

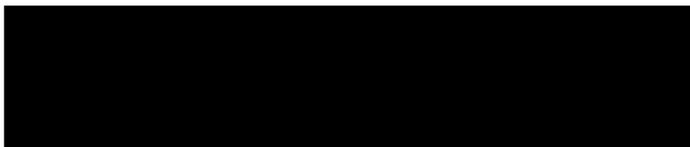
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

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U.S. Citizenship
and Immigration
Services



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DATE: **MAY 16 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 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 the United States branch of a Pentecostal Christian denomination. 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 national youth pastor. The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, lawful work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits a brief from counsel and exhibits including tax and payroll documents and evidence of the beneficiary's prior nonimmigrant status.

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 director's denial rested on the issue of the beneficiary's lawful status and employment authorization. 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 beneficiary's 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 August 31, 2009. On that form, asked whether the beneficiary had ever worked in the United States without authorization, the petitioner answered "no." Asked to specify the beneficiary's "Current Nonimmigrant Status," the petitioner responded "485 pending?" (*sic*). This phrase, with a question mark, seems to indicate that the petitioner believed, but was not certain, that a Form I-485 adjustment application was pending on the beneficiary's behalf.

The director denied the petition on October 26, 2010, stating that, according to USCIS records, the beneficiary held R-1 nonimmigrant religious worker status from March 17, 2004 to March 16, 2009, but did not hold lawful status or employment authorization after the latter date. Therefore, the director concluded that the petitioner failed to show that the beneficiary continuously held lawful status and employment authorization throughout the two years immediately preceding the petition's August 31, 2009 filing date.

On appeal, counsel observes: "this beneficiary was continuously in status as an R-1 religious worker . . . for the five years prior to 03/11/09 [*sic*]." By statute, quoted above, the two-year qualifying period occurs "immediately preceding" the filing date. An earlier two-year period of authorized employment does not create a permanent basis for a future petition. The beneficiary held R-1 nonimmigrant status in early March 2009, but the petitioner did not file the petition in early March 2009, and USCIS has no discretion to disregard the statutory and regulatory requirements regarding the timing of the qualifying period.

Counsel states that the time that elapsed between the March 2009 expiration of the beneficiary's R-1 nonimmigrant status and the August 2009 filing date was less than "the 180 day period permitted under INA Section 245(k)." That section of the statute reads, in full:

An alien who is eligible to receive an immigrant visa under paragraph (1), (2), or (3) of section 203(b) (or, in the case of an alien who is an immigrant described in section 101(a)(27)(C) , under section 203(b)(4)) may adjust status pursuant to subsection (a) and notwithstanding subsection (c)(2), (c)(7), and (c)(8), if—

- (1) the alien, on the date of filing an application for adjustment of status, is present in the United States pursuant to a lawful admission;
- (2) the alien, subsequent to such lawful admission has not, for an aggregate period exceeding 180 days—
 - (A) failed to maintain, continuously, a lawful status;

- (B) engaged in unauthorized employment; or
- (C) otherwise violated the terms and conditions of the alien's admission.

The statute quoted above concerns adjustment of status, not the antecedent petition phase. The regulations at 8 C.F.R. §§ 204.5(m)(4) and (11) do not allow 180 days of unauthorized employment or failure to maintain status, and section 245(k) of the Act does not require USCIS to approve any petition on the beneficiary's behalf. Rather, section 245(k) of the Act presumes an approved petition or other avenue to adjustment of status.

Counsel also asserts that the beneficiary "is the beneficiary of a previously approved I-360 that has not been revoked and has a previously filed I-485." The petitioner submits no evidence to support this claim, but USCIS records confirm that the petitioner filed a petition on the beneficiary's behalf on August 5, 2004 ([REDACTED]), which the director approved on May 25, 2005. Counsel asserts that the "previously approved I-360 . . . has not been revoked," although records indicate that the director issued a notice of intent to revoke on July 5, 2006.

On August 11, 2005, the beneficiary filed a Form I-485 adjustment application (receipt number [REDACTED]). The petitioner has not shown that the Form I-485 application was pending throughout the two-year qualifying period. Also, a pending adjustment application does not automatically authorize the applicant to work in the United States. Rather, the regulation at 8 C.F.R. § 274a.12(c)(9) includes adjustment applicants within the category of "aliens who must apply for employment authorization." Although the beneficiary was entitled as early as August 2005 to apply for employment authorization by filing Form I-765, USCIS records do not show that he did so before September 2009.

