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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



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Date: **JUN 21 2012** Office: CALIFORNIA SERVICE CENTER



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 in accordance with the instructions on 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 petitioner is a Christian ministry. 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 minister. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing date of the petition. The director additionally found that the petitioner had not established how it intends to compensate the beneficiary.

On appeal, the petitioner submits a brief from its former counsel, an uncertified copy of the petitioner's Form 990 tax return for 2010, copies of statements showing money transfers to the petitioner from [REDACTED], a copy of a 2009 financial record for [REDACTED], a printout showing the rate of exchange from Kenyan shillings to United States dollars on June 15, 2010, a copy of a "Ministerial Certificate" given to the beneficiary on January 6, 2002, a copy of the beneficiary's "Certificate of Ordination" and "The Pastoral Ordination Oath," dated December 11, 2010, and copies of brochures and photographs.

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 first issue to be discussed is whether the petitioner has established that the beneficiary has the requisite two years of continuous, qualifying work experience during the two years immediately preceding the filing of the petition.

The U.S. Citizenship and Immigration Service (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 August 31, 2009. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work in lawful immigration status 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.

The USCIS regulation at 8 C.F.R. § 204.5(m)(5) contains the following definitions:

Minister means an individual who:

(A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct such religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;

(B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;

(C) Performs activities with a rational relationship to the religious calling of the minister; and

(D) Works solely as a minister in the United States, which may include administrative duties incidental to the duties of a minister.

Religious occupation means an occupation that meets 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 Form I-360 petition and in an accompanying letter dated April 8, 2010, the petitioner stated that the beneficiary had worked as a compensated employee for ██████████ ██████████ in Kenya for three years and, prior to that, had worked as a volunteer for that organization for seven years. The petitioner submitted a copy of a "Ministerial Certificate" for the beneficiary, dated January 6, 2002. The petitioner did not provide employment dates for the beneficiary's work with ██████████ or for the petitioning organization. However, in the April 8, 2010 letter, the petitioner indicated that it currently employed the beneficiary. According to the petitioner's evidence and the record, the beneficiary has been in the United States throughout the two-year qualifying period immediately preceding the filing of the petition during which time she held R-1 nonimmigrant

status which authorized her work with the petitioner in Dallas, Texas. Copies of the beneficiary's Forms 1099-MISC indicate that she received income from the petitioner in the amounts of \$24,000 in 2007, \$32,000 in 2008, and \$15,200 in 2009. Copies of the beneficiary's Form 1040 tax returns for those years list her occupation as "administrator."

In describing the petitioning organization, the April 8, 2010 letter stated:

Our ministry is not a church and we do not hold church service on Sundays. The TWEM holds/sponsors conferences, meetings and prayer services in different cities through out [sic] the U.S. The ministry location [in Grand Prairie, Texas] is used to house our church offices where Minister Catherine works and lives out of.

Another document submitted with the petition listed the beneficiary's job title as "Minister and Administrator" and described her duties organizing the meetings and conferences held by the petitioner and leading worship services at these events, as well as other duties including "Visitation of Sick" and "Bereavement Counseling" and one hour per week spent answering calls to the petitioner's "Prayer line." The document also stated the following:

As a ministry we see the need for [REDACTED] to expand her role, and we anticipate that our Ministry will ordain her as a senior minister December 11th 2010 in Boston, MA and will charge her with the responsibilities of planting a church. We also look forward to a time when she will be able to plant more churches in areas where our ministry has identified a need. [REDACTED] is currently laying the groundwork for this to take place.

On August 2, 2010, USCIS issued a Request for Evidence, in part instructing the petitioner to submit "a history and description of the beneficiary's religious activity from the time he or she first arrived in the United States," including "position titles, detailed job descriptions to include hours per week, and dates the beneficiary held those positions."

