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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

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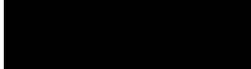


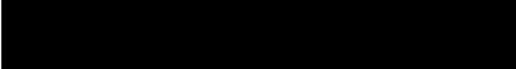
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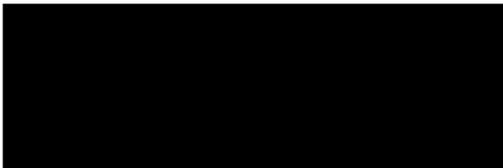
DATE: **MAY 02 2012** OFFICE: CALIFORNIA SERVICE CENTER

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:

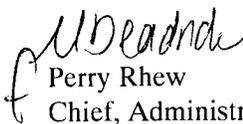


**INSTRUCTIONS:**

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, (“the director”) denied the employment-based immigrant visa petition. The petitioner timely filed an appeal to the denied petition. The matter is now before the Administrative Appeals Office (“AAO”) on appeal. The AAO will dismiss the appeal.

The petitioner is a Protestant 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 Youth Leader/Assistant Minister. On August 31, 2009 the petitioner filed a Form I-360 petition. On August 26, 2010, the director denied the petition, finding that the evidence was insufficient to establish that the beneficiary has been continuously working as a religious worker for at least the two-year period immediately preceding the filing of the petition in lawful immigration status. The director also denied the petition because she found that the employer did not qualify as a bona fide non-profit religious organization in the United States.

On appeal, the petitioner submits a brief and further documentation.

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 first issue is whether the beneficiary possesses two years of qualifying, continuous work experience during the two years immediately prior to the filing of the Form I-360 petition. The regulation at 8 C.F.R. § 204.5(m)(4) states that:

(m) *Religious workers.* This paragraph governs classification of an alien as a special immigrant religious worker as defined in section 101(a)(27)(C) of the Act and under section 203(b)(4) of the Act. To be eligible for classification as a special immigrant religious worker, the alien (either abroad or in the United States) must:

\* \* \*

(4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed. A break in the continuity of the work during the preceding two years will not affect eligibility so long as:

- (i) The alien was still employed as a religious worker;
- (ii) The break did not exceed two years; and
- (iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

Further, the regulation at 8 C.F.R. § 204.5(m)(11) states that:

(11) *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 August 31, 2009. According to the regulation above, the beneficiary must have been continuously working for two years immediately prior to the filing of the petition, from August 31, 2007 to August 31, 2009. According to the Form I-360 petition, the beneficiary arrived in the United States on July 22, 2009 as a nonimmigrant B-2 visitor for pleasure. His status expired on January 21, 2010. The USCIS regulation at 8 C.F.R. § 214.1(e) states that a B-2 nonimmigrant may not engage in any employment, and that any unauthorized employment by a nonimmigrant constitutes a failure to maintain status. The record, however, contains no evidence that shows that the beneficiary began working for the petitioner upon his arrival in the United States. The petitioner's pay stubs from his prior church in Mexico end in June, 2009. Since the beneficiary did not work from July, 2009 to August 31, 2009, the beneficiary's work experience was not "continuous" for the two years immediately preceding the filing of the petition. Further, the petitioner did not provide any evidence pursuant to 8 C.F.R. § 204.5(m)(4) showing that there was a qualifying break in the continuity as prescribed by the regulation. Therefore, the beneficiary did not satisfy this regulation because he did not show that he was working continuously during the two year period immediately preceding the filing of the petition.

The petitioner also did not satisfy the regulation at 8 C.F.R. § 204.5(m)(11) which requires that if the alien was employed in the United States during the two years immediately preceding the application and 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. If the beneficiary was employed outside the United States during these two years, the petitioner must submit comparable evidence of religious work. According to the beneficiary's Form G-325A, submitted in conjunction with his Form I-485, Application to Register Permanent Residence or Adjust Status, the beneficiary worked as a pastor for the [REDACTED] in Mexico City, Mexico from July of 1995. The beneficiary does not list any employer in the United States. On appeal, to show that the beneficiary meets the two year requirement, the petitioner submitted monthly pay stubs from the [REDACTED] showing that the beneficiary worked there from June of 2007 to June of 2009. Although the pay stubs submitted on appeal were not translated, the record contains one pay stub from February of 2009 that was translated. The AAO notes that the latest pay stub is for June of 2009. Since the two years must be *immediately preceding* the filing of the application, the petitioner had to show that the beneficiary had been paid from August of 2007 to August of 2009. The AAO also notes that the regulation requires that the petitioner submit foreign equivalents of the IRS Form W-2. The petitioner has not established that these pay stubs are the

foreign equivalent of the IRS Form W-2. Therefore, the petitioner did not satisfy this regulation because it did not submit evidence showing that the beneficiary worked for the two years immediately preceding the filing of the petition and that the pay stubs which were submitted were the equivalent of the IRS Form W-2.

