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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
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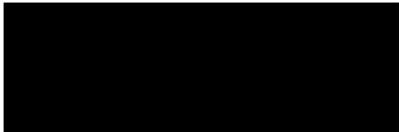
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DATE: **MAY 01 2012** OFFICE: CALIFORNIA SERVICE CENTER FILE:

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 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 its pastor-in-charge of youth and children's ministries. The director determined that the petitioner had not established that the beneficiary had the required two years of authorized, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits a brief from counsel and an affidavit of support.

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

USCIS regulation at 8 C.F.R. § 204.5(m)(11) requires that the qualifying experience, if acquired in the United States, must have been authorized under United States immigration law.

The petitioner filed the Form I-360 petition on February 16, 2010. On that form, asked whether the beneficiary had ever worked in the United States without authorization, the petitioner answered "no." On the same form, the petitioner identified the beneficiary's current nonimmigrant status as "F-2," the spouse of an F-1 nonimmigrant student. The record shows that the beneficiary entered the United States on December 25, 2007 as an F-2 nonimmigrant, and the record does not show that the beneficiary has ever held any other nonimmigrant status.

The F-2 spouse and children of an F-1 student may not accept employment. 8 C.F.R. § 214.2(f)(15)(i). Therefore, if the beneficiary performed compensated work for the petitioner while in F-2 nonimmigrant status, then by definition he engaged in unauthorized employment, and the petitioner made a false claim to the contrary.

In a letter accompanying the initial submission, [REDACTED] and founder of the petitioning church and its parent church [REDACTED] stated:

[The beneficiary] joined my ministry [REDACTED] in March 2003. . . .

[The beneficiary] came to join his wife in the United States and automatically joined us in the Bronx. . . .

He is not paid a salary; however he is given a stipend to cover his travelling expenses.

On May 26, 2010, the director issued a request for evidence (RFE), instructing the petitioner to document, among other things, the beneficiary's employment history and lawful status during the two-year qualifying period. In response, the petitioner resubmitted copies of previously submitted letters and materials detailing the beneficiary's ministerial credentials, but the petitioner did not submit any new information or evidence regarding the beneficiary's employment, immigration status, or means of support during the 2008-2010 qualifying period.

The director denied the petition on September 17, 2010, stating that, as an F-2 nonimmigrant, the beneficiary lacked employment authorization during the two-year qualifying period. The director concluded, therefore, that the beneficiary could not have accumulated continuous, authorized experience during that time.

On appeal, counsel states:

The beneficiary had been performing the work of the [REDACTED] [REDACTED] for at least two years in a non-salaried capacity. The beneficiary had supported himself and his dependents through the benevolence of an individual whose Affidavit of Support and supporting documents will be submitted as

part of the brief. In addition, it is submitted that there is no statutory requirement that the employment should be paid. Thus the beneficiary could satisfy the 2-year employment [requirement] without pay and without employment authorization.

In a later supplement to the appeal, the petitioner submits Form I-864, Affidavit of Support Under Section 213A of the Act, executed by [REDACTED] identified as the “second of two joint sponsors.” (There is an “X” in the box marked “I am the only joint sponsor,” but this mark has been obscured with correction fluid.) The record does not identify the second sponsor, and counsel does not explain why counsel first referred to a single, unnamed “individual” before submitting an affidavit claiming that there are two sponsors rather than one.

[REDACTED] indicates that she is sponsoring the “principal immigrant,” *i.e.*, the beneficiary’s spouse (an F-1 nonimmigrant nursing student). She did not check the box indicating that she is also sponsoring the principal immigrant’s family members (*i.e.*, the beneficiary). Therefore, the Form I-864 is not, on its face, evidence that [REDACTED] has agreed to cover the beneficiary’s expenses in the United States. Furthermore, the purpose of Form I-864 is to pledge future support, not to establish past support. [REDACTED] did not execute the affidavit until after the denial of the petition, so the affidavit was not in force during the 2008-2010 qualifying period.

The record contains no documentary evidence to show that [REDACTED] paid any of the beneficiary’s expenses in 2008-2010, and no statement from [REDACTED] even claiming to have done so. A copy of her 2009 income tax return shows that she did not claim the beneficiary or his spouse as dependents.

For the reasons discussed above, the petitioner’s submission on appeal does not shed any light on the beneficiary’s material or financial support during the qualifying period.

To support the assertion that “there is no requirement in the regulations that the position should be salaried,” counsel cites *Campbell Soltane v. US Department of Justice, Immigration & Naturalization Service*, 381 F.3d 143, 2004. The relevant portion of that decision reads as follows:

The requirement that the position be “salaried” appears to be inconsistent with the list of religious occupations given in the regulation itself, which includes positions—perhaps most notably “missionaries”—who do not always receive salaries. We further note that in promulgating the final rules at issue, the agency explicitly stated that they had been “revised to account more clearly for uncompensated volunteers, whose services are engaged but who are not technically employees.” 56 Fed. Reg. 66965 (Dec. 27, 1991) (emphasis added).

