is accomplishing through his society; and (4) to provide the opportunity for our readers to participate in the Great Commission.”

The Request for Evidence issued on February 28, 2011 instructed the petitioner to submit additional evidence to establish that the proffered position qualifies as a religious occupation. In response, the petitioner stated, in part:

As indicated in Part 8. Item 5.b. of the Form I-360, “Media Specialist” is the short title for the official position of “**Religious** Media Director & Publication Specialist.” It is a religious position performing the duties to achieve our ministry calling specifically expressed within the context of our Mission Statements:

“The HeartCry Missionary Society functions as a partner with and facilitator between the autonomous churches and individual donors in the West and the indigenous church in some of the most un-evangelized areas of the world, to the end that the Gospel might be preached to every creature... Our specific calling is to partner with indigenous churches of like faith and practice in the training and sending of missionaries for the establishment of mature autonomous local churches.”

The petitioner asserted that the role of media specialist “is closely related to the traditional religious function of world evangelism effectively through media ministry.” The petitioner further asserted that the primary duties of the position “require religious training beyond that of dedicated and caring lay leaders.” The petitioner submitted a website printout of its mission statement and a statement of its purpose from its certificate of incorporation. The petitioner also submitted various printouts from its website regarding its publications and their purpose as well as a photocopy of HeartCry Magazine from October to December of 2010.

Additionally, the petitioner submitted a “Position Description” for the media specialist position, which again asserted that the work is related to the traditional religious function of evangelism and requires religious training. The document also provided breakdown of the position’s duties, indicating that 55% of the media specialists time is used to “build and manage electronic libraries of audio and video interviews, testimonies and mission field reports...” 20% of his time is used to

“design, build, develop and maintain multiple HeartCry websites...,” 10% of his time is used to “collaborate with HeartCry’s Donor Coordinator to fulfill his daily function, calling and purpose...,” 5% of his time is used to “support HeartCry’s Regional Coordinators in their daily ministry activities, purposes and calling...,” 5% of his time is used to “provide visual design for all media distribution...,” 3% of his time is used to “provide media support as needed for conferences, mission trips, etc.,” and 2% of his time is used to “select, develop and maintain media equipment and resources and media recording room.” The petitioner submitted an additional weekly schedule similar to that provided at the time of filing the petition.

Although the petitioner has stated that the beneficiary’s role as media specialist relates to the traditional religious function of world evangelism, the regulations focus on the nature of the specific duties to be performed. The evidence submitted suggests that well over half of the beneficiary’s time is spent performing duties which are technical in nature. Further, the petitioner has stated that it is affiliated with the Baptist denomination, but it has not submitted evidence that the position of media specialist is recognized as a religious occupation within the denomination. The AAO does not find that a media specialist position could never meet the eligibility requirements of a religious occupation, only that the petitioner has not yet demonstrated that the beneficiary’s position qualifies as a religious occupation.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.