The second issue is whether the petitioner qualifies as a bona fide non-profit religious organization in the United States. The regulation at 8 C.F.R. § 204.5(m)(1) states:

(m) Religious workers. This paragraph governs classification of an alien as a special immigrant religious worker as defined in section 101(a)(27)(C) of the Act and under section 203(b)(4) of the Act. To be eligible for classification as a special immigrant religious worker, the alien (either abroad or in the United States) must:

(1) For at least the two years immediately preceding the filing of the petition have been a member of a religious denomination that has a bona fide non-profit religious organization in the United States.

The regulation at 8 C.F.R. § 204.5(m)(5) further states:

*Bona fide non-profit religious organization in the United States* means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the IRS confirming such exemption.

*Bona fide organization which is affiliated with the religious denomination* means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code and possessing a currently valid determination letter from the IRS confirming such exemption.

The director denied the petition because she found that the petitioner did not submit requested evidence to establish that it qualified as a *bona fide* religious organization. More specifically, the director found that the petitioner did not submit either a valid determination letter from the Internal Revenue Service or a valid determination letter from the IRS establishing that the petitioner is recognized as tax-exempt under a group tax exemption.

At filing, the petitioner submitted a letter from the [REDACTED] dated November 16, 2004, which specifically states that the [REDACTED] who is the petitioner, falls under this group exemption. The petitioner, however, did not submit a copy of the [REDACTED] actual 501(c)(3) group exemption letter. On May 18, 2010, the director issued a Request For Evidence ("RFE") to the petitioner, in which she specifically requested a copy of the

Petitioner's IRS 501(c)(3) letter showing that the petitioner is a tax exempt organization or an IRS 501(c)(3) letter showing that the petitioner is affiliated with a church that is a tax-exempt organization. In response to the director's RFE, on August 4, 2010, the petitioner submitted a series of documents, but it did not submit an IRS 501(c)(3) letter, nor did it submit an explanation as to why this letter was not submitted with the response to the director's RFE. In fact, the petitioner submitted no documents relevant to its tax-exempt status in response to the RFE. On appeal, the petitioner submits this letter. The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not, and does not, consider the sufficiency of the evidence submitted on appeal.

The evidence submitted does not establish that the beneficiary was working continuously during the two year period immediately preceding the filing of the petition and that the petitioner qualifies as a bona fide non-profit religious organization in the United States. Therefore, the appeal will be dismissed.

Beyond the directors' decision, the AAO also finds that petitioner failed to establish its ability to compensate the beneficiary, and that the beneficiary would be working full time for the petitioner. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO 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 regulation at 8 C.F.R. § 204.5(m)(10) requires that the petitioner submit verifiable evidence of how the petitioner intends to compensate the alien. In the Form I-360 petition attestation clause, the petitioner stated that it would pay the beneficiary \$669 per week. To show its ability to compensate the beneficiary, the petitioner submitted a Statement of Activity for a three month period ending March 31, 2010. The statement, however, does not list salaries or other specific information related to the petitioner's ability to pay the beneficiary's proffered salary. The AAO notes that this financial information is not relevant because it is for a period after the filing date. A petitioner must establish the elements for the approval of the petition at the time of filing. A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). Further, as there is no accountant's report accompanying these statements, the AAO cannot conclude that they are audited statements. Unaudited financial statements are the representations of management. The unsupported

representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the proffered wage. This statement of activity also does not contain any specific information to show that it includes the beneficiary's proffered salary. The petitioner submitted no other financial information for its organization or any of the information listed in the regulation showing that it has the ability to compensate the beneficiary. Therefore, the AAO finds that the petitioner has not shown that it has the ability to compensate the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(2) also requires that the beneficiary come to the United States to work in a full time (average of at least 35 hours per week) compensated position. On July 28, 2010, the petitioner submitted a letter listing the beneficiary's schedule. However, this schedule does not add up to 35 hours per week. Therefore, the AAO finds that the petitioner has not shown that the beneficiary will be coming to the United States to work in a full time compensated position.

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.

**ORDER:** The appeal is dismissed