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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: JUN 20 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:

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,

U.D. Adnde
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 religious instructor. The director determined 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 and that the petitioner had failed to establish that a bona fide job offer existed, as it had failed to return phone calls for an interview from a U.S. Citizenship and Immigration Services (USCIS) investigating officer.

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 the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition and whether the petitioner has established that a bona fide job offer existed, as it had failed to return phone calls for an interview from a USCIS investigating officer.

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 July 17, 2010. 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 September 16, 2003. 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 "R1." 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 then possessed R-1 nonimmigrant status to work for the petitioner from July 31, 2006 to July 31, 2008.

The director denied the petition on December 16, 2010, finding that the petitioner had failed to establish that the beneficiary maintained continuous employment during the two years preceding the filing of the

petition. On appeal, the petitioner does not dispute that the beneficiary failed to maintain authorized status throughout the two-year qualifying period.

As previously stated, the beneficiary has not been in lawful status since July 31, 2008. The regulation at 8 C.F.R. § 204.5(m)(4) prohibits USCIS from considering work that was not “in lawful immigration status” and any “unauthorized work in the United States.” The regulation at 8 C.F.R. § 204.5(m)(11) requires that “qualifying prior experience . . . must have been authorized under United States immigration law.” Therefore, the regulations, separately and together, require that USCIS must have affirmatively authorized the beneficiary to perform any claimed religious functions while in the United States. The record therefore reflects that the beneficiary was not in an authorized immigration status during almost all of the two years immediately preceding the filing of the visa petition. Accordingly, any work that she may have performed in an unauthorized status would interrupt the continuity of the qualifying work experience.

Under 8 C.F.R. §§ 204.5(m)(4) and (11), the petition cannot be approved, because the beneficiary’s religious employment in the United States during almost all of the qualifying period was not authorized under United States immigration law.

Regarding the director’s second ground for denial, the USCIS regulation at 8 C.F.R. § 204.5(m)(12) describes USCIS site visits:

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.

The director noted in her decision that USCIS had conducted a site check at the address listed on the petition on August 22, 2008 and that the church [REDACTED] was not there. The director then noted that the pastor failed to return repeated phone calls from the USCIS investigating officer. The director concluded that the pastor’s failure to respond to the investigating officer’s request for an interview constituted grounds for denial of the petition, as all religious organizations are subject to a mandatory site check and interview.

On appeal, the petitioner submitted a letter, stating that he was never informed of the USCIS visit. He asserts that the individuals working at his church on the day of the site visit never informed him of the visit. [REDACTED] states that he did not return USCIS’s call, because he never received any

instruction to do so. He also notes that his schedule varies from day-to-day. [REDACTED] then suggests that the USCIS officer should have asked for the full name of the person who received him/her, should have left his/her name and phone number with that person, and should have rescheduled a site visit with the pastor at his/her earliest convenience.

The AAO finds that the petitioner failed to account for the fact that the USCIS investigating officer left repeated phone calls for him to set up an interview, but that he never responded. 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 of the beneficiary's place of actual employment when the petitioner has not established the beneficiary's facial eligibility for the benefit sought.

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.