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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

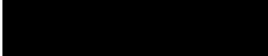


U.S. Citizenship
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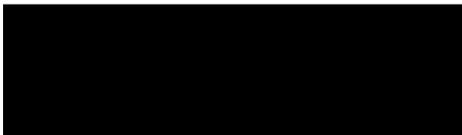
DATE: Office: CALIFORNIA SERVICE CENTER FILE: 

MAR 12 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:



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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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 and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 minister. The director determined that the petitioner had not established that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the petition.

Counsel asserts on appeal that the beneficiary receives non-salaried compensation and that the director “erred in concluding that there is insufficient [documentation] to support a finding that [the beneficiary] performed full-time work during the qualifying period.” Counsel submits a brief and copies of previously submitted documentation in support of the appeal.

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 issue presented on appeal is whether the petitioner has established that the beneficiary worked continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the visa petition.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m) provides that to be eligible for classification as a special immigrant religious worker, the alien must:

(4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed. A break in the continuity of the work during the preceding two years will not affect eligibility so long as:

- (i) The alien was still employed as a religious worker;
- (ii) The break did not exceed two years; and
- (iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

Therefore, the petitioner must show that the beneficiary worked 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 October 6, 2009. Accordingly, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

The 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.

With the petition, the petitioner submitted a September 29, 2009 letter from the beneficiary, who stated that she had “been serving in a full time ministry” with the petitioning organization “for the past five years.” She further stated:

My housing and meals have been provided by members of the church. My cell phone bill and spending money is [sic] given to me by my faithful sponsors, [redacted] and [redacted] and [redacted] and [redacted]. Through the ministry of [the petitioning organization] I have had the privilege to speak at many Schools, Conferences, Juvenile Hall, and Churches. I currently am on voluntary staff for [the petitioner] and I oversee discipleship which involves teaching, one-on-one counseling, and volunteer work in our surrounding communities. Weekly I help feed, cloth [sic] and minister to people in the city of Stockton, CA. . . . At this point I am not receiving a salary and I am considered volunteer staff.

The petitioner submitted no other documentation to establish the beneficiary’s qualifying work experience.

In a February 1, 2010 request for evidence (RFE), the director instructed the petitioner to:

Provide evidence that the beneficiary has been working for at least the two-year period immediately preceding the filing of the petition . . .

Provide experience letters written by the previous and current employers that include a breakdown of duties performed in the religious occupation for an average week. Include the employer’s name, specific dates of employment, specific job duties, number of hours worked per week, form and amount of compensation, and level of responsibility/supervision. In addition, submit evidence that shows monetary payment, such as pay stubs or other items showing the beneficiary received payment. If any work was on a volunteer basis, provide evidence to show how the beneficiary supported himself during the two-year period or what other activity the beneficiary was involved in that would show support. If any of the experience was gained while working in the United States provide evidence that the beneficiary was employed while in lawful status.

In response, the petitioner submitted the following documentation:

1. A July 2009 letter from [redacted] the petitioner’s parent organization. [redacted] stated that the

beneficiary had been with the organization for four years and that the [REDACTED] [REDACTED] "has supported her financial needs (shelter, food, clothing, etc)." The petitioner provided no documentation to establish any support provided by the [REDACTED] [REDACTED]

2. A March 9, 2010 letter from [REDACTED] the petitioner's pastor and the official who signed the petition on behalf of the petitioner, in which he stated that since the beneficiary's arrival:

[S]he has had many faithful sponsors who support her for her personal needs, such as clothing, hygiene products, and food. These sponsors are my wife [REDACTED] and I, [REDACTED] and [REDACTED] and [REDACTED] and [REDACTED] [REDACTED]. She also has received numerous one time donations of money from members of the church and [REDACTED]

Regarding the beneficiary's housing, [REDACTED] stated:

[The beneficiary's] housing from August 2005-September 2009 has been provided by different members of the church which we refer to as home openers. In Master's Commission students stay with home openers during their school year. Home openers provide shelter and food for the students in their homes. All transportation is provided by the students with vehicles. . . . In October 2009, we partnered with a man named [REDACTED] who purchased an apartment complex and 4 bedroom home in Lodi, CA. He has generously allowed our female staff including [the beneficiary], to live in the house on the property with all rent and utility expenses paid. So again [the beneficiary's] shelter and utilities are 100% covered with no out of pocket expenses for her. The staff girls work together to buy groceries and share with one another.

