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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: OFFICE: CALIFORNIA SERVICE CENTER

FILE:



**MAY 16 2012**

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)

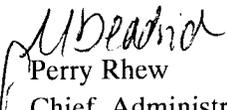
ON BEHALF OF PETITIONER:



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.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, (“the director”) denied the employment-based immigrant visa petition. The matter was before the Administrative Appeals Office (“AAO”) on appeal. The AAO remanded the case to the director. The director denied the petition a second time, and certified the matter to the AAO. The AAO will withdraw the decision of the director. Because the record, as it now stands, does not support approval, the AAO will remand the petition to the director for further consideration and action.

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 a senior pastor/missions director. On December 28, 2005, the director initially denied the petition. The petitioner timely filed an appeal to the AAO. On January 26, 2009, the AAO remanded the matter to the director. On July 23, 2010, the director issued a Request for Evidence (“RFE”), to which the petitioner responded. On October 6, 2011, the director again denied the petition. The director found that the petitioner had not submitted an attestation clause, and based upon a site visit inspection determined that the petitioner does not actually exist.

On certification, the petitioner submits a brief from counsel and several supporting exhibits.

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 petitioner properly completed, signed and dated an attestation in accordance with the regulation at 8 C.F.R. § 204.5(m)(7). The director denied the petition in part because she determined that the petitioner had not submitted an attestation with the response to the RFE. Although a review of the record establishes that the petitioner timely responded to the RFE, the record of proceeding does not contain an attestation. On appeal, the petitioner submitted an attestation and a brief stating that it had submitted the attestation with the response to the RFE. Since the record as it was constituted before the director does not demonstrate the submission of evidence of an attestation, the AAO cannot fault the director for denying the petition on this basis. However, there is evidence in the record that counsel sent the Federal Express envelope to the director, and the director acknowledged in the decision that the petitioner timely responded to the RFE. Therefore, the AAO will remand the matter to the director to review the petitioner's attestation.

The second issue is whether the petitioner exists, and is a place where religious activities are conducted. The regulation at 8 C.F.R. § 204.5(m)(12) states that:

*Inspections, evaluations, verifications, and compliance reviews.* The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

In the present case, the director found that:

On September 24, 2010, a pre-adjudicative site visit was conducted at [REDACTED]. The investigating officer determined that the location is not a place where religious activities are conducted. Also, the telephone numbers listed for the petition were not in service. The investigating officer could not determine if the petitioner actually exists.

On July 23, 2010 the petitioner was requested to submit evidence to prove religious activity at [REDACTED]. On August 20, 2010 the petitioner responded to the request for evidence, however, they did not submit the evidence requested.

In the RFE, the director requested that the petitioner submit documentary evidence to prove religious activity at [REDACTED]. On appeal, the petitioner submitted photographs, two of which purportedly show the outside of the church and one showing the inside. The petitioner also submitted a New York City certificate of occupancy dated February 11, 2002, a Con-Edison bill, financial statements and some church pamphlets and flyers. This evidence appears to comport with the director's RFE. As previously indicated, although the record before the director demonstrated a timely response to the RFE, the actual documentation appears to have been misplaced. The AAO is not in a position to determine whether this information shows the existence of a legitimate church conducting religious activities. Therefore, the AAO will remand the matter to the director to consider the evidence submitted in response to the RFE, and whether such evidence overcomes the negative site visit.

In addition, the director may consider on remand whether the petitioner has established that the beneficiary worked in lawful immigration status in the United States continuously for at least the two-year period immediately preceding the filing of the petition, if he was in the United States. The regulations at 8 C.F.R. §§ 204.5(m)(4) and (m)(11) require that the qualifying prior experience during the two years immediately preceding the petition if acquired in the United States, must have been authorized under United States immigration law. The record shows that the petitioner filed the Form I-360 petition on May 6, 2004. Therefore, the petitioner must show that the beneficiary was working in lawful status from May 6, 2002 to May 6, 2004. The Form I-360 petition indicates that the beneficiary last entered the United States on January 22, 2003. A Form I-94 in the record shows that the beneficiary entered the United States as a B-2 nonimmigrant. Immediately prior to that, the petitioner states that the beneficiary worked for the petitioner's sister church in Ghana. On January 14, 2003, the beneficiary was also ordained as a minister for the petitioner's church in Ghana. The record also shows that the beneficiary received R-1 status that was valid from November 4, 2003 to November 4, 2006. The AAO also notes that in the beneficiary's Form G-325A, Biographic Information, the beneficiary stated that he started working for the petitioner in November of 2003. The petitioner also has not submitted IRS Forms W-2 for the beneficiary in 2003 and 2004, and has not submitted the Ghanaese equivalent from 2002 to 2003, as required by the regulation at 8 C.F.R. 204.5(m)(11)(i). Therefore, on remand, the director may determine whether the beneficiary was working continuously and in lawful status in the United States for the two years immediately preceding the filing of the petition.

The director's decision is withdrawn. The petition may not be approved, however, for the reasons discussed above. The petition will be remanded for the director to review the petitioner's RFE response, to determine whether the petitioner's information overcomes the negative site visit, and any other issues the director deems appropriate. The director may issue a request for evidence and allow the petitioner a reasonable period of time to respond. Upon review, the director shall enter a new decision which, if adverse to the petitioner, shall be certified to the AAO for review.

As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and the entry of a new decision, which, if adverse to the petitioner, must be certified to the Administrative Appeals Office for review.