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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: Office: CALIFORNIA SERVICE CENTER
JUN 11 2012



IN RE:

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 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 appeal will be dismissed.

The petitioner is church that seeks classification for 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), as women's ministry. The director determined that the petitioner had failed to sign the petition as required by regulation and that the petitioner had failed to submit initial evidence demonstrating that it is a bona fide non-profit religious organization in the United States. The director also found that the petitioner had failed to provide verifiable evidence regarding how it intended to compensate the beneficiary; that the petitioner had failed to demonstrate that the beneficiary was a member of the same religious denomination as the petitioner throughout the two-year qualifying period; that the petitioner had failed to establish that the position qualifies as a religious occupation; and that the petitioner had failed to establish that the beneficiary was engaged in authorized religious employment throughout the two-year qualifying period.

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 October 1, 2008, 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 October 1, 2008, 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 issues on appeal are whether the petitioner signed the petition as required by regulation, whether the petitioner submitted initial evidence demonstrating that it is a bona fide non-profit religious

organization in the United States, whether the petitioner has provided verifiable evidence regarding how it intended to compensate the beneficiary, whether the petitioner has demonstrated that the beneficiary was a member of the same religious denomination as the petitioner throughout the two-year qualifying period, whether the petitioner has established that the position qualifies as a religious occupation, and whether the petitioner has established that the beneficiary was engaged in authorized religious employment throughout the two-year qualifying period.

The director found that the petitioner failed to sign the petition. The record of proceeding does not support that finding. The director may have instead intended to indicate that the petitioner did not submit the requisite attestation clause, as it was not signed. The AAO withdraws the director's finding regarding the petition's signature, but finds, as an additional matter, that the petitioner failed to submit a signed attestation pursuant to the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(7).

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

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or
- (iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, as something other than a religious organization:
 - (A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;
 - (B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;
 - (C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

At the time of filing, the petitioner submitted no evidence regarding its tax-exempt status. On the Form I-360, it also failed to list its Internal Revenue Service (IRS) number. The director noted that the petitioner had claimed affiliation with the [REDACTED] on the petition. The director found that the record of proceeding did not contain an IRS determination letter to show that either organization holds a valid exemption that covers the petitioner or any evidence to establish the petitioner's affiliation with that other organization.

The director stated that a search of public records had revealed that the petitioner's church does not exist, does not possess any tax information, and does not have business registration. The director found no proof of business activity conducted by this entity. The director additionally noted that USCIS records reveal that the petitioner has filed multiple petitions under the same name using different commercial and residential addresses for beneficiaries who appeared to be unqualified as religious workers in the United States, all lacking valid nonimmigrant status. The director concluded that the petitioner's church did not appear to exist, to be religious in nature, or to be a bona fide religious organization in the United States exempt from taxation.

On appeal, the petitioner fails to submit any information regarding whether either its church or the [REDACTED] is considered to be 501(c)(3) tax-exempt. The petitioner also does not address the director's statements regarding how the petitioner's church did not appear to exist, to be religious in nature, or to be a bona fide tax exempt religious organization in the United States. Thus, the petitioner has not overcome this ground for denial.

Regarding the director's second ground of denial, the USCIS regulation at 8 C.F.R. § 204.5(m)(10) states:

(10) *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.

On the petition, the petitioner indicated that the beneficiary would receive non-salaried compensation. At the time of filing, the petitioner submitted no evidence regarding its ability to compensate the beneficiary. In her decision, the director highlighted that the record of proceeding does not contain evidence of the petitioner's past compensation for similar positions; budgets showing money set

aside for salaries, leases, etc.; documentation showing that it would provide the beneficiary with room and board; or other similar evidence. The director additionally noted that the petitioner had failed to submit IRS documentation including Forms W-2 and certified tax returns and that the petitioner had failed to submit any statement indicating why such information might not be available for submission.