The petitioner, on appeal, has not submitted any documentary evidence to show that the beneficiary held employment authorization after his R-1 nonimmigrant status expired on March 16, 2009. The AAO, therefore, will affirm the director's finding that the petitioner has not met its burden of proof in this regard.

Review of the record reveals several additional grounds that preclude approval of the petition. 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).

All of the additional issues relate to absence of required evidence. The instructions to Form I-360 list the types of evidence required under the regulations, but the petitioner's initial filing was skeletal, containing none of the required documentation.

The USCIS regulation at 8 C.F.R. § 204.5(m)(8) requires the petitioner to submit a currently valid determination letter from the Internal Revenue Service (IRS) establishing that the petitioning organization is a tax-exempt organization or covered by a group exemption. The record does not contain any IRS determination letter, and therefore the petitioner has not met this requirement.

In instances such as this proceeding in which the petitioner claims that the beneficiary is a minister, the USCIS regulation at 8 C.F.R. § 204.5(m)(9) requires the petitioner to establish the beneficiary's qualifications as a minister, including a copy of the alien's certificate of ordination if one exists. In the employer attestation that accompanied the Form I-360 petition, the petitioner stated that the beneficiary is "ordained/licensed by sister Pentecostal organization Assemblies of God." The petitioner, however, did not submit a copy of the beneficiary's ordination certificate, ministerial license, or any other documentary evidence that the petitioner's religious denomination recognizes the beneficiary's authority to perform the duties of a member of the clergy.

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 a letter accompanying the initial filing, [REDACTED] the petitioner's national overseer for the United States and senior pastor of its Southern California congregation, stated that the beneficiary's "salary will be not less than \$2500 per month. In addition, [the beneficiary] will be provided with transportation, and food valued at not less than \$200 per week and he may receive love offerings as well from those he serves." It is not clear, from [REDACTED] wording, whether the "\$200 per week" value applies to "transportation and food" or to food alone. Under the stated terms, the beneficiary's total compensation (before any "love offerings") would be \$30,000 per year in salary plus about \$10,400 in additional benefits. The petition did not include any documentation, from the IRS or elsewhere, to show how the petitioner would meet those stated terms.

The appeal includes copies of IRS Form 1099-MISC Miscellaneous Income statements, showing that the petitioner paid the beneficiary \$13,250 in 2004; \$14,400 in 2005; \$14,400 in 2006; \$16,700 in 2007; \$28,500 in 2008 and \$30,510 in 2009. If those amounts reflect the beneficiary's salaried and non-salaried compensation, then the amounts are well below the stated sum in excess of \$40,000 per year. If, on the other hand, the listed amounts include only salary, then the petitioner paid the beneficiary the promised annual salary in 2009 but failed to demonstrate that it provided an additional \$200 per week in non-salaried compensation (such as food). The petitioner submitted no

other evidence, such as grocery receipts, to show how much food (if any) the petitioner provided to the beneficiary, either directly or through reimbursement.

The AAO also notes that the USCIS regulation at 8 C.F.R. § 204.5(m)(7)(viii) requires the intending employer to list the specific location(s) of the proposed employment on an employer attestation. The petitioner completed the attestation, but did not list the locations of the proposed employment. Instead, instructed to list “the specific address(es) or location(s) where the alien will be working,” the petitioner stated that the beneficiary would work at “[a]ll petitioner’s congregations throughout USA. Please see petitioner’s website for a complete list of congregations.” The petitioner then identified three web sites but did not include printouts or other evidence that the sites contained the information claimed.

The petitioner did not list the specific locations of the proposed employment, and therefore failed to provide required information. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. 8 C.F.R. § 103.2(b)(14). The petitioner must provide the required information; it cannot suffice simply to name an outside source where the information may be found. USCIS reserves the right to verify the petitioner’s claims, but assumes no obligation to gather information that it is the petitioner’s responsibility to provide.

Any one of the above evidentiary deficiencies would, by itself, warrant denial of the petition. Cumulatively, they lead to a finding that the petitioner did not submit any supporting evidence at all until the appeal, when the petitioner submitted documentation regarding the beneficiary’s past compensation. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. All required application or petition forms must be properly completed and filed with any initial evidence required by applicable regulations and/or the form’s instructions. 8 C.F.R. § 103.2(b)(1). The petitioner has not done so, and USCIS cannot properly 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.