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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: **MAR 20 2012** Office: CALIFORNIA SERVICE CENTER

FILE: 

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:

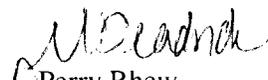


INSTRUCTIONS:

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

The self-petitioner 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), to perform services as a staff minister. The director determined that the self-petitioner had not established that she had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the self-petitioner submits a brief from counsel, a copy of the R-1 visa page from her passport, as well as materials regarding the relationship between the [REDACTED]. These materials include letters from officials of both entities, a Statement of Information from the State of California Secretary of State regarding the [REDACTED] and a copy of the Certificate of Ordination [REDACTED].

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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the alien 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 self-petitioning alien must establish that she was continuously performing qualifying religious work in lawful 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 issue in this case is whether the self-petitioning alien engaged in unauthorized employment during the two-year qualifying period, thereby failing to maintain lawful status and failing to meet the requirements of 8 C.F.R. §§ 204.5(m)(4) and (11).

In a letter submitted with the I-360 petition, the president of the [REDACTED] states the following:

This is to certify that [REDACTED] is an ordained minister who has been serving in the [REDACTED] and [REDACTED] since September 2004.

During the same period of time, she has been serving as a minister in our church under the name [REDACTED]

A separate letter from the [REDACTED] also submitted with the petition, confirms that the self-petitioner has worked at the church since 2004.

On February 23, 2010, USCIS issued a Request for Evidence which, in part, asked the self-petitioner for additional information regarding her employer as well as documentation to establish that she had maintained lawful status under U.S. immigration law during the two-year qualifying period immediately preceding the filing date of the petition. In a letter submitted in response to the request, counsel states that the self-petitioner was self-employed as a minister "pursuant to an R-1 visa" during the two-year qualifying period. Counsel goes on to state that the self-petitioner "worked as a minister for [REDACTED] as well as [REDACTED] [REDACTED] As evidence of her employment, the self-petitioner submitted copies of tax Form 1099 showing compensation from [REDACTED] for 2008 and 2009, as well as copies of cancelled checks from [REDACTED] to the self-petitioner showing monthly payments made during the period of December 2006 to March of 2009. Letters were submitted from both employers describing the relationship between the two entities as "interdependent."

In response to the request for documentation of her lawful status during the two-year qualifying period, the self-petitioner submitted a photocopy from her passport showing an R-1 nonimmigrant visa, issued on September 20, 2004 with an expiration date of September 19, 2009, authorizing the alien to work for [REDACTED]

The regulations at 8 C.F.R. §§ 214.2(r)(3)(ii)(E), as were in effect in 2004 when the beneficiary was approved as an R-1 nonimmigrant, required an authorized official of the organization to provide the "name and location of the specific organizational unit of the religious organization" for which the alien would work. The regulation at 8 C.F.R. § 214.2(r)(6) stated:

Change of employers. A different or additional organizational unit of the religious denomination seeking to employ or engage the services of a religious worker admitted under this section shall file Form I-129 with the appropriate fee ... Any unauthorized change to a new religious organizational unit will constitute a failure to maintain status..."

Further, pursuant to 8 C.F.R. § 214.1(e), a nonimmigrant may engage only in such employment as has been authorized. Any unlawful employment by a nonimmigrant constitutes a failure to maintain status.

In the decision issued on August 2, 2010, the director cites unauthorized employment as the reason for denying the petition, noting that the self-petitioner has not shown that she was authorized to work for [REDACTED] and therefore violated her lawful nonimmigrant status by engaging in such employment.

On appeal, counsel argues that the self-petitioner did not violate her R-1 nonimmigrant status because the two employers for whom she worked are “part of the **same** religious organization” (emphasis in original) through whom she obtained her status. As cited above, the regulations in effect at the time explicitly required that a separate or additional unit of the religious denomination file an additional Form I-129 petition. The self-petitioner’s R-1 nonimmigrant visa only authorized her employment with the named organizational unit [REDACTED]. The AAO agrees with the director’s finding that the self-petitioner engaged in unauthorized employment by working for the church [REDACTED] and that unauthorized employment constituted a failure to maintain lawful status. Therefore, the AAO agrees with the director’s determination that the self-petitioner has failed to establish that she has the requisite two years of lawful qualifying work experience immediately preceding the filing of the petition.

In a brief submitted on appeal, counsel alternately argues that, even if the AAO finds that the self-petitioner violated her R-1 nonimmigrant status, “the Form I-360 should not be denied because the Acting Director has not followed the appropriate procedures with respect to Petitioner’s R-1 status.” Counsel states:

According to 8 C.F.R. § 214.2(r)(18)(iii), “[t]he director **shall** send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that...(3) The petitioner violated the terms and conditions of the approved petition...” (emphasis added). This notice may be sent at any time, even after the expiration of the petition. 8 C.F.R. § 214.2(r)(18)(ii). However, unless and until such a notice is sent to [REDACTED] pursuant to the above referenced section, Petitioner should be held to have been in valid R-1 status prior to the submission of her Form I-360 petition. [...] The adjudication of Petitioner’s Form I-360 petition is not the appropriate forum to contest the validity of [REDACTED] approved Form I-129 petition or maintenance of Petitioner’s R-1 status.

The AAO is not persuaded by counsel’s argument that USCIS must revoke an R-1 approval before an alien’s failure to maintain lawful R-1 nonimmigrant status can be considered for the purposes of adjudicating a Form I-360 petition. It is appropriate for USCIS to examine and consider an alien’s compliance with immigration law for any periods of stay in the U.S. during the two-year qualifying period immediately prior to filing the immigrant petition, since lawful immigration status during that period is a requirement for eligibility under 8 C.F.R. § 204.5(m)(4).

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.