On appeal, the petitioner does not address the director's concerns regarding its failure to evidence its ability to compensate the beneficiary. 8 C.F.R. § 204.5(m)(10) states that an employer must intend to compensate the beneficiary for performance of the proffered position in the future. Such compensation may be salaried or non-salaried. The petitioner has not indicated that it has specific plans to compensate the beneficiary for her work. The AAO highlights the fact that future self-support as an immigrant is not qualifying. The AAO finds that the petitioner has failed to provide verifiable evidence regarding how it intends to compensate the beneficiary. Thus, the petitioner has not overcome this ground for denial.

Regarding the director's third ground for denial, the USCIS regulation at 8 C.F.R. § 204.5(m)(5) defines religious denomination as:

... a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes one or more of the following:

- (A) A recognized common creed or statement of faith shared among the denomination's members;
- (B) A common form of worship;
- (C) A common formal code of doctrine and discipline;
- (D) Common religious services and ceremonies;
- (E) Common established places of religious worship or religious congregations; or
- (F) Comparable indicia of a bona fide religious denomination.

The petitioner filed the Form I-360 on July 18, 2011. The director found that the petitioner had failed to submit any evidence showing that the beneficiary was a member of its denomination during the entire two years preceding that date. On appeal, the petitioner again failed to provide any statements or evidence regarding the beneficiary's past membership within the petitioner's church's denomination. Thus, the petitioner has not overcome this ground for denial.

Regarding the petitioner's fourth ground for denial, the USCIS regulation at 8 C.F.R. § 204.5(m)(5) defines religious occupation as an occupation meeting all of the following requirements:

(A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.

(B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

(C) The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible.

(D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

On the petition, the petitioner indicated that the beneficiary's position of women's ministry requires:

DAILY DEVOTIONS, INVOLVED IN THE EXPLAINING OF THE HOLY SCRIPTURES TO THE MEMBERS OF THE CONGREGATION AND STUDENTS TO COME TO A BETTER UNDERSTANDING OF THE WORD OF GOD (THE BIBLE) [sic]

With the petition, the petitioner submitted a supplemental list regarding the duties of its staff members. The document states that women's ministry includes the responsibilities of:

PROVIDES SPIRITUAL SUPPORT TO THE LADIES, AUXILLIARY PLANS EVENTS, PRAYER SERVICES AND EVANGELIZES TO THE COMMUNITY.
[sic]

Within the petitioner's July 11, 2011 letter of support submitted with the petition, the petitioner states that the beneficiary is a person of good moral character who is faithful in the Word of God. The director found that the petitioner had failed to establish that the position qualified as a religious occupation.

On appeal, the petitioner submits photos regarding the beneficiary's work, copies of her Bible studies, and an undated Certificate of Appreciation from the Memorial Sloan-Kettering Cancer Center. The petitioner states that the beneficiary has fulfilled the Holy Scriptures in her life and that she has dedicated herself to instill good moral values within her family. The petitioner claims that the beneficiary's position constitutes a religious occupation similar to that of liturgical workers, religious instructors, religious counselors, missionaries, and religious broadcasters. The petitioner asserts that the statute is silent as to what exactly constitutes a religious occupation. The petitioner states that the beneficiary's duties are directly related to the religious creed of its denomination, that the governing

body of the denomination recognizes her position, and that the position is a permanent full-time occupation within the denomination. The AAO notes that the petitioner has provided no evidence to substantiate any of these claims. 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)). Thus, the petitioner has not overcome this ground for denial.

Regarding the director's fifth ground for denial, the 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 August 9, 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)(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 petition, the petitioner indicated that the beneficiary arrived in the United States in December of 1997. Therefore, the beneficiary was in the United States throughout the entire two-year

qualifying period. The record shows that the beneficiary entered the United States without inspection. The record contains no evidence that the beneficiary has ever held lawful nonimmigrant status in the United States.

The director found that the petitioner had failed to establish that the beneficiary maintained continuous, lawful employment in a religious occupation during the two years preceding the filing of the petition. On appeal, the petitioner fails to address the director's finding that it had not established that the beneficiary had completed the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition. Thus, the petitioner has not overcome this ground for denial.

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.