

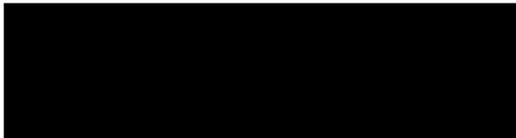
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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DATE: **MAY 09 2012** OFFICE: CALIFORNIA SERVICE CENTER 

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 AAO notes that the alien in this instance, [REDACTED], signed the Form I-360 and is therefore considered a self-petitioner. The petitioner is a minister of evangelization who 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). The director determined that the petitioner's church had not established that it had the ability to compensate him the proffered wage, that the petitioner's position qualifies as a religious occupation, that the petitioner had been in lawful status during the two years immediately preceding the filing of the visa petition, or that the petitioner had been authorized to work in the United States during that same period.

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 issues on appeal are whether the petitioner's church had established that it had the ability to compensate him the proffered wage, that the petitioner's position does qualify as a religious occupation, that the petitioner had been in lawful status during the two years immediately preceding the filing of the visa petition, or that the petitioner had been authorized to work in the United States during that same period.

The AAO notes that the director stated in her April 9, 2010 decision that the petitioner's church had failed to respond to her February 11, 2010 Request for Evidence (RFE). On appeal, counsel submitted a receipt from the U.S. Postal Service indicating that the California Service Center received a response to the February 11, 2010 RFE on March 25, 2010. Accordingly, the AAO will consider all of the submitted evidence within the record of proceeding included the RFE response.

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 (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 U.S. Citizenship and Immigration Services (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.

On the petition, the petitioner's church indicated that it would be paying him \$30,000.00 a year and providing him with \$12,000.00 in education yearly for his children. The AAO notes that the petitioner's church has not provided any evidence that it has paid him for prior work performed. Rather, as counsel indicated in her brief on appeal, the petitioner had been working for his church on a voluntary basis and was not compensated. Instead, he purportedly received donations from other congregants.

The pastor of the petitioner's church, [REDACTED], provided a notarized affidavit dated March 5, 2010, stating that the petitioner had been engaged in volunteer work for his church. The petitioner's church additionally submitted a signed letter dated March 15, 2010 stating that it intends to prospectively pay the petitioner the proffered wages, but the letter does not mention any prior payment of the petitioner.

The AAO notes that the petitioner's church did submit copies of its 2010 bank statements, but that these bank statements do not demonstrate that it paid the petitioner in the past or that it intends to pay the petitioner the proffered wage in the future from those funds. The petitioner's church additionally submitted a copy of its 2009 profit and loss statement, which shows that it had paid \$28,523.00 in pastoral expenses and \$3,984.95 in general wages that year. However, the AAO again notes that the

petitioner's church did not pay him that year, so this evidence is not persuasive of its ability to absorb this additional cost in the future.

With the petition, the petitioner's church had previously submitted a copy of In His Image International's 2009 unaudited financial report. 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.

The AAO accordingly finds that the petitioner's church has failed to demonstrate that it has the ability to compensate the petitioner according to 8 C.F.R. § 204.5(m)(10).

As her second ground for denial, the director found that the petitioner's position of minister of evangelization did not qualify as a religious occupation. The USCIS regulation at 8 C.F.R. § 204.5(m)(5) defines "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 USCIS regulation at 8 C.F.R. § 204.5(m)(5) defines "minister" as an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct such religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and

(D) Works solely as a minister in the United States, which may include administrative duties incidental to the duties of a minister.

The record indicates that, while the director considered the petitioner's position in the context of a religious occupation, the director failed to consider whether the position qualified as that of a minister.

The USCIS regulation at 8 C.F.R. § 214.2(r)(10) outlines the evidence required to show that an alien qualifies as a minister. The director did not address these evidentiary requirements. On appeal, counsel highlights that the petitioner has submitted his July 13, 2001 certificate of ordination, his business card, his church's bulletins and flyers, and a May 5, 2010 affidavit from the church pastor, [REDACTED], demonstrating the petitioner's role as a minister within the church. The AAO finds that the petitioner has sufficiently demonstrated that he qualifies as a minister. The AAO concludes that the director's finding that the petitioner did not qualify for the classification as a religious worker was not an appropriate ground of denial for the petition. The AAO therefore withdraws the director's finding to that effect.

The remaining issue is whether the petitioner was in lawful status and/or had engaged in unauthorized employment during the two years immediately preceding the filing of the visa petition. The USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that he 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 petition on November 9, 2009. Therefore, the petitioner must establish that he was continuously performing qualifying religious work throughout the two years immediately prior to that date.

On the Form I-360 petition, the petitioner indicated that he arrived in the United States on June 3, 1993. Therefore, the petitioner was in the United States throughout the entire two-year qualifying period. On the Form I-360, under "Current Nonimmigrant Status," the petitioner indicated "F1" or student visa status. The petitioner did not state that he was currently in valid immigration status. Further, as an F-1 nonimmigrant, the petitioner would have been eligible for employment authorization only under limited conditions specified at 8 C.F.R. §§ 214.2(f)(9)-(11) and 274a.12(b)(6). The petitioner also has not demonstrated that he possessed authorization to work in a religious capacity during the two years preceding the petition's filing date.

On appeal, counsel appears to misinterpret the director's discussion regarding the petitioner's failure to maintain lawful status. Counsel instead discusses how the petitioner was consistently a member of the church's denomination. In terms of the petitioner's employment, counsel again contends that it was only voluntary in nature.

The AAO finds the petitioner's voluntary employment to be disqualifying. In supplementary information published with the proposed rule in 2007, USCIS stated:

The revised requirements for immigrant petitions and nonimmigrant status require that the alien's work be compensated by the employer because that provides an objective means of confirming the legitimacy of and commitment to the religious work, as opposed to lay work, and of the employment relationship. Unless the alien has taken a vow of poverty or similarly made a formal lifetime commitment to a religious way of life, this rule requires that the alien be compensated in the form of a salary or in the form of a stipend, room and board, or other support so long as it can be reflected in a W-2, wage transmittal statements, income tax returns, or other verifiable IRS documents. USCIS recognizes that legitimate religious work is sometimes performed on a voluntary basis, but allowing such work to be the basis for an R-1 nonimmigrant visa or special immigrant religious worker classification opens the door to an unacceptable amount of fraud and increased risk to the integrity of the program. In this rule, USCIS is proposing to implement bright lines that will ease the verification of petitioner's claims in the instances where documentary evidence is required.

72 Fed. Reg. 20442, 20446 (April 25, 2007). When USCIS issued the final version of the regulation, the preamble to that final rule incorporated the above assertion by reference: "The rationale for the proposed rule and the reasoning provided in the preamble to the proposed rule remain valid and USCIS adopts the reasoning in the preamble of the proposed rule in support of the promulgation of this final rule." 73 Fed. Reg. 72275, 72277 (Nov. 26, 2008).

The self-support referred to in 8 C.F.R. § 204.5(m)(11)(iii) relates to nonimmigrant religious workers who are part of an established missionary program. 8 C.F.R. § 214.2(r)(11)(ii). In this instance, the record does not establish that the petitioner was in a missionary program. Accordingly, the petitioner's voluntary work in the United States does not count toward the two-year continuous work requirement.

The AAO concurs with the director's finding that the petitioner has failed to establish that he had been in lawful status or authorized to work in a religious occupation during the two years immediately preceding the filing of the visa petition.

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.