3. A March 1, 2009 letter from [REDACTED] who stated that he owned [REDACTED] and that under an arrangement with [REDACTED], he allows the petitioner's female staff, including the beneficiary, to reside at his apartment complex at no cost and that he pays the rent and utilities. The petitioner provided no other documentation to establish that [REDACTED] [REDACTED] ownership of an apartment complex or the beneficiary's residency there.
4. A "vendor quick report" for the period May 1, 2007 through March 4, 2010 containing 16 entries. The document has the beneficiary's name with the terms "bill" and "bill pmt - check" underneath and items such as "service fee," "love offering," and Anaheim Trip" identified for some of the entries under the heading "memo." The petitioner offers no other explanation as to the purpose of this document or what it purports to establish.
5. A March 1, 2010 letter from [REDACTED] and [REDACTED] who stated that they provided the beneficiary with money over the past three years. They further stated, "The majority of our sponsorship to her has been through numerous small increments of \$100.00 cash gifts. We helped sponsor a trim and gifted her \$350 in 2007. Most recent gift was of \$300.00 in

October of 2009. I have purchased [her] toiletries & clothing.” The petitioner submitted no documentation to establish any monetary support provided by the Saucedos.

6. An undated letter from [REDACTED] who stated that when she met the beneficiary three years previously, “I knew that I would support her financially on a monthly basis.” [REDACTED] did not provide any other information regarding her support of the beneficiary, including specific monetary amounts or dates the funds were provided.
7. A copy of the petitioner’s gas bill for the 30-day period ending January 12, 2010.
8. Copies of the January and February 2010 phone bills from [REDACTED] for [REDACTED] which shows a list of phone numbers, one of which was circled with a handwritten note stating “we pay [the beneficiary’s] cell phone” and another which stated “proof that we pay [the beneficiary’s] cell phone.”
9. Copies of the beneficiary’s bank statements for the period July 2009 to December 2009, on which deposits have been highlighted and with a handwritten note stating “proof of money given to [the beneficiary].”

The director denied the petition, determining that the petitioner had failed to submit IRS Forms W-2 for the beneficiary and had thus failed to establish that the beneficiary worked continuously on a full-time basis during the qualifying two-year period.

On appeal, counsel states that “[a] lack of salary does not mean that the petitioner did not employ the beneficiary throughout the qualifying period preceding the filing of the petition” and that the regulation requires submission of IRS documentation “if it is available.” Citing the precedent decision *Matter of Hall*, I&N Dec. 203 (BIA 1982), counsel asserts:

Similarly in the instant case, [the beneficiary] is considered a non-salaried “employee” for immigration purposes. While she is not paid a cash wage, [she] like the respondent in *Matter of Hall*, does receive remuneration in the form of board, room, donations, gifts, and other incidental expenses from her patrons in return for her efforts to perform services on behalf of the Church.

As counsel noted, the current regulation permits the petitioner to establish the beneficiary’s qualifying work experience through non-salaried compensation. However, the record does not establish that the beneficiary received compensation for her work with the petitioner. According to the beneficiary’s statement and her résumé, she served with the petitioner as a volunteer and received support from “patrons” who provided her with financial assistance that allowed her to pursue her association with the petitioning organization. There is nothing in the record to establish that the beneficiary was compensated for her work with the petitioning organization.

The regulation at 8 C.F.R. § 204.5(m)(11)(iii) provides that the petitioner may establish the beneficiary’s prior work experience if the beneficiary received no salary but provided for his or her own support. The petitioner must show how the beneficiary maintained support 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.

Although the petitioner provided letters from individuals who stated that they provided support to the beneficiary, the petitioner submitted no documentation to establish this support. 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)). Although the petitioner provided copies of the beneficiary's bank statements that show deposits to her account, it provided no documentation as to the source of those deposits. Additionally, while Pastor Saldano stated that he paid the beneficiary's phone bills, nothing in the record associates the phone number he indicated with the beneficiary.

