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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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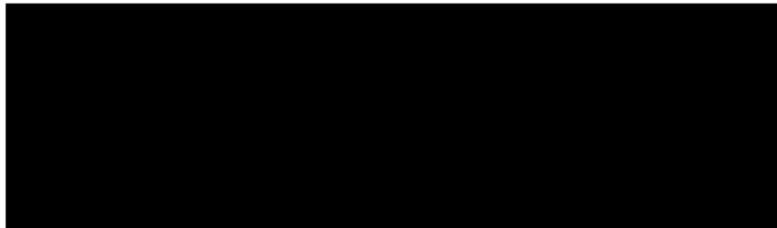
Date: **JUL 30 2012** Office: CALIFORNIA SERVICE CENTER

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 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 an assistant minister. The director determined that the petitioner failed to establish that it will be able to compensate the beneficiary.

On appeal, the petitioner submits a brief from counsel and an audited financial statement for the petitioning organization for the year 2010.

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 United States Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(10) states:

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 documentation, such as IRS Form W-2 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.

The USCIS regulation at 8 C.F.R. § 204.5(m)(12) reads:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

On the Form I-360 petition and in an accompanying letter, the petitioner indicated that it provides the beneficiary with an annual salary of \$24,000 and also provides housing. The letter stated that the beneficiary has been working as an assistant minister for the church in R-1 nonimmigrant status since May 1, 2009. The petitioner submitted a "Budget Statement" for the year 2010, which listed the church's total income for the year as \$242,661.13. Under "expenditures," the budget included \$36,000.00 for [REDACTED] and \$24,000.00 for [REDACTED]." A budget for 2011 was also provided, listing total income as \$308,000.00 and including \$40,000.00 for [REDACTED] and \$24,000.00 for [REDACTED]." The petitioner also submitted copies of the beneficiary's Forms W-2 and tax returns for 2009 and 2010, which indicated that the beneficiary was paid \$16,000 by the petitioner in 2009 and \$24,000 in 2010. Additionally, the petitioner submitted copies of processed paychecks showing monthly payments of \$1,600 to the beneficiary from the petitioner for the period from January to April of 2011.

On August 8, 2011, USCIS issued a Notice of Intent to Deny the petition based in part on a failed compliance review. The notice described the findings of the site visit as follows:

An Immigration Officer for USCIS conducted a site visit on behalf of the petitioner on October 24, 2007. The church is a very small congregation of 35 people. They use a small church of an English Presbyterian congregation. On the I-129 they listed an income of \$165,000 when in fact they have an income of \$50,000 per year. They claim they are paying the beneficiary \$24,000 which leaves only \$26,000 for the

salary of the senior pastor and the operating expenses of the church. It is doubtful that a person can self support herself on \$24000 in Northern VA without unauthorized employment. The area of the church is suburban and there is no public transportation making a car a necessity. Accurint reports that the beneficiary lives with the petitioner in a \$355,000 home in Dumfries, VA. It also reports that she is employed at [REDACTED]

[REDACTED] She is a seamstress. It appears the I-129 is just a method of supplying an employee to the upholstery company.

The notice went on to instruct the petitioner to submit official IRS Forms W-2 and tax returns for 2009 and 2010, as well as copies of its IRS forms W-3 evidencing wages paid to employees for 2009 and 2010 and copies of its Quarterly Wage Reports for all employees for the last four quarters.

In response to this notice, the petitioner submitted the beneficiary's IRS Wage and Income Transcript for the year 2010, indicating that she earned \$24,000 from the petitioner. The petitioner resubmitted copies of the beneficiary's Forms W-2 and tax returns for the years 2009 and 2010 indicating that she earned \$16,000 and \$24,000 respectively. The petitioner also submitted copies of its Forms W-3, Transmittal of Wage and Tax Statements, for 2009 and 2010, indicating that it paid total wages of \$16,000 and \$24,000 respectively for those years, with only one Form W-2 submitted by the petitioner for each of those years. The petitioner additionally submitted Forms 941, Quarterly Wage Reports, for the second through fourth quarters of 2009, all quarters of 2010 and the first quarter of 2011. Each of these forms indicated that the petitioner had only one employee receiving compensation with total wages of \$6,000 paid per quarter, with the exception of the second quarter of 2009 during which the total wages paid were \$4,000.

Also submitted in response to the notice, the petitioner provided "Statements of Financial Position" for the petitioning church "As of December 31, 2010 and 2011 Budget," compiled by [REDACTED]. In the cover letter to the statements, [REDACTED] stated the following:

A compilation is limited to presenting in the form of financial statements information that is the representation of management. We have no audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any form of assurance on them.

