

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



C₁

Date: **MAR 16 2012** Office CALIFORNIA SERVICE CENTER

FILE:

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 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church treasurer who seeks classification 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). The director determined that the petitioner had not provided evidence establishing that his church qualified as a nonprofit religious organization with the Internal Revenue Service (IRS) at the time of filing the petition, that the position qualifies as that of a religious occupation, that the petitioner had been continuously employed as a religious worker for the two years preceding the filing date, and that the church has the ability to compensate the petitioner.

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 October 1, 2008, 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 October 1, 2008, 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 on appeal are whether the petitioner has provided evidence establishing that his church qualified as a nonprofit religious organization with the IRS at the time of filing the petition, whether the position qualifies as that of a religious occupation, whether the petitioner has demonstrated his continuous employment for at least the two-year period preceding the filing of the petition, and whether the petitioner has established the church's ability to compensate.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(8) reads, in full:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or
- (iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, as something other than a religious organization:
 - (A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;
 - (B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;
 - (C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and
 - (D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

On appeal, the petitioner submitted a copy of an IRS 501(c)(3) letter for his church dated April 12, 2010. The AAO notes that the 501(c)(3) letter does provide tax exempt status for the petitioner's employer. However, the letter reveals that the church did not receive such status until April 12, 2010, which fell after the petition's filing date of March 5, 2010. Thus, at the time of filing, the petitioner's employer did not possess tax exempt status as required by 8 C.F.R. § 204.5(m)(8). A petitioner must establish the elements for the approval of the petition at the time of filing. A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). A petitioner may not

make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1988). Accordingly, the AAO concurs with the director's finding that the petitioner failed to submit the required evidence of qualifying tax-exempt status.

As it relates to the second issue, in her May 17, 2010 decision, the director found the petitioner's position of treasurer for the church to not constitute a qualifying religious occupation. The director noted that the petitioner had submitted a summary of his duties, which included taking responsibility for the receipts and disbursements of the church. The director also stated that the petitioner had failed to provide documentary evidence indicating that his duties are directly related to the religious creed of the denomination.

The AAO notes that the Form I-360 states that the petition is for a treasurer, but the petitioner's church's June 12, 2010 letter states that the petitioner has been working as a church elder. The petitioner additionally submitted a job description for a church elder on appeal. The AAO notes that the petitioner may not make material changes to the petition in order to conform to the regulations. *Izummi*, 22 I&N Dec. at 176.

The petitioner additionally submitted his church's bylaws on appeal. The bylaws delineate the duties of church treasurer. The USCIS regulation at 8 C.F.R. § 204.5(m)(5) defines religious occupation as 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.

The petitioner's listed duties all relate to financial matters such as being responsible for funds, maintaining accounts, updating financial records, and providing status updates. Other than being performed for a church, the duties do not appear to be religious in nature. Accordingly, the petitioner has not shown that his duties primarily relate to a traditional religious function and are recognized as a religious occupation within the denomination, as required by 8 C.F.R. § 204.5(m)(5)(A), or that his duties are primarily related to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination, as required by 8 C.F.R. § 204.5(m)(5)(B).

With regard to the third issue, the 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 he 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 March 5, 2010. Accordingly, the petitioner must establish that he had been 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.

In her decision, the director noted that the petitioner submitted no documentation of his qualifying work experience with the petition. In his June 12, 2010 letter submitted on appeal, [REDACTED] stated that the petitioner had been a non-compensated employee of the church since June of 2006 and had been working full-time, but uncompensated, as a church elder during the two-year qualifying period. The petitioner submits no evidence of non-salaried compensation such as room and board and no IRS documentation as required by the regulation. Again, [REDACTED] did not explain why the position was listed as being for a treasurer on the petition.

Also on appeal, the petitioner submitted copies of his uncertified 2007 to 2009 IRS Forms 1040 and Forms 1099-MISC. The petitioner's tax documents reflect that he was working as a landscaper for those years for a separate employer. The petitioner has failed to demonstrate how he was purportedly able to work full-time for the church and also be able to work enough as a landscaper to support himself and his family.

Regarding the petitioner's uncompensated volunteer work, in supplementary information published with the proposed rule in 2007, USCIS stated:

The revised requirements for immigrant petitions and nonimmigrant status require that the alien's work be compensated by the employer because that provides an objective means of confirming the legitimacy of and commitment to the religious work, as opposed to lay work, and of the employment relationship. Unless the alien has taken a vow of poverty or similarly made a formal lifetime commitment to a religious way of life, this rule requires that the alien be compensated in the form of a salary or in the form of a stipend, room and board, or other support so long as it can be reflected in a W-2, wage transmittal statements, income tax returns, or other verifiable IRS documents. 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. In this rule, USCIS is proposing to implement bright lines that will ease the verification of petitioner's claims in the instances where documentary evidence is required.

72 Fed. Reg. 20442, 20446 (April 25, 2007). When USCIS issued the final version of the regulation, the preamble to that final rule incorporated the above assertion by reference: "The rationale for the proposed rule and the reasoning provided in the preamble to the proposed rule remain valid and

USCIS adopts the reasoning in the preamble of the proposed rule in support of the promulgation of this final rule.” 73 Fed. Reg. 72275, 72277 (Nov. 26, 2008).

The self-support permitted by the regulation relates to nonimmigrant religious workers who are part of an established missionary program. The petitioner has not claimed to be part of such a program, nor does the record reflect his participation in such a program. Accordingly, the petitioner’s voluntary work in the United States is not qualifying. In addition, the petitioner has not established that any employment was authorized. Therefore, the petitioner has failed to establish that he worked lawfully and continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the visa petition.

Finally, the AAO concurs with the director’s finding that the petitioner has not provided sufficient information demonstrating the church’s ability to compensate him. 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 [Internal Revenue Service] documentation, such as IRS Form W-2 [Wage and Tax Statement] 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 Part 8 of the petition, the petitioner stated that the church would not be providing him with salaried compensation. The petitioner has made clear that the church has not compensated him in the past for his work, nor does it have plans to do so in the future. The AAO notes that 8 C.F.R. § 204.5(m)(10) states that an employer must intend to compensate the employee for performance of the proffered position in the future. Such compensation may be salaried or non-salaried. The AAO highlights the fact that future self-support as an immigrant is not qualifying. Accordingly, the AAO finds that the petitioner has failed to meet the requirements of 8 C.F.R. § 204.5(m)(10).

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.