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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

[REDACTED]

C1

Date: **JUN 04 2012** Office: CALIFORNIA SERVICE CENTER [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:

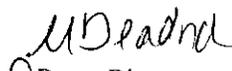
SELF-REPRESENTED

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 with the field office or service center that originally decided your case by filing a 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 self-petitioner seeks classification 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 minister [REDACTED]. The director determined that the self-petitioner had not established that he had the requisite two years of continuous, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the self-petitioner submits an amended Internal Revenue Service (IRS) Form 990-EZ for [REDACTED] for the year 2009, and a letter from [REDACTED] a tax preparer in California.

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 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 petition was filed on October 5, 2010. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work 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.

Accompanying the Form I-360 petition, the self-petitioner submitted a letter from the vice-president of [REDACTED]. The letter stated, in part:

Iglesia de Cristo Ministerios Renacer ... has employed [REDACTED] as the minister of this congregation since the year 2010 with a salary of \$16,000 a year.... Since 2007, [REDACTED] has been the minister for our congregation but he was a non-salaried minister because he has his independent job and would file his personal taxes (1040) with the IRS and received a W-2 form from his employer (enclosed is a copy of his 2007, 2008, and 2009 1040 forms filed with the IRS and a copy of each W-2 he received).

The self-petitioner submitted copies of his IRS Forms 1040 for the years 2007 to 2009 along with Forms W-2 for those years from the employer Contractor's Windows. The amounts listed on the

Forms 1040 corresponded to the amounts on the W-2s, indicating that the self-petitioner's income from Contractor's Windows was his only reported income for the years 2007, 2008 and 2009. The self-petitioner also submitted a copy of [REDACTED] Form 990-EZ for the year 2009, which listed the self-petitioner as "President" of the organization and indicated that he devoted "20 hrs" per week to that position.

On February 14, 2011, USCIS issued a Request for Evidence, in part instructing the self-petitioner to submit additional evidence regarding his work history during the two-year qualifying period immediately preceding the filing of the petition. The notice requested evidence of compensation and specifically instructed him to submit copies of his last six pay statements and signed, complete copies of his income tax returns for the years 2008 to 2010 including all W-2s, forms, schedules, and statements.

The self-petitioner submitted an unsigned response to the Request for Evidence, which included the following statement under the heading "V. Work History:"

Since the year 2007, [REDACTED] has been our minister and for the year 2008, 2009 he was a volunteer and until the year 2010 he became a salaried position. He earns \$16,000 yearly. For the year 2007, 2008, 2009 [REDACTED] worked only for about 15 hours weekly because he had independent jobs. Enclosed are a copy of the year 2008, 2009 and 2010 taxes so that you can see where he worked during these years. He supported himself during the year 2008 working for [REDACTED] [REDACTED] And the year 2009 he supported himself by working full time for [REDACTED] [REDACTED] Till the year 2010 he worked for our church full-time 40 hours. Enclosed is a copy of the last 6 pay stubs from our church for the year 2010 and 2011 and we are also enclosing a copy of the 2008,2009 and 2010 taxes for the pastor.

The self-petitioner also submitted copies of six paystubs from [REDACTED] for the period September 2010 to February 2011 which indicated that he was being paid at a rate equal to \$16,000 per year. He additionally submitted signed copies of his tax returns and W-2s for the years 2008 to 2010. The tax documents for 2008 and 2009 again showed [REDACTED] as the self-petitioner's only source of income. The W-2 and Form1040 for 2010 indicated that he received \$16,000 from [REDACTED] which was his only source of reported income for that year.

The director denied the petition on March 21, 2011. The director found that the self-petitioner was a part-time, unpaid minister from 2007 through 2009, and only started working as a full-time, compensated minister in 2010. The director therefore determined that the self-petitioner failed to establish that he had the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition.

On appeal, the self-petitioner argues that his position as a minister at [REDACTED] has always been a full time position, but that the tax preparer who filed the church's Form 990-EZ in 2009 mistakenly listed the wrong number of hours per week for the self-petitioner's position. The self-petitioner states, in part:

The denial has been caused due to an error that the tax-preparer made the 2009 form 990. Our tax preparer did not write the correct hours in the form 990ez that we filed in 2009. It was a mistake and she filed a 990ez amendment for the year 2009 stating the correct number of hours that we actually did work for the year 2009. Anyways, [REDACTED] has been the [REDACTED] since 2008, he has worked full-time for the church but he did not receive any monetary compensation because the church was not able to provide him a salary or a stipend, until the year 2010 we were able to establish a salary for the Minister. This is explained in a letter that the [REDACTED] wrote but in the letter it was never established that he was a part-time volunteer, because he has always been a Full-time Minister, the problem was that for the year 2008 and 2009 he had to work independently because the church was too small to pay him a salary. That is what he declared in his 1040 taxes for the year 2008, 2009. [REDACTED] worked full time for [REDACTED] for the year 2008 with the earnings of \$26,298, but when we started working full time for the church in 2009 and ending the year 2008, his earnings for [REDACTED] went down because he was no longer fulltime (in the year 2009, his earnings were \$14,151, which is \$12,147 less than the year 2008, which shows that he was not a full-time worker). This is proven in [REDACTED] 2008 and 2009 Federal Income Taxes....

In support of the self-petitioner's assertions, he submits an amended Form 990-EZ for [REDACTED] listing 38 hours per week devoted to his position of "President," as well as a letter from [REDACTED] a tax preparer, acknowledging her purported mistake in the original 2009 Form 990-EZ.

The self-petitioner has not resolved the inconsistencies in the evidence regarding the hours worked in his position as minister during the qualifying period. First, the self-petitioner has not established that the amended forms were actually filed with the IRS. Further, the amended tax return submitted on appeal, created several years after the fact, like amended tax returns, raise serious questions regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991)(discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings). Furthermore, the self-petitioner's assertion on appeal that he "has always been a Full-time Minister" directly conflicts with his response to the February 14, 2011 Request for Evidence, which stated that "[f]or the year 2007, 2008, 2009 [REDACTED] worked only for about 15 hours weekly because he had independent jobs." 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).

Regardless of the hours, the self-petitioner's work as a minister prior to 2010 was not compensated, and therefore is not considered qualifying experience.

The regulation at 8 C.F.R. § 204.5(m)(11) requires the alien's previous religious work to have been compensated, either through salaried or non-salaried compensation, with limited exceptions for self-support outlined in the USCIS regulations at 8 C.F.R. § 214.2(r)(11)(ii). The circumstances for self-support involve the alien's participation in an established program for temporary, uncompensated missionary work. The self-petitioner has not shown or claimed that he participated in such a program. Regarding the petitioner's claim that the beneficiary's volunteer work within the United States is qualifying experience, any work performed by the beneficiary as a volunteer is not qualifying. In the preamble to the proposed rule, USCIS recognized that although "legitimate religious work is sometimes performed on a voluntary basis . . . allowing such work to be the basis for . . . special immigrant religious worker classification opens the door to an unacceptable amount of fraud and increased risk to the integrity of the program." See 72 Fed. Reg. 20442, 20446 (April 25, 2007). Accordingly, any time the beneficiary may have spent in the United States "working" as a volunteer for the petitioner cannot be considered qualifying employment.

The AAO agrees with the director's finding that the self-petitioner has not established that he has the requisite two years of qualifying work experience immediately preceding the filing date 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.