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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: **MAY 14 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 an English/Portuguese Bible studies interpreter. The director determined that the petitioner had not established that the beneficiary was lawfully employed as a religious worker for the two-year period preceding the filing of the petition, that the beneficiary had been employed in a paid full-time position for that same period, and that the beneficiary's prospective position is a qualifying religious occupation.

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 has established that the beneficiary was lawfully employed as a religious worker for the two-year period preceding the filing of the petition, that the beneficiary had been employed in a paid full-time position for that same period, and that the beneficiary's prospective position is a qualifying religious occupation.

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 petitioner filed the petition on January 19, 2010. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work throughout the two years immediately prior to that date.

The USCIS regulation at 8 C.F.R. § 204.5(m)(11) reads:

(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.

On the Form I-360 petition, the petitioner indicated that the beneficiary last arrived in the United States on June 29, 2006. The AAO notes that the record of proceeding instead reflects that the beneficiary arrived on July 29, 2006. The beneficiary was in the United States throughout the entire two-year qualifying period. On the Form I-360, under "Current Nonimmigrant Status," the petitioner wrote "R-1." The record shows that the beneficiary last entered the United States as a B-2 nonimmigrant visitor, a status that does not authorize employment in the United States. 8 C.F.R. § 214.1(e). The beneficiary's B-2 nonimmigrant status expired on January 28, 2007. The petitioner claims that the beneficiary began working for its church that same month. However, the petitioner did not submit the beneficiary's Form I-539 Application to Extend/Change Nonimmigrant Status or Form I-129 Petition

for a Nonimmigrant Worker to USCIS until February 2, 2007. USCIS approved both the application and the petition on April 30, 2008 and the beneficiary was granted R-1 nonimmigrant status from April 28, 2008 until January 28, 2010. The record contains no evidence that the beneficiary held lawful nonimmigrant status between the expiration of his nonimmigrant visitor status on January 28, 2007 and the approval of his Form I-129 on April 30, 2008. The director denied the petition on June 14, 2010, finding that the petitioner had failed to establish that the beneficiary maintained continuous employment during the two years preceding the filing of the petition.

On appeal, the petitioner claims that the gap between the expiration of the beneficiary's B-2 nonimmigrant visitor status in January of 2007 and the approval of his Form I-129 in April of 2008 was only due to USCIS processing times. The petitioner asserts that it had employed the beneficiary lawfully during the two-year qualifying period. The AAO notes that the petitioner fails to account for the fact that the beneficiary's B-2 nonimmigrant visitor status lapsed on January 28, 2007, but the petitioner did not file the Form I-129 until February 2, 2007. Further, the beneficiary purportedly had already begun working for the petitioner in January of 2007. Regardless, the beneficiary had no authorization to work from January 28, 2007 until approval as an R-1 nonimmigrant on April 28, 2008.

Accordingly, the AAO concurs with the director's finding that the petitioner failed to establish the beneficiary's qualifying continuous employment during the requisite period. As this finding is, on its face, disqualifying as it relates to eligibility under 8 C.F.R. §§ 204.5(m)(4) and (11), the AAO will not discuss the director's related finding under these regulations regarding the petitioner's failure to establish the beneficiary was employed in a paid full-time position during the requisite period.

The remaining third issue is whether the petitioner has established that the beneficiary's prospective position is a qualifying religious occupation. The petitioner stated on the Form I-360 that it sought the beneficiary's services as an English/Portuguese Bible studies interpreter. 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.

On the Form I-360, the petitioner offered the following description of the beneficiary's duties:

TRANSLATE AND DEVELOP THE PORTUGUESE EXPOSITOR'S BIBLE
STUDIES COMMENTARIES MADE BY [REDACTED]

In a January 4, 2010 letter accompanying the petition, the petitioner stated that the beneficiary had been developing the "Expositor's Study Bible in Portuguese" by correcting the translated version and by arranging the text in order to satisfy the publisher's requests. In a May 3, 2010 letter submitted in response to the director's March 23, 2010 Request for Evidence (RFE), the petitioner claimed that the beneficiary's position constituted a traditional religious occupation, as the beneficiary needs to know the Bible and be an ordained clergy member. The AAO notes that the petitioner submitted the beneficiary's Certificate of Ordination dated November 4, 2008 from the [REDACTED] with the petition.

In denying the petition, the director found that the beneficiary's duties do not primarily relate to a traditional religious function. The director listed the beneficiary's duties as an English/Portuguese Bible studies interpreter as being:

- Translating and developing the Portuguese Expositor's Study Bible commentaries made by [REDACTED] who is the founder of the organization
- Grammar correction to the translated version from English to Portuguese and from Spanish to Portuguese
- Arranging text in order to satisfy the requests of the publisher[.]

The director recognized that the beneficiary's duties may include an aspect of religion and may have religious overtones, but that other translators often perform the majority of these same duties. The director also found that any of the beneficiary's religious duties are only secondary to his primary duties as a translator. The director also noted that the petitioner had submitted its bylaws, but that the bylaws do not indicate that the beneficiary's duties are directly related to the religious creed of this denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination. Thus, the director concluded that the record did not demonstrate that the proposed duties of the position are sufficiently specialized in a theological doctrine in order to constitute a religious occupation.

On appeal, the petitioner contends that the beneficiary's position, which it calls a "proofer," requires a deeper knowledge and understanding of the Word. The petitioner states that translating Bible content and commentaries requires an individual whose beliefs are in line with those of the petitioner's church, so as to keep the meaning of God's message intact. The petitioner asserts that the beneficiary is a theological scholar and an ordained pastor. The petitioner also reveals that it has a large library of religious books, which it needs for the beneficiary to translate. The petitioner additionally provides a sample translation of the beneficiary's work in a given week.

In this instance, the AAO finds that the petitioner has submitted no documentary evidence to establish that the position of a “proofer” is recognized as a religious occupation within its denomination. The petitioner’s statement on appeal that the beneficiary’s position “is new within [REDACTED]” casts further doubt on any claim that the position is recognized beyond the petitioning church on a denominational level. The AAO further agrees with the director’s finding that the beneficiary’s duties do not appear to relate primarily to a traditional religious function. Accordingly, the petitioner has failed to establish that the beneficiary will be employed in a qualifying religious occupation.

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, the petitioner has not met that burden.

ORDER: The appeal is dismissed.