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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**

**PUBLIC COPY**



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Date: **MAR 22 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 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 teacher-trainer. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition, and that the petitioner had not established how it would compensate the beneficiary.

On appeal, the petitioner submits letters, as well as documentation regarding the support and housing of the beneficiary by a fellow minister and his family who are members of the petitioning church.

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 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 March 11, 2010. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work 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.

According to the Form I-360 petition and supporting materials, the beneficiary arrived in the United States on November 18, 2009 in B-1 nonimmigrant status. In a letter in support of the petition, the petitioner asserts that the beneficiary has been a "missionary volunteer teacher" with the petitioner since December of 2009. The letter also stated, "[w]e support [redacted] with food, transport, shelter and accommodation at [redacted]." In a separate letter, [redacted] House describes itself as "a Christian group providing homeless men with a structured home and teaching them life skills and discipline with a distinct Bible emphasis." The petitioner also submitted letters from other churches regarding intermittent speaking engagements that the beneficiary has had, as well as letters from other organizations for whom the beneficiary has done volunteer missionary work both in the United States and in Africa. On the Form I-360 petition in Part 8, "Employer Attestation," the petitioner indicated that it does not attest to statement 11

regarding whether the beneficiary “has been a religious worker for at least 2 years immediately before Form I-360 was filed and is otherwise qualified for the position offered.”

On May 13, 2010, USCIS issued a Request for Evidence seeking, in part, more evidence regarding the beneficiary’s work history. In response to the request, the petitioner again provided letters regarding volunteer work and short term speaking engagements that the beneficiary has done. On a second “Employer Attestation” form, the petitioner again answered “No” in response to the statement regarding the beneficiary’s two years of religious work and qualifications for the position.

Any work performed by the beneficiary that was not authorized and as a volunteer is not qualifying. In the preamble to the proposed rule, USCIS recognized that although “legitimate religious work is sometimes performed on a voluntary basis . . . allowing such work to be the basis for . . . special immigrant religious worker classification opens the door to an unacceptable amount of fraud and increased risk to the integrity of the program.” *See* 72 Fed. Reg. 20442, 20446 (April 25, 2007). The regulation at 8 C.F.R. § 204.5(m)(11) specifically requires that the alien’s prior experience have been compensated either by salaried or non-salaried compensation (such as room and board), but can also include self-support under limited conditions. In elaborating on this issue in the final rule, USCIS determined that the sole instances where aliens may be uncompensated are those aliens “participating in an established, traditionally non-compensated, missionary program.” *See* 73 Fed. Reg. at 72278. *See also* 8 C.F.R. § 214.2(r)(11)(ii). The petitioner has neither claimed nor established that the beneficiary was participating in such a program. Accordingly, any time the beneficiary may have spent in the United States or abroad “working” as a volunteer cannot be considered qualifying employment.

In addition, Service records do not indicate that the beneficiary has ever held any lawful status in the United States that would have authorized him to continuously work for the petitioner during the qualifying two-year period.

In a letter accompanying the Form I-290B Notice of Appeal, the petitioner again acknowledges that the beneficiary does not have the requisite two years of qualifying work experience, but requests that the beneficiary “be granted an exception” to the requirement. The AAO does not have authority under the Act or the regulations to grant such an exception.

The AAO agrees with the director’s finding that the petitioner has not established that the that the beneficiary has the requisite two years of qualifying work experience immediately preceding the filing date of the petition.

In the final decision issued on July 6, 2000, the director also determined that the petitioner had not established its ability to compensate the beneficiary. The 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, the petitioner indicated that the beneficiary would receive non-salaried compensation in the form of “free transport, food, accommodation when he travel[s], care for any rising needs, support offer \$1,000.” In the Request for Evidence issued on May 13, 2010, USCIS instructed the petitioner to submit additional evidence regarding how it would compensate the beneficiary. In response to the request, the petitioner did not submit any documentation regarding its finances. On the new “Employer Attestation” form submitted in response to the request, the petitioner indicated that it would provide housing, food and transportation for the beneficiary at [REDACTED]

[REDACTED] A letter from the beneficiary, dated June 18, 2010, states that this is the address of [REDACTED]” members of the petitioning church.

On appeal, the petitioner submits additional evidence regarding the beneficiary’s housing arrangements with the [REDACTED] family and their ability to support the beneficiary. On the Form I-290B, the petitioner states that [REDACTED] have shared that the Lord had put in their heart to take care [of] [REDACTED]” A letter from [REDACTED] states he and his family “will host [the beneficiary] and assist in transportation as well as meals.” The petitioner has also submitted a lease agreement between the beneficiary and [REDACTED] for “\$0 per month,” a Form I-134, Affidavit of Support from the [REDACTED] as well as IRS forms W-2 and 1040 for the [REDACTED] for 2009.

The AAO agrees with the director’s finding that the petitioner has failed to meet the evidentiary requirements relating to compensation. The petitioner has not established that the proffered position is a compensated position. The regulation at 8 C.F.R. § 204.5(m)(2) requires that the beneficiary is “coming to the United States to work in a full time ... compensated position” as a minister or in a qualifying religious occupation or vocation. The regulation at 8 C.F.R. § 204.5(m)(7)(xi) requires the petitioning employer to attest to the statement that “any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer.” Although the petitioner did attest to this statement on the Form I-360, the evidence submitted by the employer shows that the beneficiary’s room and board will be provided by a host family who has volunteered to support the beneficiary, not by the petitioner as compensation for work performed.

Beyond the director’s decision, the AAO also finds that the petitioner has failed to establish that the beneficiary has been a member of the petitioner’s denomination for at least the two years immediately preceding the filing date of the I-360 as required under 8 C.F.R. § 204.5(m)(1). The petitioner has indicated on the “Employer Attestation” form that it does not attest to the statement

that the beneficiary “has been a member of the prospective employer’s denomination for at least 2 years before the Form I-360 was filed.” The petitioner has identified itself as affiliated with the Pentecostal denomination, while the evidence submitted suggests that the beneficiary was a member of the Baptist denomination before coming to the United States on November 18, 2009.

The AAO may deny an application or petition that fails to comply with the technical requirements of the law 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 (9<sup>th</sup> 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.