Furthermore, volunteer work does not establish the beneficiary's qualifying work experience. In the supplementary information for the final rule, as it relates to self-support, the rule stated:

Compensation Requirements

USCIS proposed to add a requirement that the alien's work, under both the immigrant and nonimmigrant programs, be compensated by the employer. Specifically, the rule proposed amending the definition of "religious occupation" to require that an occupation be "traditionally recognized as a compensated occupation within the denomination." Commenters were concerned that the proposed rule would exclude many religious workers who do not receive salaried compensation, but may receive stipends, room, board, or medical care, or who may rely on other resources such as personal savings, rather than salaried or non-salaried compensation.

In response to the commenters' concerns, USCIS is clarifying that compensation can include either salaried or non-salaried compensation. Under the Internal Revenue Code, non-salaried support, such as stipends, room, board, or medical care, qualifies as taxable compensation unless specifically excluded.

. . .

Several commenters stated that the proposed compensation requirement would exclude programs that traditionally utilized only self-supporting religious workers from participating in the R-1 visa program. The comments noted that religious workers who are self-supporting receive neither salaried nor non-salaried compensation; instead, they may rely on a combination of resources such as personal or family savings, room and board with host families in the United States, and donations from the denomination's local churches. Additionally, the comments noted that self-supporting religious workers are currently admitted under the R-1 visa program. In response, the final rule will continue to allow these aliens to be admitted under the R-1 visa classification. USCIS will, however, to preserve its ability to prevent fraud, permit self-supporting religious workers only under very

limited circumstances, and, consistent with other provisions of the final rule, require specific types of documentation.

The change provides that if the nonimmigrant alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work within the organization, which is part of a broader, international program of missionary work sponsored by the denomination.

USCIS again notes that the religious worker visas are not the exclusive means by which an alien may be admitted to the United States to perform self-supported religious work, including missionary work. Current regulations specifically provide for the admission of missionaries under the general visitor for business visa

73 Fed. Reg. at 72281-72282. *See also* Fed. Reg. at 72278.

As specifically provided for in the final rule, and as noted earlier, the only religious workers who may rely on self-support rather than actual salary or in-kind support as evidence of their prior employment are those workers in an established missionary program under an R-1 or B-1 nonimmigrant visa. In this instance, the record does not establish that the beneficiary was in a missionary program. As indicated in the supplementary information for the proposed rule:

USCIS recognizes that legitimate religious work is sometimes performed on a voluntary basis, but allowing such work to be the basis for an R-1 nonimmigrant visa or special immigrant religious worker classification opens the door to an unacceptable amount of fraud and increased risk to the integrity of the program. 72

Fed. Reg. 20442, 20446 (Apr. 25, 2007).

The beneficiary's voluntary work in the United States is therefore not qualifying experience for the purpose of this visa classification.

Furthermore, the beneficiary stated in her September 29, 2009 letter that she graduated from her "internship" in May 2009 "and recently received my Minister's License from [REDACTED] [REDACTED] She further stated that she "received a full ride scholarship for Bible College and Internship." The record reflects that the beneficiary received her ministerial license on September 9, 2009, a month before the petition was filed. The regulation at 8 C.F.R. § 204.5(m)(5)(D) provides that "[r]eligious study or training for religious work does not constitute a religious occupation." Therefore, the beneficiary's schooling and training do not qualify as work experience for the purpose of this visa classification.

The petitioner has not submitted evidence to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition.

Beyond the decision of the director, the petitioner has not established how it will compensate the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(10) provides that the petitioner must submit:

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 for Amerasian, Widow(er), or Special Immigrant, the petitioner stated that the beneficiary would not be paid a salary but that the church “will cover all clothing and housing expenses” and that “all her expenses will be covered by church.” The petitioner submitted no documentation with the petition to establish how it would provide this compensation to the beneficiary.

In response to the RFE, the petitioner provided a copy of its financial report to the General Council of the Assemblies of God on which it reported \$1.2 million in church income. However, it provided no information regarding its financial obligations against that income, or any other verifiable documentation as to how it will compensate the beneficiary.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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.