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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



C1

DATE: **MAR 30 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 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 secretary at [REDACTED] Los Angeles, California. The director determined that the beneficiary's intended work does not qualify as a religious occupation.

On appeal, the petitioner submits a personal statement, witness letters and a certificate of ordination.

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)(5) defines a "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 filed the Form I-360 petition on October 5, 2010. In an accompanying employer attestation, the church's vice president, [REDACTED] provided the following information:

Title of position offered:
SECRETARY

Detailed description of the alien's proposed daily duties:

She will be answering all phone calls, she will be in charge of organizing the Minister and all of the Board of Directors, by scheduling their appointments, making agendas for all of the meetings, having the book of minutes and the membership book up-to-date, she is also in charge of organizing all of the events and the food distribution program that we host every Tuesday afternoon. . . .

Description of the alien's qualifications for the position offered:

As a cashier in a gas station for 5 years, she learned to have great customer service and excellent bookkeeping skills. She knows Accounts Payable/Accounts Receivable. She learned to create Financial Statements such as Income Statement & has applied all of these skills into the Secretary position because she helps the CFO count all of the tithes/Offerings/and Activities Income & helps collect receipts for the Expense Report.

In a separate letter dated August 31, 2010, [REDACTED] stated that the church "has employed [the petitioner] as the Secretary of this congregation since the year 2010."

The director denied the petition on March 1, 2011, stating that the petitioner's duties "are primarily administrative or support and are ineligible for consideration as a religious occupation" under the regulations cited above.

On appeal, the petitioner states: "I was denied the Form I-360 because I applied as a secretary, but in reality I am the Co-Pastor and the Minister's wife and my duties go beyond that of a secretary. I am also the President of the Ladies in the congregation of 175 members." The petitioner goes on to list numerous duties such as counseling, Bible studies, evangelism and hospital visitations.

Three letters accompany the appeal. One is a reprint of [REDACTED] August 31, 2010 letter, in which [REDACTED] identified the petitioner as “the Secretary/Women Coordinator for our congregation.” [REDACTED] did not list the duties of the “Women Coordinator” or give any indication that the petitioner was the congregation’s co-pastor.

The other two letters on appeal are undated. [REDACTED] treasurer of [REDACTED] [REDACTED] states:

[The petitioner] is a spiritual guide for our church. The[] reason we gave her the title of secretary is because she is the Minister’s Personal Secretary because she is his wife but in reality she is the Co-Pastor in our congregation. She leads the wom[e]n and she conducts prayer services for the wom[e]n and helps guide them and prays for their needs and is there for them. . . . She guides and preaches and does all of the duties of the Minister and helps with all of the coordination and organization of the church.

[REDACTED] president and chief executive officer of [REDACTED] California (from which the petitioner’s church split off), states:

I certify that [the petitioner] has the capacity and the authority to preach the Gospel of Jesus Christ and perform at baptisms, weddings, and funerals. . . . She was cordially commenced as a Co-Pastor of Christ on Saturday May 17, 2008 by our ministry. . . . [S]he was the Co-Pastor for our ministry since the year 2002 until the year 2007, when she left to open her own church with her husband the minister of their church.

The petitioner submits an original Certificate of Ordination, purportedly issued by [REDACTED] [REDACTED] on May 17, 2008.

The petitioner’s initial submission did not contain any indication that the petitioner was an ordained minister, let alone co-pastor of her church. The employer attestation described her as a secretary, and listed job duties consistent with those of a secretary. [REDACTED] repeatedly referred to the petitioner as a “Secretary” in his August 31, 2010 letter.

Only on appeal has the petitioner claimed to be an ordained minister serving as the co-pastor of the petitioning church. This new claim contradicts the petitioner’s previous claims. Doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92. The petitioner has not submitted independent objective evidence to support her new claims on appeal. The record contains no reliable documentary evidence to prove that the ordination certificate truly dates from 2008 as claimed.

Section 204(b) of the Act, 8 U.S.C. § 1154(b), provides for the approval of immigrant petitions only upon a determination that “the facts stated in the petition are true.” False, contradictory, or unverifiable claims inherently prevent a finding that the petitioner’s claims are true. *See Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Systronics Corp. v. I.N.S.*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988). The very substantial revision of the petitioner’s claims on appeal raises serious doubts about the truthfulness of those claims.