In response, in a letter dated September 9, 2010, the petitioner stated that the beneficiary "is currently the only paid employee" but did not provide additional information or dates of employment relating to the beneficiary's religious work during the qualifying period. A two-page document entitled "Daily Activities" listed the beneficiary's job duties divided into three categories: "preconference, conference, and post conference." With the exception of "Preach during the meetings" and "Lead worship," all of the duties listed were administrative in nature, relating to the logistics of organizing conferences for the petitioning organization.

On May 18, 2011, USCIS issued a Notice of Intent to Deny the petition, in part based on a failed compliance review. The notice stated, in part:

The USCIS is in possession of the following information: On October 26, 2010 and again on February 28, 2010, a site visit was conducted at 1838 Crooks, Grand

Prairie, Texas. Both visits found no one at the address and no one answered. There was no signs or any information to establish that this location was a religious organization.

The investigating officer was able to make contact with both the treasurer of the organization, and the beneficiary by phone. It has been established the beneficiary is working and living in Massachusetts and not in Texas. The beneficiary stated the petitioner just opened up a church in Massachusetts and she is the minister there and she also plans conferences for the ministry. The beneficiary stated there are about 30 members of the church. And the church holds services inside hotels. The petitioner did not submit substantial documentation to show the location of the beneficiary's employment for the petitioner at [REDACTED]. The I-360 clearly states the beneficiary will be working in Texas, however, she is employed, and living in Massachusetts with her husband and son.

The notice also discussed the descriptions provided by the petitioner regarding the beneficiary's job duties, noting that the duties are mostly administrative rather than religious in nature.

In response, the petitioner submitted a letter from the signatory of the petition, [REDACTED], dated May 11, 2011, which stated, in part:

Until June 2009, [REDACTED] resided at and worked in an office devoted to the ministry, which is located at [REDACTED]. However, when she married [REDACTED] in May 2009, she decided to relocate with her husband to his home in Boston, Massachusetts. She was asked the reason for not notifying USCIS about the move, and to be perfectly honest with you it was simply and oversight. After several months of wedding planning and making the subsequent move to Massachusetts, it really never occurred to her about contacting your department, and she takes responsibility for failing to notify you.

Regarding the beneficiary's job duties, the letter stated:

[REDACTED] has been I have been [sic] a minister for several years now, but was formally ordained on December 111 [sic], 2010. ... Prior to ordination as a minister in the state of Massachusetts, her duties included the following: Visiting the bereaved; leading prayer services; leading worship services; and preaching. Now that I she [sic] is ordained ..., her duties have been expanded to include: Administering communion for worshippers; officiating at weddings and funerals; church planting and pastoral care. [REDACTED] is a small, evangelical ministry operation, and as such, she is forced to wear many hats and perform duties that are both clerical and ministerial in nature. Please be mindful of the fact that she is the only paid staff member, and consequently she has the responsibility of coordinating all ministry functions. She perform [sic] the duties listed on Page 2 of the Notice of Intent to

[REDACTED], but in addition, she preaches, teaches, speaks at conferences, and preaches on a weekly basis at [REDACTED], where she now serves as the pastor.

The petitioner submitted documentation listing the beneficiary as president and director of [REDACTED] and indicating that the church was organized on April 16, 2010. The petitioner also submitted a document entitled "Pastoral Duties and Activities, [REDACTED]" as well as a weekly schedule, providing a new description of the beneficiary's duties including her role as the minister of [REDACTED]. Additionally, the petitioner submitted a copy of the beneficiary's ordination certificate from [REDACTED], dated December 11, 2010. As documentation of the beneficiary's work as a minister, the petitioner submitted "DVD's of services where she has preached."

On June 1, 2011, the director denied the petition, in part finding that the petitioner had not established that the beneficiary had the requisite two years of continuous, qualifying religious work experience immediately preceding the filing of the petition. The director noted that, although the petitioner indicated that the beneficiary had worked as a minister for at least the two years immediately preceding the filing of the petition, the evidence suggests that her employment during the qualifying period was as an administrator rather than a minister.