Management has elected to omit substantially all of the disclosures and the statement of cash flow required by generally accepted accounting principles. If the omitted disclosures and statement were included in the statements, they might influence the user's conclusions about the organization's financial position, results of operations and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

The attached financial statements listed the petitioner's "Total Unrestricted Revenue" as \$242,661.13 for 2010 and \$308,000.00 in 2011, and listed "Salaries & benefits" as \$60,000.00 for 2010 and \$64,000.00 in 2011. Although the figures in the financial statements correspond to those provided in the budgets accompanying the petition, the AAO notes that they directly conflict with the IRS evidence submitted in response to the Notice of Intent to Deny. The Forms W-3 and Forms 941, together with the beneficiary's Forms W-2, indicate that the petitioner had only one paid employee, the beneficiary, who was being compensated at a rate of \$24,000 per year, or \$6,000 per quarter. Meanwhile, the budgets and financial statements assert that the petitioner had an additional employee who was paid \$36,000 in 2010 and \$40,000 in 2011. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The director denied the petition on October 4, 2011. In the decision, the director again noted the findings of the site visit and found the evidence submitted insufficient to establish the petitioner's ability to compensate the beneficiary.

On appeal, counsel asserts that, "[a]ccording to the [redacted] there was some miscommunication between the Service and the petitioner church about the annual income of the church during site visit on October 24, 2007." No evidence is submitted regarding this assertion. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Counsel also states that the annual income of the church in the year 2010 was \$242,661.00, rather than \$50,000 per year as found during the site visit. In support of this assertion, the petitioner submits an audited financial statement for 2010, prepared by [redacted]. In the cover letter, titled "Independent Auditor's Report," [redacted] states in part:

We have audited the accompanying statement of financial position of [redacted] as of December 31, 2010, and the related statements of activities and cash flows for the year then ended. These financial statements are the responsibility of the management of [redacted]. Our responsibility is to express an opinion on these financial statements based on our audits. ...

In our opinion.... the financial statements referred to above present fairly, in all material respects, the financial position of [redacted] as of December 31, 2010, and the results of its activities and its cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America.

The accompanying statement lists the petitioner's "Total unrestricted revenue" for 2010 as \$242,661. Under "Expenses," the statement includes \$36,000 as "Pastor's compensation" and \$24,000 as "Staff salaries." In his brief, counsel argues that "the Audit Report should be accepted by the Service as an evidence [sic] to prove the ability of the petitioner church to pay the proffered wage."

The AAO notes that the financial statement submitted on appeal, although purportedly audited by an independent accountant, again contains compensation figures which directly conflict with the submitted IRS documentation regarding wages paid during 2010, thus calling into question the validity of the petitioner's evidence. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Therefore, the AAO disagrees with counsel that the evidence submitted on appeal establishes the petitioner's ability to compensate the beneficiary. Further, although the petitioner asserted at the time of filing that it provides subsidized housing to the beneficiary as part of her compensation, no evidence has been submitted in support of this assertion. 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)). Because of the unresolved inconsistencies discussed above, the AAO agrees with the director's determination that the petitioner has not established its ability to compensate the beneficiary.

As an additional matter, the AAO finds that the petitioner has not established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition. 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 Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

The 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. Therefore, petitioner alien must establish that the beneficiary was continuously performing qualifying religious work in lawful status throughout the two-year period immediately preceding May 31, 2011.

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.

In a letter accompanying the petition, the petitioner asserted that it has employed the beneficiary as an assistant minister since May 1, 2009. According to the petition and accompanying evidence, the beneficiary held R-1 nonimmigrant status which authorized her employment with the petitioner from April 2, 2009 to June 20, 2011.

The regulation at 8 C.F.R. § 214.2(r)(2) provides that “[a]n alien may work for more than one qualifying employer as long as each qualifying employer submits a petition plus all additional required documentation as prescribed by USCIS regulations.”

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.

The Notice of Intent to Deny, issued on August 8, 2011, discussed a site visit conducted on October 24, 2007. The findings of that site visit included a finding that the beneficiary “is employed at [REDACTED] as a seamstress.

In its response to the notice, the petitioner did not address the finding regarding the beneficiary’s employment as a seamstress or indicate that the beneficiary had stopped working for [REDACTED]. The record does not indicate that the beneficiary held any lawful status

which would have authorized her employment with [REDACTED] during the qualifying period. Therefore, any such work would be unauthorized employment and would constitute a failure to maintain status. Accordingly, the AAO finds that the petitioner has not established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

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.