The original petition described the petitioner as a secretary, with secular, administrative duties. The director correctly found that those duties, as described, do not relate to a qualifying religious function. The AAO will affirm the director’s decision.

Beyond the director’s decision, review of the record reveals additional grounds for denial. The AAO may identify additional grounds for denial beyond what the Service Center identified 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 first additional ground concerns the petitioner’s past experience. The 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 USCIS regulation at 8 C.F.R. § 204.5(m)(11) reads:

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 [Internal Revenue Service] 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 the August 31, 2010 letter that accompanied the initial filing, [REDACTED] stated:

[REDACTED] . . . has employed [the petitioner] as the Secretary of this congregation since the year 2010 with a salary of \$14,000 a year. . . . Since 2007, [the petitioner] has been the Secretary/Women Coordinator for our congregation but she was a non-salaried Secretary because she had to be a homemaker since she had 2 small children but her husband worked and would file their personal taxes together (1040) with the IRS (enclosed is a copy of his 2007, 2008, and 2009 1040 forms filed with the IRS and a copy of each W-2 her husband received). . . . [The petitioner] this year 2010 will be receiving a W-2 form from our Organization. . . . [W]e have paid [the petitioner] her monthly salary of \$1,166 since the year began in 2010.

Copies of joint income tax returns for the petitioner and her spouse indicated wages of \$10,260 in 2007, \$26,298 in 2008 and \$14,151 in 2009. Each of the three returns identified the petitioner's occupation as "home maker" and that of her spouse as "labor." Copies of IRS Form W-2 Wage and Tax Statements show payments from Contractor's Windows to the petitioner's spouse, in amounts matching the wages reported on the corresponding income tax returns. This evidence shows that the petitioner did not perform compensated religious work in 2008 or 2009 (and neither did her spouse, newly identified as the pastor of [REDACTED]).

[REDACTED] claimed that the church began to pay the beneficiary in 2010, but the record contains no documentary evidence to support that claim. The petitioner submitted a copy of a July 30, 2010 bank statement for the church, but that statement does not include any identifiable evidence of salary payments to the beneficiary. The statement includes reproductions of two checks, neither of which is payable to the beneficiary.

The record does not contain any evidence of the petitioner's compensated employment during the 2008-2010 qualifying period. The regulation at 8 C.F.R. § 204.5(m)(11)(iii) refers to uncompensated, self-supported work, but self-supported work is permissible only as part of an established program for temporary, uncompensated missionary work as described in the regulation at 8 C.F.R. § 214.2(r)(11)(ii).

For the above reasons, the petitioner has not submitted the required evidence of two years of continuous employment immediately preceding the petition's filing date. This is an additional ground for denial, independent of the originally stated basis for denial.

The final issue concerns the petitioner's intended compensation. The USCIS regulation at 8 C.F.R. § 204.5(m)(10) reads:

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.

The initial petition indicated that the petitioner would receive \$14,000 per year. The only IRS documentation in the record is an uncertified copy of an IRS Form 990-EZ Short Form Return of Organization Exempt From Income Tax for calendar year 2009. The form includes the following information:

Total revenue	\$42,525
Salaries, other compensation, and employee benefits	0
Total expenses	35,115
Excess for the year	7,410
Net assets or fund balances at beginning of year	1,000
Net assets or fund balances at end of year	8,410

The above information indicates that, even without paying salaries, the church took in barely enough surplus income to cover half of the petitioner's proposed \$14,000 salary.

The AAO notes that the July 2010 bank statement shows two accounts with balances that, together, add up to \$15,206.10, but this one bank statement does not provide a full picture of the church's income and expenses. As noted previously, church officials have claimed that the petitioner was already receiving a salary in 2010, but the bank statement does not corroborate that claim.

For the above reasons, the record does not establish that the church's income is sufficient to cover the petitioner's intended salary. This amounts to a third independent ground for denial.

The AAO will dismiss the appeal 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. The petitioner has not met that burden.

ORDER: The appeal is dismissed.