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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



C1

Date: JUL 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:

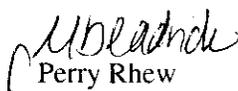


INSTRUCTIONS:

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 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 pastor at Iglesia Monte Carmelo in [REDACTED]. 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 copy of a Form I-797C, Rejection Notice, and copies of pages from the beneficiary's passport.

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 13, 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 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...

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.

According to the Form I-360 petition and accompanying materials, the beneficiary last entered the United States on October 28, 2008 in R-1 nonimmigrant status which authorized his employment with the petitioner until August 25, 2010. In a letter dated March 31, 2010, the petitioner stated that the beneficiary held R-1 status "since 2005," and that the beneficiary will be working at [REDACTED]. The petitioner did not describe the beneficiary's employment history during the two-year qualifying period immediately preceding the filing of the petition. The petitioner submitted uncertified copies of the beneficiary's Form 1040 tax returns for 2008 and 2009 which indicated that he earned \$20,000 and \$20,800 in those years respectively, but did not identify the source of his income.

On February 16, 2011, USCIS issued a Request for Evidence, in part requesting additional evidence regarding the beneficiary's work history during the qualifying period, including evidence that any work performed in the United States during that period was authorized under immigration law.

In a letter responding to the notice, the senior pastor of Indonesian service at the church in East Brunswick, Rev. Polke D. Koyongian, asserted that the beneficiary served as a "co pastor" to the congregation "since August 2005 to now." The petitioner submitted copies of pages from the beneficiary's passport, showing that the beneficiary was previously admitted to the United States on August 26, 2005 in R-1 nonimmigrant status authorizing his work for the petitioner until August 25, 2008. The petitioner also submitted copies of the beneficiary's Forms 1099-MISC and Forms 1040 for the years 2008 through 2010 which indicate that the beneficiary earned the following amounts from Iglesia Cristiana Monte Carmelo in [REDACTED] \$20,000 in 2008, \$20,800 in 2009, and \$19,200 in 2010. The petitioner submitted a copy of a deed showing its ownership of the church property in East Brunswick, and the Forms 1099-MISC listing Iglesia Cristiana Monte Carmelo's employer identification number as that of the petitioner.

On May 31, 2011, the director denied the petition. The director noted that the beneficiary's R-1 status expired on August 25, 2010, and therefore found that the beneficiary lacked lawful status and employment authorization from August 26, 2010 until the filing of the petition on October 13, 2010. The director concluded that the petitioner failed to establish that the beneficiary was lawfully employed as a religious worker for at least the two years immediately preceding the filing of the petition.

On appeal, counsel for the petitioner states the following:

The officer erred in her factual understanding.

(1) Beneficiary was employed lawfully as an R-1 beginning in August 26, 2005 until [sic] the filing of the petition is [sic] August 2010.

The I-360 was filed in August 2010 but was rejected by your office (please see attached rejection).

The petitioner submits a photocopy of a Form I-797C, Rejection Notice, dated August 17, 2010. The notice is addressed to the petitioner and states that a Form I-360 petition filed on behalf of the beneficiary on August 12, 2010, was being returned because the petition was not signed and Part 1 of the petition was incomplete. The photocopy also includes a returned "Postal Money Order" for \$375. The petitioner additionally re-submits copies of pages from the beneficiary's passport.

Although the petitioner submitted a Form I-360 petition on behalf of the beneficiary on August 12, 2010, the petition was appropriately rejected as improperly filed. The regulation at 8 C.F.R. § 103.2(a)(7)(i) states, in pertinent part:

An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as non-payable **will not retain a filing date.**

(Emphasis added). The petitioner subsequently submitted a properly signed and completed Form I-360 petition on October 13, 2010. Therefore October 13, 2010, is the filing date of the petition. Accordingly, the qualifying period in this case consists of the two-year period immediately preceding that date. The AAO agrees with the director's determination the beneficiary lacked lawful status and employment authorization for the portion of the qualifying period between August 26, 2010 and October 13, 2010.

Furthermore, the copies of pages of the beneficiary's passport suggest that he departed the United States on May 29, 2008 and subsequently re-entered the United States on October 28, 2008, approximately five months later. The petitioner has not accounted for this five month period which overlaps with the two-year qualifying period and has not established that it constitutes an acceptable break according to the requirements of 8 C.F.R. § 204.5(m)(4). Although the petitioner has asserted that it employed the beneficiary during this period, no evidence has been submitted regarding the nature of the break.

For the reasons discussed above, the AAO agrees with the director's determination 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.

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.