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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 19 2012

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:

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,

UDeadndc
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. The director determined that the petitioner had failed to establish that it was a bona fide religious organization because it did not appear to be operating during a U.S. Citizenship and Immigration Services (USCIS) site visit in the capacity claimed on the petition and that the petitioner had failed to establish that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience 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 issues presented on appeal are whether the petitioner has established that it is a bona fide religious organization operating in the capacity claimed on the petition and whether the petitioner has established that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

In its NOID response the petitioner stated that it normally answers all phone calls when it is operating and that it has an additional cell phone number for calls made outside of regular hours. The petitioner also claimed that it failed to respond to the emails from USCIS was because it was busy moving locations during that time. The petitioner submitted utility bills to evidence this fact.

In her decision, the director referenced the supporting documents that the petitioner had submitted with the petition. The director noted that the documents that the petitioner submitted with the NOID were all dated after the petition was filed and found that the petitioner had failed to demonstrate that its church was operating in the capacity claimed on the petition.

On appeal, the petitioner again stated that its church does not operate on a regular business schedule. Rather, it conducts most of its activities in the evenings and on weekends. The petitioner also highlights that it had indicated on the petition that the beneficiary would be working as a pastor for its affiliate church in Louisville, Kentucky, operating under a similar schedule. Thus, the USCIS site check was not conducted at the address of the beneficiary's employment.

Even if the AAO were to find the petitioner's explanations regarding the deficiencies within the site visit to be credible, satisfactory completion of a site visit is a condition for approval. 8 C.F.R. § 204.5(m)(12). In this case, it would serve no purpose to remand for an additional site visit at the beneficiary's place of actual employment when the petitioner has not established the beneficiary's facial eligibility.

Regarding the director's second 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 31, 2009. 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 on August 19, 2005. Therefore, the beneficiary was in the United States throughout the entire two-year qualifying period. On the Form I-360, under "Current Nonimmigrant Status," the petitioner wrote "B-2." The record shows that the beneficiary entered the United States as a B-2 nonimmigrant visitor, a status that does not authorize employment in the United States. 8 C.F.R. § 214.1(e). The beneficiary's B-2 status expired on February 19, 2006. The beneficiary subsequently possessed B-2 nonimmigrant status from March 31, 2009 to August 30, 2009. The petitioner submitted a letter dated December 12, 2009, indicating that the beneficiary worked for the Impacto de Dios church in Elkhart, Indiana from February of 2006 until February of 2009 when he began working for the petitioner's church.

The director denied the petition on August 23, 2010, finding that the petitioner had failed to establish that the beneficiary maintained continuous employment in the two years preceding the filing of the petition.

On appeal, the petitioner states that the beneficiary entered the United States on August 19, 2005 as a B-2 nonimmigrant and that a U.S. religious organization filed an R-1 nonimmigrant petition for him on February 8, 2006, which USCIS later approved on January 15, 2009. The petitioner argues that the beneficiary's R-1 approval should be interpreted to cover the requested period of the proposed employment. The petitioner highlights that the beneficiary later possessed B-2 nonimmigrant status until August 30, 2009.

The petitioner's arguments are not persuasive and contain no support for requiring the AAO to interpret the beneficiary's R-1 approval to cover any time other than what was stated in the approval. As previously indicated, pursuant to the regulation at 8 C.F.R. 214.1(e), a B-2 nonimmigrant is not permitted to work. The regulation at 8 C.F.R. § 214.2(r)(3)(ii)(E) as in effect when the beneficiary was approved as an R-1 nonimmigrant, indicated that the beneficiary could only work for the specific organizational unit of the religious organization which would be employing and paying the beneficiary. Further, the regulation at 8 C.F.R. § 214.2(r)(6) indicated that "a different or additional

organizational unit of the religious denomination seeking to employ or engage the services of a religious worker” shall file a new petition and that “any unauthorized change to a new religious organizational unit will constitute a failure to maintain status . . .”

Further, 8 C.F.R. § 274a.12(b) provides, in pertinent part:

Aliens authorized for employment with a specific employer incident to status. The following classes of non-immigrant aliens are authorized to be employed in the United States by the specific employer and subject to the restrictions described in the section(s) of this chapter indicated as a condition of their admission in, or subsequent change to, such classification...

(16) An alien having a religious occupation, pursuant to § 214.2(r) of this chapter. An alien in this status may be employed only by the religious organization through whom the status was obtained;

Finally, under 8 C.F.R. § 214.1(e), a nonimmigrant may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status.

From the start of the requisite period on August 31, 2007 until the beneficiary’s approval as an R-1 nonimmigrant on January 14, 2009, the beneficiary was not authorized to work as he was a B-2 nonimmigrant. Therefore, any work performed by the beneficiary prior to January 14, 2009 is not qualifying. Pursuant to the beneficiary’s R-1 approval, he was authorized to work only for Impacto de Dios from January 14, 2009 until March 1, 2009. According to the petitioner’s description of the beneficiary’s employment history, however, the beneficiary terminated employment with Impacto de Dios in February 2009, one month after approval as an R-1 and began working for the petitioner. As soon as the petitioner began working for the petitioner, he failed to maintain status as an R-1. Accordingly, any work performed by the beneficiary after February 2009 was also not qualifying.

Under 8 C.F.R. §§ 204.5(m)(4) and (11), the petition cannot be approved, because the beneficiary’s employment in the United States during the qualifying period was not authorized under United States immigration law. Due to the fact that the petitioner has failed to establish the beneficiary’s two years of qualifying employment prior to the petition’s filing date, the AAO will not make any further eligibility findings, such as whether the petitioner has adequately established a relationship between itself and the affiliated church at which it states the petitioner will be working in order to demonstrate that the petitioner is the beneficiary’s prospective employer and not another distinct church.

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.