

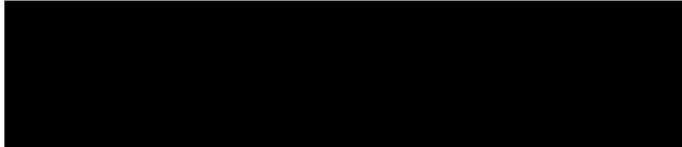
**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY

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**



C1

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 pastor. 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.

On appeal, the petitioner submits letters from the petitioner, signed "Certification" letters from various church officials, a description of the beneficiary's daily schedule, copies of certificates held by the beneficiary, and a letter of agreement between the beneficiary and 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 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 August 31, 2009. 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.

In a letter submitted with the Form I-360 petition, the petitioner states that the beneficiary has been working full time as a pastor for the petitioner since June of 2001. According to the petition and the director's findings, the beneficiary arrived in the United States on June 14, 1992 in nonimmigrant visitor status which expired on July 13, 1992. The regulation at 8 C.F.R. § 214.1(e) states that aliens in such status "may not engage in any employment." Service records do not indicate that the beneficiary has ever held any lawful status in the United States that would have authorized him to work for the petitioner during the qualifying two-year period. Accordingly, any work performed by the beneficiary during that time is not considered qualifying prior experience under 8 C.F.R. §204.5(m)(11).

On January 19, 2010, USCIS issued a Notice of Intent to Deny the Form I-360 petition based on the beneficiary's lack of lawful immigration status during the two-year qualifying period. In response, the petitioner submitted a brief in which the petitioner stated that the beneficiary has been receiving

a “love gift in the amount of \$1,100 per month” towards his training and studies throughout the time he has been working for the petitioner.

On appeal, the petitioner does not argue that the beneficiary was in lawful status, but rather that he was not paid a salary for his full-time work, and therefore was not engaged in unlawful employment. The petitioner states the following:

Our church agreed not to pay [REDACTED] a salary until he received a work permit. He was receiving love offerings as compensation prior to receiving his work permit. Not receiving a salary does not negate the fact that his employment was lawful, full time employment.

The regulation at 8 C.F.R. § 204.5(m)(11) requires the beneficiary’s previous religious work to have been compensated, either through salaried or non-salaried compensation, with limited exceptions for self-support outlined in the USCIS regulations at 8 C.F.R. § 214.2(r)(11)(ii). The circumstances for self-support involve the beneficiary’s participation in an established program for temporary, uncompensated missionary work. The petitioner has not shown or claimed that the beneficiary participated in such a program, and has offered no evidence that the beneficiary provided for his own support. The petitioner has submitted conflicting evidence regarding the issue of the beneficiary’s compensation. The petitioner states that the beneficiary received no salary. However, the “Certification” letters submitted on appeal and signed by various church officials, all contain a statement that the beneficiary “is working full time and the church compensates him with the right salary.” The regulation at 8 C.F.R. § 204.5(m)(11) requires the petitioner to submit evidence of compensation in the form of IRS documentation, or evidence of qualifying self-support. The petitioner has submitted neither.

Regarding the petitioner’s claim that the beneficiary’s volunteer work within the United States is qualifying experience, any work performed by the beneficiary 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). Accordingly, any time the beneficiary may have spent in the United States “working” as a volunteer for the petitioner cannot be considered qualifying employment.

It is clear that the petitioner has not met the evidentiary requirements regarding compensation as required under 8 C.F.R. §204.5(m)(11). Regardless, the issue of whether or not the beneficiary was compensated has no effect on the beneficiary’s lack of lawful immigration status during the two-year qualifying period. The AAO agrees with the director’s finding that the petitioner has not established that the beneficiary has the requisite two years of continuous and lawful work experience immediately preceding the filing date of the petition.

The AAO notes that in response to the January 19, 2010 Notice of Intent to Deny, the petitioner stated that a Form I-130 Immigrant Petition for Relative was filed by the beneficiary's sister on his behalf on April 30, 2001. The petitioner asserted that the beneficiary is therefore granted protection under section 245(i) of the Act. Section 245(i) of the Act permits certain aliens to adjust status in the United States despite otherwise disqualifying unlawful presence. The question of whether the 2001 Form I-130 petition qualifies the beneficiary for section 245(i) relief lies outside the scope of this proceeding.

The present proceeding is not an adjustment proceeding. Section 245(i)(2)(A) of the Act requires that an alien seeking 245(i) relief must be "eligible to receive an immigrant visa." That is, the alien must be the beneficiary of an approved immigrant visa petition. The law does not require USCIS to approve every petition filed on behalf of aliens who seek 245(i) relief. Rather, such relief presupposes an already approved petition. Without an approved petition, the beneficiary has no basis for adjustment of status, and therefore section 245(i) relief never comes into play.

The regulations at 8 C.F.R. § 204.5(m) say nothing about what benefits are or are not available to the beneficiary at the adjustment stage, and the director, in this proceeding, did not bar the beneficiary from ever receiving benefits under section 245(i) of the Act. Rather, the director found that the beneficiary's lack of lawful status during the two-year qualifying period prevents the approval of the present petition. The AAO agrees with the director's finding.

As an additional matter, the AAO finds that the petitioner has not established that it has the 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 states that the church will provide the beneficiary with monetary compensation as well as housing, but does not specify an amount that will be paid. No salary amount is given in the documents that were submitted with the petition, but a "Letter of Agreement" between the petitioner and beneficiary, submitted on appeal, states that the beneficiary will receive a salary of \$1,800 per month. The petitioner has not submitted any IRS documentation relating to its ability to compensate the beneficiary, nor has it provided any explanation for its absence or provided any comparable, verifiable documentation regarding its finances.

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 (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.