On appeal, former counsel for the petitioner argues that the petitioner "has clearly demonstrated that the beneficiary's duties [in] the two years immediately preceding the filing of the Form I-360 petition were that of a minister." As additional evidence of the beneficiary's work as a minister during the qualifying period, the petitioner submits brochures for two conferences held by the petitioner, on May 28 to 30, 2009 and December 10 to 13, 2010, as well as copies of unlabeled, undated photographs.

The AAO agrees with the director's finding that the petitioner has failed to establish that the beneficiary has the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition. On appeal, former counsel asserts that the beneficiary worked as a minister for the two years immediately prior to filing, but the petitioner has not provided the dates of the beneficiary's employment to establish the continuity of her work during the qualifying period. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Further, the AAO agrees with the director that the petitioner has not established that the beneficiary was engaged in qualifying religious work. While the regulations provide that ministerial positions and religious occupations may contain limited, "incidental" administrative duties, the duties have to be primarily religious in nature. The descriptions provided by the petitioner indicate that, before beginning her role as the minister of [REDACTED], the beneficiary's duties were mostly administrative relating to the organization and management of religious conferences and meetings. The petitioner has provided evidence that, in addition to her administrative roles, the beneficiary also preached and led worship services at

these events. However, this evidence is not sufficient to show continuous employment that was primarily religious in nature.

The AAO also notes the inconsistencies in the petitioner's statements regarding the beneficiary's work experience during the qualifying period. In a letter dated April 8, 2010, the petitioner stated that the petitioner does not hold Sunday services and that the beneficiary "works and lives out of" the ministry location in Grand Prairie, Texas. The petitioner also asserted at the time of filing that "we anticipate that our Ministry ... will charge her with the responsibilities of planting a church." In response to the August 2, 2010 Request for Evidence which specifically asked for descriptions and dates of the positions held by the beneficiary, the petitioner provided only a description of the beneficiary's role in coordinating and leading conferences and meetings. However, in response to the Notice of Intent to Deny, the signatory of the petition stated that the beneficiary moved to Massachusetts in June 2009. Evidence submitted by the petitioner indicates that Faith Family Center was established in April 2010.

The signatory of the petition has asserted that the failure to disclose the beneficiary's move to Massachusetts was an "oversight" which the beneficiary "takes responsibility for." This assertion is not convincing as the petition and accompanying evidence were submitted by the petitioner a year after the beneficiary moved to Massachusetts and two months after [REDACTED] was established. 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).

The second issue to be discussed is whether the petitioner has established how it intends to compensate the beneficiary. The USCIS regulation at 8 C.F.R. § 204.5(m)(10) states:

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 Form I-360 petition and in an accompanying letter, the petitioner stated that "the salary offered to [REDACTED] will be \$24,000 per year plus housing and auto allowance." As stated above, the petitioner submitted copies of the beneficiary's Forms 1099-MISC indicating that she received income from the petitioner in the amounts of \$24,000 in 2007, \$32,000 in 2008, and \$15,200 in 2009. The petitioner also submitted a copy of its 2008 Form 990-EZ tax return showing net assets of \$37,000 and a copy of its 2007 Form 990 showing net assets of \$130,488.

The petitioner submitted copies of its Bank of America checking account statements showing account activity from March of 2008 to February of 2010. Additionally, the petitioner submitted a copy of a 2007 financial report for [REDACTED] as well as records of wire transfers from [REDACTED] to the petitioner.

The August 2, 2010 Request for Evidence instructed the petitioner to submit “a recent audit OR an annual financial statement which is signed and certified by the petitioner.” The notice also requested copies of the beneficiary’s last six pay statements. In response, the petitioner submitted a copy of its 2009 Form 990-EZ showing net assets of \$34,138. Additionally, the petitioner submitted copies of four processed checks from the petitioner to the beneficiary: three in the amount of \$2,000 dated December 11, 2009, July 22, 2010, and August 13, 2010 and one in the amount of \$1,972 dated February 25, 2010. In a letter, the petitioner described its relationship to FEM as follows:

History of Our Religious Organization

The Ministry was founded in 1989 by [REDACTED], currently the director of [REDACTED] is an international Ministry with an international outreach. The Ministry has branches one in the U.S. registered as [REDACTED].