Id. at 150.

Four years after the *Soltane* decision, USCIS published substantially revised regulations for nonimmigrant and special immigrant religious worker petitions. *See* 73 Fed. Reg. 72276 (Nov. 26, 2008). The new regulations were already in effect when the petitioner filed the present petition in

February 2010. Because the court's decision in *Soltane* rested on a discussion of the pre-2008 regulations, the revised regulations supersede that decision.

The current regulation at 8 C.F.R. § 204.5(m)(11) contemplates three different compensation scenarios, each with its own evidentiary requirements, stating that if the beneficiary:

- (i) Received salaried compensation, the petitioner must submit IRS documentation that the alien received a salary, such as an IRS [Internal Revenue Service] 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.

The petitioner has not submitted any of the required documentation showing how the beneficiary maintained support.

Another issue is that the petitioner did not claim that the beneficiary worked entirely without compensation. [REDACTED] stated that the beneficiary "is given a stipend to cover his travelling expenses." If this "stipend" is in any way contingent on the beneficiary performing services for the petitioning church, then the beneficiary's work amounts to "employment" for immigration purposes. *See Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982).

For the above reasons, the AAO will affirm the director's finding that the petitioner has not shown that the beneficiary performed continuous, qualifying work for the petitioner consistent with lawful status as an F-2 nonimmigrant.

Review of the record reveals an additional issue. 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 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.

In the employer attestation that accompanied the petition, the petitioner indicated that the beneficiary would earn \$24,000 per year, and that two employees worked at the same location where the beneficiary would be employed. A "Statement of Income and Expenses For the thirteen month period ended August 31, 2009" indicated that the petitioner paid \$110,255 in "Salaries & wages" and \$68,160 in "Rent" during that time, as well as a separate \$25,000 expense listed as "New Jersey rent," with net income of \$26,651.90 in net income after expenses. The claimed net income was just above the \$26,000 needed to cover the beneficiary's salary during that 13-month period. There is, however, good reason to question the credibility of this document.

The petitioner's response to the May 2010 RFE included a "List of Paid Employees in the Church" containing two names, consistent with the employer attestation. The list indicated that [REDACTED] earns \$38,400 per year, and an assistant pastor, [REDACTED] earns \$28,800 per year. These annual salaries add up to \$67,200, an amount very substantially less than the \$110,255 in "Salaries & wages" that the petitioner previously claimed to have paid from August 2008 to August 2009.

A copy of the petitioner's lease agreement indicated that the petitioner's rent is due on the first of each month, increasing every January 15th. From January 15, 2008 to January 14, 2009, the rent was \$5,304.50 per month. From January 15, 2009 to January 14, 2010, the rent was \$5,463.64 per month. Between August 1, 2008 and August 31, 2009 (the period covered by the "Statement of Income and Expenses"), the petitioner would have made six rental payments at the 2008-2009 rate and seven payments at the 2009-2010 rate. Those 13 payments would have totaled \$70,072.48. The "Statement of Income and Expenses," however, showed the lower sum of \$68,160. The petitioner did not acknowledge this discrepancy, much less explain it. The record contains no first-hand documentation of rent payments (such as copies of processed checks) to show how much the petitioner actually paid in rent during the period in question.

The petitioner's response to the RFE also included audited financial statements for the years ending July 31, 2009 and 2010. The 2008-2009 audited statement reflected \$66,490 in "Rent," whereas the terms of the lease indicate that the petitioner should have paid \$64,608.84 in rent from August 1, 2008 to July 31, 2009. There is no line item for "New Jersey rent," and it cannot have been folded into a larger category of expenses; only two line items exceeded \$12,000. The 2009-2010 audited statement likewise fails to show an expense of at least \$25,000 for "New Jersey rent." The disappearance of this major expense is of significant concern.

The 2008-2009 audited statement does not list any salary expenses; the only expense higher than rent was \$128,938 for "Consultants/Musicians." Further comparison between the audited statement

and the unaudited statement is difficult because the two lists are itemized differently and do not cover exactly the same period of time. The observable discrepancies between the two financial statements, however, suffice to raise significant questions about their credibility and reliability.

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 consistent, credible financial documentation. The record is devoid of the relevant IRS documentation the regulations demand, and the petitioner's unsupported statements lack credibility because of demonstrable inconsistencies in the record. For this additional reason, USCIS cannot approve the petition.

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.