

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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



C1

DATE: **JUL 24 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 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 worship pastor. 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 June 8, 2011. 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)(5) states:

Religious worker means an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister.

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 Form I-360, under "Current Nonimmigrant Status," the petitioner wrote "R1 Visa." The record indicates that the beneficiary arrived in the United States as an R-1 nonimmigrant to work for the petitioner in June of 2007. The record further shows that the beneficiary worked for the petitioner in the United States from June of 2007 until he enrolled in the [REDACTED] in [REDACTED] state in August of 2009. When he last entered the United States to work for the

petitioner on February 16, 2010, he received authorization to remain in the United States pursuant to R-1 nonimmigrant status until February 15, 2013.

As previously indicated, while in R-1 nonimmigrant status, the beneficiary enrolled at the [REDACTED] in August of 2009 for a three-year degree in theology to become a pastor for the petitioner. The director noted in her August 30, 2011 decision that the petitioner had submitted a letter indicating that the beneficiary had begun working for its organization in the United States in June of 2007, but that the petitioner had recommended that the beneficiary engage in further training. The director highlighted that the letter stated that the beneficiary began a three-year degree in theology at [REDACTED] and that he only worked for the petitioner's organization during his school vacations and on long weekends. The director noted that the petitioner's letter indicated that the beneficiary was scheduled to complete his course of study in May of 2012 when he would then return to work for the petitioner in the proffered position of worship pastor.

The director found that the beneficiary's studies interrupted his continuous employment, that he had not been working for the petitioner in R-1 nonimmigrant status since August of 2009 and that he had been engaged in F-1 academic status without USCIS approval since that time. The director further noted that the beneficiary would not be qualified for the proffered position of worship pastor until he graduated from his theology program, scheduled for May of 2012. The director concluded that the petitioner had failed to establish that the beneficiary had been continuously performing full-time work as a worship pastor for at least the two-year period immediately preceding the filing of the petition while in lawful immigration status.

Counsel asserts that religious studies are permitted incident to R-1 status. 8 C.F.R. § 204.5(m)(5) states:

[r]eligious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

The USCIS regulation at 8 C.F.R. § 204.5(m)(4) also sets forth the requirements for an acceptable break in the continuity of an alien's religious work as follows:

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 ...

On appeal, counsel states that the beneficiary is taking full-time courses at the [REDACTED] but that he is qualified for the position of worship pastor because of the 12-month discipleship training that he had previously received at the petitioner's headquarters in [REDACTED]. The AAO finds that counsel has failed to reconcile the fact that the petitioner has claimed that the beneficiary has not been working as a worship pastor during the two years immediately preceding the petition's filing date. In the petitioner's May 26, 2011 signed letter from [REDACTED] [REDACTED] the petitioner reveals that the beneficiary had been working for its church as a house leader and as a worship leader, but that he would not be ordained as a pastor until he completed his studies in May of 2012. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988), states:

[i]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence. Attempts to explain or reconcile the conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.

The USCIS regulation at 8 C.F.R. § 204.5(m)(4) allows for a break of two years or less in the continuity of an alien's religious work during the qualifying period for purposes of religious training. However, in addition to requiring that the "nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States," the regulation requires that the alien was "still employed as a religious worker" during the break. The petitioner has not evidenced that it considered the beneficiary to be an official, full-time employee during the period of his studies in the United States. Counsel states that the petitioner was continuing to support the beneficiary financially while he was engaged in his studies. The assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Although an individual may be authorized to pursue academic studies incident to R-1 nonimmigrant status and without obtaining F-1 nonimmigrant status, the AAO finds that, according to the petitioner's claim, the beneficiary did not work continuously as a worship pastor or in a religious occupation or vocation during the qualifying period.

Further, on appeal, counsel claims that the beneficiary worked for the petitioner approximately 38 hours per week during the qualifying period. Counsel has failed to explain how the beneficiary could attend classes full-time and engage in nearly full-time work, and counsel has failed to provide evidence of such purported employment. The petitioner additionally submitted a letter, which states that the beneficiary was working for its organization part-time while he was engaged in his studies at the [REDACTED]. Counsel has also failed to reconcile his differing claims from those in the petitioner's May 26, 2011 letter, which instead stated that the beneficiary had only worked for the petitioner's church when on vacation from school and during long weekends. *Matter of Ho*, 19 I&N Dec. at 591-592.

The AAO concurs with the director's finding that the petitioner has failed to demonstrate that the beneficiary had engaged in continuous, lawful employment in the proffered position during the two-year period immediately preceding the filing date of the petition.

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.