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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 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:

**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 the senior pastor of [REDACTED] Sioux City, Nebraska. The director determined that the petitioner had not established that he had the required two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits a brief from counsel and a letter from his employer.

Part 1 of the Form I-360 petition identifies [REDACTED] as the petitioner. Review of the petition form, however, indicates that the alien beneficiary is the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 10 of the Form I-360, "Signature," has been signed not by any official of [REDACTED] but by the alien beneficiary himself. Thus, the alien, and not [REDACTED] has taken responsibility for the content of the petition. This will not affect the adjudication of the appeal, because the record shows that the attorney who filed the appeal represents the self-petitioning alien beneficiary. Thus, the appeal has been properly filed.

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 issue under consideration concerns the beneficiary's past experience and immigration status. 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 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 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 petitioner filed the Form I-360 petition on July 21, 2010. On that form, the petitioner claimed that he had never worked in the United States without authorization. By signing the petition form, the petitioner certified under penalty of perjury that all the information in the petition is true and correct.

The petitioner submitted a copy of a July 16, 2008 letter from [REDACTED] describing an offer to "compensate [the petitioner] \$1,000 every two weeks for living expenses for him and his family in exchange for services rendered." USCIS records show that the petitioner held R-1 nonimmigrant religious worker status from February 9, 2005 to December 31,

2006. [REDACTED] filed Form I-129, seeking to extend the petitioner's R-1 nonimmigrant status, but USCIS denied the petition and extension application.

Materials submitted with the petition indicate that the petitioner held R-1 nonimmigrant religious worker status authorizing him to work at [REDACTED] from September 14, 2007 to July 22, 2009. The petitioner later entered the United States on April 20, 2010 as a B-2 nonimmigrant visitor for pleasure, with status valid through October 19, 2010. On Form I-360, the petitioner indicated that he was still in B-2 nonimmigrant status. The petitioner submitted no evidence that he held any nonimmigrant status after July 23, 2009 that would permit him to work in the United States.

Under the USCIS regulation at 8 C.F.R. § 214.1(e), a B-2 nonimmigrant may not engage in any employment. A nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status.

The petitioner submitted a copy of an IRS Form W-2 Wage and Tax Statement, indicating that [REDACTED] paid him \$11,908 in wages and \$14,092 for housing in 2008. The petitioner did not document any paid compensation for other years.

On September 2, 2010, the director issued a request for evidence instructing the petitioner to submit additional evidence, including IRS documentation, to show authorized employment during the two-year qualifying period. The director also indicated that the beneficiary overstayed following a previous nonimmigrant entry, but the period in question fell more than two years before the petition's July 2010 filing date.

In response, the petitioner submitted a joint letter from [REDACTED] and [REDACTED] respectively the associate [REDACTED]. The officials stated:

[The petitioner] has been working at the [REDACTED] [REDACTED] Sioux City, Nebraska since April of 2006 . . . as our fulltime minister. . . .

[The petitioner] was sent to us from [REDACTED] Temple (in Missouri) to do this work at a time when our church was without a fulltime Pastor. At first, [the petitioner] was supported financially by [REDACTED] Temple because we couldn't afford to pay him a salary. Due in large part to [the petitioner's] pastoral and administrative skills, our church can now meet our financial commitments and we can now also provide a living wage for a minister of Jesus Christ.

[REDACTED] secretary/treasurer and missions pastor of [REDACTED] likewise stated that [REDACTED] sent the petitioner to [REDACTED] "an extension of the ministry of [REDACTED] [REDACTED] :

This new phase of his training/work began in July 2006. . . .

As part of that ministry of [REDACTED] his living expenses were provided by [REDACTED]. His expenses were made through our standard payroll process as one of the [REDACTED] pastors at the rate of \$1000 paid bi-weekly.

Neither of the above letters referred to any interruption in the petitioner's work after July 2006. In a separate letter, [REDACTED] stated: "The 'overstay' mentioned in [the request for evidence] was an appeal process where we were told an extension was automatic until approval/disapproval. He left upon notification and obtained another visa through the Embassy in Monterrey, Mexico. He left again when that visa expired."

The petitioner also submitted copies of older letters, originally prepared in furtherance of earlier nonimmigrant petitions, from [REDACTED]. On May 11, 2006, he stated: "I have invited [the petitioner] to come to our church for two years of work and training in the ministry as a pastor. Our church has an ongoing internship program designed to train pastors, and [the petitioner] desires to go through this program to learn pastoring and how to disciple others into a proper Christian life." On May 1, 2007, he stated that the petitioner "has participated in all ministries and on-the-job training as a pastor" since 2004, and that the petitioner "has finished his internship at our church." Finally, on July 16, 2008, he repeated the assertion that [REDACTED] "has an ongoing internship program designed to train pastors, and [the petitioner] is being trained through this program to learn pastoring and how to disciple others for an effective Christian life."

