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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: OFFICE: CALIFORNIA SERVICE CENTER [Redacted]

JUN 20 2012

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:

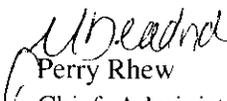
[Redacted]

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, Vermont Service Center, denied the employment-based immigrant visa petition on January 26, 2006. The petitioner appealed the decision to the Administrative Appeals Office (AAO) on February 28, 2006. On December 18, 2008, the AAO withdrew the director's decision and remanded the petition to the California Service Center for further consideration and action pursuant to new regulations. The California Service Center issued a Notice of Intent to Deny (NOID) the petition on February 4, 2009, to which the petitioner responded on March 4, 2009. The California Service Center issued a Notice of Certification on October 8, 2009. The California Service Center subsequently issued a decision denying the petition on April 11, 2011, which the petitioner appealed to the AAO on May 12, 2011. 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 resident pastor. The director determined that the petitioner had failed to demonstrate that the beneficiary had engaged in continuous, lawful employment during the two-year period 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).

At issue on appeal is whether or not the beneficiary had engaged in continuous, lawful employment during the two-year period immediately preceding the filing date of the petition.

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 petitioner filed the petition on March 22, 2004. 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 appeal, the petitioner submitted an undated letter stating that it would pay the beneficiary \$250.00 per week (\$13,000.00 per year.) On the petition, the petitioner had indicated that the beneficiary arrived in the United States on September 23, 2003. Therefore, the beneficiary was not 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 March 21, 2004. The record contains no evidence that the beneficiary has ever held any lawful status since the 2004 expiration of his tourist visa.

Both with the petition and with its February 28, 2006 Form I-290B, the petitioner submitted a signed appointment certificate dated February 14, 2004, indicating that the beneficiary was ordained as minister of the Gospel on September 9, 2000 and then as a pastor on December 20, 2003.

In its June 27, 2005 response to the Vermont Service Center's April 1, 2005 Request for Evidence (RFE), the petitioner submitted a June 20, 2005 signed letter stating that the beneficiary was ordained on December 20, 2003. The petitioner additionally submitted two diplomas and one license to this effect. The petitioner also submitted a signed June 9, 2005 letter, which again indicated that the beneficiary began working for its organization in September of 2003 and received ordination as a minister on December 20, 2003.

The director denied the petition on April 11, 2011, finding that the petitioner had failed to establish that the beneficiary maintained continuous, lawful employment in the two years preceding the filing of the petition, because the beneficiary had entered the United States as a B-2 visitor on September 23, 2003 and the beneficiary was not ordained as a pastor until December 20, 2003.

On appeal, the petitioner states that the beneficiary worked as an associate pastor in the same denomination for the two years immediately preceding the filing of the petition. The petitioner submits a signed letter dated April 15, 2011, stating that the beneficiary worked full-time for the [REDACTED] as an associate pastor from January of 2001 to August of 2003. The petitioner additionally submits a signed affiliation agreement between its church and the [REDACTED] in the Philippines, which began on January 3, 2001. The petitioner submits two certificates of ordination for the beneficiary, one from the [REDACTED] in the Philippines dated October 28, 1994 to be a minister of the Gospel and one from the petitioner dated December 20, 2003 to be a pastor.

The petitioner first indicated within the present appeal that the beneficiary may have been ordained as early as October 28, 1994 overseas even though the petitioner had repeatedly contended that the petitioner's date of ordination was instead December 20, 2003. Regardless of the date in which the beneficiary was actually ordained, the regulation at 8 C.F.R. § 204.5(m)(11) requires that the two years of qualifying experience immediately precede the filing of the petition and be authorized under United States immigration law. There is no provision in the regulations that allows a B-2 visitor to work in the United States in one of the positions described in 8 C.F.R. § 204.5(m)(2).

The beneficiary began working for the petitioner in late September of 2003 as a resident pastor before he was purportedly ordained on December 20, 2003. In its May 10, 2011 letter submitted with the appeal, the petitioner indicates that the beneficiary ceased working as an associate pastor at the [REDACTED] in the Philippines in August of 2003. Thus, the beneficiary's religious work prior to the filing date was not continuous. The beneficiary may also not have been qualified to perform his job duties for approximately three months until the claimed date of his ordination.

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 reflects that the beneficiary was not in an authorized immigration status allowing him to work immediately preceding the filing of the visa petition. Accordingly, any work that he may have performed in an unauthorized status, such as what he did for the petitioner, 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 the qualifying period was not authorized under United States immigration law. The petitioner has also failed to demonstrate that the beneficiary’s religious work during the two-year qualifying period overseas and in the United States was continuous leading up to the filing of the petition.

The petitioner has failed to submit sufficient documentation to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the petition.

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.