In response to the April 18, 2011 Notice of Intent to Deny the petition, the petitioner submitted a copy of its 2010, Form 990 showing no income for that year and total expenses of \$49,280. The petitioner also submitted copies of processed checks from the petitioner to [REDACTED] with the notation “Donations” totaling less than \$10,000 between November 2010 and May 2011.

In the June 1, 2011 decision, the director noted that the petitioner is required to demonstrate its ability to pay as of the time of filing, in this case, June 10, 2010. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm’r 1971).

On appeal, the petitioner submits records of transfers made from [REDACTED] to the petitioner and a 2009 financial report for [REDACTED]. Former counsel for the petitioner acknowledges that the petitioner’s 2010 tax returns “demonstrate a loss,” but argues that the petitioner, “as the subsidiary of [REDACTED], receives additional income from [REDACTED] as needed.” Former counsel states:

While the income received by [REDACTED] for the year 2010 was only \$12,000.00, these payments to [REDACTED] provide substantial evidence that [REDACTED] assists [REDACTED] as needed and will continue to assist [REDACTED] in the future, in particular, once the Form I-360 is approved, providing required funds for the Beneficiary’s salary if needed. [REDACTED] financial records demonstrate that for the year 2009 there was a surplus of income of 28,367,208.00 Kenyan Shillings, which converts to

\$335,104.00 USD, more than enough to supplement any income needed to pay the Beneficiary's salary of \$24,000 per year plus housing and auto allowances. (See attached Exhibits C and D). Thus, the petitioning organization has established by clear and convincing evidence the ability to compensate the beneficiary once the Form I-360 is actually approved.

Despite former counsel's assertion, evidence of past wire transfers from [REDACTED] to the petitioner does not establish [REDACTED] intent to provide continued financial assistance to the petitioner including any "required funds for the beneficiary's salary if needed." The petitioner's tax return for that year showed no income and expenses of \$49,280. Further, the petitioner has only submitted evidence of three checks paid to the beneficiary during 2010 totaling \$5,972. Therefore, the AAO agrees with the director that the petitioner has not established its ability to compensate the beneficiary as of the time of filing the petition on June 10, 2010.

As an additional matter, the AAO finds that the petitioner has not established that the beneficiary qualified as a minister according to the regulations at the time of filing. The regulation at 8 C.F.R. § 204.5(m)(5) defines a minister as an individual fully authorized by the denomination "to conduct such religious worship and perform other duties usually performed by authorized members of the clergy of that denomination." The definition specifically excludes lay preachers or individuals "not authorized to perform duties usually performed by clergy."

On the Form I-360 petition, the petitioner indicated that the beneficiary would be working as a minister. The petitioner submitted a copy of a "Ministerial Certificate" issued to the beneficiary on January 6, 2002, affirming "her calling and dedication to the making of disciples." However, the petitioner's April 8, 2010 letter in support of the petition was printed on [REDACTED] letterhead which listed the beneficiary as "Lay Minister."

In response to the April 18, 2011 Notice of Intent to [REDACTED], the petitioner submitted a copy of a "Certificate of Ordination" issued on December 11, 2010 stating that "[REDACTED] has been ... solemnly and publicly set apart as a Minister of the Gospel of our Lord Jesus Christ." In his letter of May 11, 2011, the signatory of the petition stated that "prior to ordination," the beneficiary's duties included visiting the bereaved, leading prayer services, leading worship services, and preaching. He then stated, "[n]ow that I she [sic] is ordained..., her duties have been expanded to include: Administering communion for worshippers; officiating at weddings and funerals; church planting and pastoral care." These statements suggest that, prior to her ordination on December 11, 2010, the beneficiary was not fully authorized to perform duties reserved for members of the clergy. Therefore, the beneficiary was not a fully authorized minister as of the filing of the petition on June 10, 2010. As stated above, a petitioner must establish eligibility as of the date of filing. *Matter of Katigbak*, 14 I&N Dec. at 45, 49 (Comm'r 1971).

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.