A June 20, 2006 letter from [REDACTED] pastoral liaison, referred to the petitioner's "internship at the [REDACTED] for the past three years."

The petitioner submitted copies of IRS Forms W-2 that [REDACTED] issued to him for 2008 and 2009. Details of the 2008 statement appeared earlier in this decision. The 2009 form showed \$11,450 in wages and \$13,550 for housing. Thus, [REDACTED] paid the petitioner a total of \$26,000 in 2008 and \$25,000 in 2009. The petitioner submitted no evidence of compensated employment in 2010.

The director denied the petition on February 22, 2011, stating:

The beneficiary entered [the United States] September 14, 2007, with a validity date till August 19, 2008. The beneficiary departed on July 25, 2008.

On August 15, 2008, the beneficiary re-entered the United States under the R-1 status. This status was valid until July 22, 2009; however, the beneficiary did not depart until March 2, 2010. The beneficiary was in unlawful status and ineligible to work lawfully for about 7 months, from July 23, 2009, till March 2, 2010, the date of departure.

From April 21, 2010 to August 8, 2010, the beneficiary re-entered the United States under a B-2 visa. This visa does not permit work authorization. . . .

[T]he petitioner did not actually submit any evidence to establish that the beneficiary was lawfully employed for the two immediately preceding years prior to filing the application, as advised in the Request for Evidence. The petitioner submitted evidence of the beneficiary's employment . . . but no evidence that all of that employment was lawfully authorized. . . .

[T]he evidence is insufficient to establish that the beneficiary has been performing full-time work as a Senior Pastor, for the two-year period immediately preceding the filing of the petition in lawful immigration status.

The director noted that the petitioner had submitted no evidence of the "appeal process" that [REDACTED] mentioned in one of his letters.

On appeal, counsel asserts:

Although the beneficiary was temporarily unauthorized to work in the United States, according to 8 C.F.R. § 204.5(m)(4), the beneficiary is allowed a break in the continuity of the work. . . .

During the time period in question, from approximately July 22, 2009 to March 2, 2010, clearly less than two years, the beneficiary took a sabbatical break for further training and religious education, while still being employed. . . . To date, the beneficiary is still being paid as a missionary/pastor for his church/respondent, while in Mexico City.

The petitioner submits a new joint letter from [REDACTED]. Unlike previous letters, this latest letter is in the Spanish language. The accompanying translation reads, in part:

[The petitioner] took a sabbatical during which [REDACTED] agreed to financially support him. This period was from July 23<sup>rd</sup> to March 1<sup>st</sup>, during which time he prepared by studying some courses and attending various conferences. . . . During this time, [the petitioner] was willing to continue to work together to help the church in different ways. [The petitioner] is now working as a missionary for our church in Mexico City.

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.

Prior to the appeal, neither the petitioner nor any church official had claimed any sabbatical or other break in the continuity of the petitioner's religious work. Furthermore, letters from 2006, 2007 and

2008 – including three from [REDACTED] – indicated that the petitioner was already in training at [REDACTED]. The petitioner’s new claim, therefore, seems to be that the petitioner interrupted his training in order to pursue other training.

The petitioner submits no evidence to show where this newly claimed training took place, and no evidence of the petitioner’s newly claimed missionary work in Mexico City. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

The petitioner has not shown that the new claims on appeal are credible. Even if proven to be true, however, those claims do not address the petitioner’s documented April 20, 2010 entry as a B-2 nonimmigrant. He was still in the United States when he filed the petition on July 21, 2010. Enrollment in a course of study violates B-2 nonimmigrant status. *See* 8 C.F.R. § 214.2(b)(7). Thus, the newly claimed training, whether in the form of paid on-the-job training or formal academic study, would still amount to a violation of status during the two-year qualifying period.

Furthermore, a break for sabbatical or training does not subtract from the two-year experience requirement. Rather, it shifts the timing of the two-year period, as the regulation at 8 C.F.R. § 204.5(m)(11) makes clear when it refers to “[q]ualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work.” If the petitioner was on an acceptable break from July 23, 2009 to March 1, 2010, and again from April 21, 2010 to the filing date, then these breaks would have consumed roughly ten months and one week. The beginning of the qualifying period, therefore, would move from July 21, 2008 to somewhere in mid-September 2007. The petitioner has not submitted IRS documentation to show employment in 2007 (or in 2010, for that matter). Therefore, the record would still be deficient even if the petitioner had shown that all of its claims are true.

Counsel stipulates that the petitioner was still “employed” and paid after his R-1 nonimmigrant status expired. If the petitioner was a paid employee of [REDACTED] without valid nonimmigrant status or employment authorization, then by definition he engaged in unauthorized employment. Calling this arrangement a “sabbatical” does not resolve the matter in the petitioner’s favor.

For the reasons discussed above, the AAO will affirm the director’s finding that the petitioner has not established two years of continuous, authorized religious work throughout the two years immediately preceding the filing of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the AAO will dismiss the appeal.

**ORDER:** The appeal is dismissed.