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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



LI

DATE: **JUL 05 2012** Office: CALIFORNIA SERVICE CENTER FILE:

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 appeal will be dismissed.

The petitioner is a religious organization. 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 counselor. The director determined that the petitioner had failed to demonstrate that the beneficiary had engaged in continuous, lawful employment during the two-year period immediately preceding the filing date of the 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 on appeal is whether the petitioner has demonstrated that the beneficiary had engaged in continuous, lawful employment during the two-year period immediately preceding the filing date of the petition.

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 beneficiary 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 petitioner filed the petition on October 7, 2010. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work throughout the two years immediately prior to that date.

The USCIS regulation at 8 C.F.R. § 204.5(m)(11) reads:

(11) *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.

On the petition, the petitioner indicated that the beneficiary arrived in the United States on September 2, 1997. 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 "Overstay." The record shows that the beneficiary entered the United States as an F-1 nonimmigrant student in order to study for the Youth Challenge International Bible Institute in Sunbury, Pennsylvania.

The director noted in her August 9, 2011 decision that the petitioner had reported that the beneficiary had been working as a counselor for its organization since June of 2008. However, the director highlighted that the beneficiary's F-1 nonimmigrant status had expired in August of 1999. The director accordingly concluded that the petitioner had failed to establish that the beneficiary had

been performing full-time work as a counselor for at least the two-year period immediately preceding the filing of the petition while in lawful immigration status.

On appeal, counsel contends that the beneficiary's I-94 card states "D/S," and "does not expire unless cancelled by USCIS or an immigration judge." Counsel asserts that the beneficiary has not accumulated any unlawful presence in the United States. The AAO finds that unlawful presence is not the issue in this matter. Rather, the issue is whether the beneficiary was authorized to work in the United States. The AAO also finds that counsel's description of duration of status is not accurate. Under 8 C.F.R. § 214.2(f)(5), duration of status is defined as:

the time during which an F-1 student is pursuing a full course of study at an educational institution approved by the Service for attendance by foreign students, or engaging in authorized practical training following completion of studies, except that an F-1 student who is admitted to attend a public high school is restricted to an aggregate of 12 months of study at any public high school(s). An F-1 student may be admitted for a period up to 30 days before the indicated report date or program start date listed on Form I-20. The student is considered to be maintaining status if he or she is making normal progress toward completing a course of study.

Changes in educational levels are permitted, but the change must be made in accordance with the transfer procedures at 8 C.F.R. § 214.2(f)(8).

If the beneficiary was no longer pursuing a course of study or in an authorized training period after study, he was not considered to be in status. The Form I-20-ID shows that the beneficiary enrolled in a two-year course with an expected completion date of December 30, 1999 and does not reflect any grant of practical training employment. Although the record contains a copy of the beneficiary's bachelor's degree from Lancaster Bible College issued in 2005, the record does not contain any evidence of the beneficiary's maintenance of a full course of study and proper change of educational level from the fall of 1999 to May 2005 when he received his degree.

Moreover, while within F-1 status, the beneficiary would have been eligible for employment authorization only under limited conditions specified at 8 C.F.R. §§ 214.2(f)(9)-(11) and 274a.12(b)(6); the petitioner has not claimed or shown that the beneficiary met any of those conditions. A nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status. 8 C.F.R. § 214.1(e).

Counsel also contends that the beneficiary performed work similar to that of his proffered position overseas before ever arriving in the United States in 1997. Counsel states that the beneficiary had worked as an assistant director at African Christian Missions Board of East Africa in Kenya. The AAO finds that counsel has failed to specify when the beneficiary worked for this overseas organization or to provide any information to this effect. 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)). Further, the AAO finds that the beneficiary's purported work overseas did not take place during the two years immediately preceding the filing of the instant petition.

The regulation at 8 C.F.R. § 204.5(m)(4) prohibits USCIS from considering work that was not "in lawful immigration status" and any "unauthorized work in the United States." The regulation at 8 C.F.R. § 204.5(m)(11) requires that "qualifying prior experience . . . must have been authorized under United States immigration law." Therefore, the regulations, separately and together, require that USCIS must have affirmatively authorized the beneficiary to perform any claimed religious employment while in the United States. The record reflects that the beneficiary was not in an authorized immigration status allowing him to work during the two-year period immediately preceding the filing of the visa petition. Accordingly, any work that he may have performed in an unauthorized status, such as what he did for the petitioner, would interrupt the continuity of the qualifying work experience.

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. Accordingly, the AAO will dismiss the appeal.

**ORDER:** The appeal is dismissed.