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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 18 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 petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO subsequently remanded the petition to the director for a new decision based on revised regulations. The director again denied the petition and certified the decision to the AAO. The AAO will affirm the director's decision.

The petitioner is a Full Gospel Christian 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 missionary/spiritual counselor. The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition. The director based this finding on a compliance review site inspection that indicated the beneficiary performed a number of secular functions.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.4(a)(2) indicates that the petitioner may submit a brief within 30 days after the director serves notice of a certified decision. The director issued the certified denial on December 22, 2010. The permitted time period has elapsed, and the AAO has received no response to the certified denial. The AAO therefore considers the record to be complete as it now stands.

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 petitioner filed the Form I-360 petition on December 15, 2006. At that time, the USCIS regulation at 8 C.F.R. § 204.5(m)(3)(ii) required the petitioner to submit a letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work; and

(B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested; or

(C) That, if the alien is a religious professional, he or she has at least a United States baccalaureate or its foreign equivalent required for entry into the religious profession. In all professional cases, an official academic record showing that the alien has the required degree must be submitted; or

(D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

The USCIS regulation at 8 C.F.R. § 204.5(m)(2) defined a “religious occupation” as “an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters.” The definition excluded secular occupations such as “janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.”

The petitioner’s initial submission included a letter from [REDACTED] president and pastor of the petitioning church. The letter read, in part:

[REDACTED] has been in operation since 1995 as an outreach of [the petitioning] Church to help men and women seeking accountability in areas of vocation and spirituality. . . .

We have both a Recovery Home for Men and Boys and a Recovery Home for Women and Girls. The men are required to work at [REDACTED] either on the farm or in the dairy. . . .

The Spiritual Counselors assist the various programs by leading Bible study and spirituality groups. . . . As stated above, one of the unique components of our recovery program is the work element. . . . The counselors also have the responsibility to supervise groups of residents while they perform their work hours. . . . The missionary counselors generally work a schedule of 7:00 am to 9:00 pm for six days per week. Approximately two-thirds of [the beneficiary's] time is spent working as a spiritual counselor.

The petitioner's initial submission also included a copy of the beneficiary's 2005 income tax return, on which the beneficiary identified his occupation as "counselor."

On June 12, 2007, the director issued a request for evidence, instructing the petitioner to submit, among other things, "a **detailed description** of the work to be done" (emphasis in original). In response, the petitioner submitted an affidavit in which [REDACTED] stated that "the focus of [the beneficiary's] work is to help the men, women, and children in our programs to accept Jesus Christ in their lives through spiritual direction, education, and counseling." [REDACTED] did not describe the beneficiary's counseling duties in any detail.

On April 16, 2008, a USCIS officer and an officer from Immigration and Customs Enforcement (ICE) visited the petitioning entity for a routine compliance review inspection. The officers spoke to the beneficiary, and reported:

When asked what his duties are, [the beneficiary] stated that until recently he served as the manager of the dairy. [The beneficiary] stated they have since hired a dairy manager, so he counsels those in the program. . . . When questioned several times about his counseling duties, [the beneficiary] failed to provide an explanation of his duties, saying that he helped with whatever is required. . . .

As of 04/30/08, [the petitioner's] website lists [the beneficiary] as the contact person for [REDACTED]

The director denied the petition on October 27, 2008, stating that the petitioner failed to "provide a clear description of the beneficiary's duties," and that the beneficiary himself indicated that "until recently he served as the manager of the [REDACTED] and was unable to describe his later claimed counseling work.

The director denied the petition on October 27, 2008, having concluded that the above information cast doubt on the claim that the beneficiary had continuously worked in the religious occupation of a missionary/religious counselor throughout the two-year qualifying period.

On appeal, counsel stated:

[The petitioner's] philosophy includes the need for recovering addicts to perform manual work to distract them from their sorrows and to develop a new sense of worth as a contributing member of the community. The counselors work along side the residents of the treatment program and counsel and support them on a daily basis. The [petitioner's] community was established on a dairy farm for this very reason. The work available to the residents includes milking, feeding, and caring for dairy cows at the [REDACTED]. When there was a temporary vacancy in the position of manager, the beneficiary put his management experience to good use by temporarily filling the position. As manager, he did not stop performing his counseling and missionary responsibilities. . . . To the outside observer, [the petitioner] may appear to be a large-scale dairy and farming operation, but it is a growing faith community.

The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Therefore, the above claims have no weight unless supported by verifiable evidence. Counsel indicated that further evidence would follow.

Subsequently, the petitioner submitted 23 witness statements, copies of the [REDACTED] newsletter, and a promotional DVD. Volume 7, Issue 1 of the [REDACTED] indicated the beneficiary "manages [REDACTED] (page 2).

In an affidavit, the beneficiary claimed that he told the inspecting officers that he "had been working at the [REDACTED] on a temporary basis." The beneficiary stated that his counseling duties involve "teach[ing] group sessions," "help[ing] residents] with their behavioral and anger issues," and "help[ing] run the [REDACTED] to oversee those JOBS we provided to those in need" (emphasis in original).

Numerous other witnesses asserted that counselors worked at the dairy and creamery alongside residents of [REDACTED]. For example, [REDACTED] stated: "The fall of 2005 I took the job of managing the [REDACTED] at [the petitioning entity]. . . . The managers are the busiest counselors in the ministry because we work right along side these men and women." Several other witnesses made similar assertions that counselors typically work at the dairy to stay in close contact with residents. These claims appear to contradict the beneficiary's statement that he "had been working at the [REDACTED] on a temporary basis."

None of the witnesses' statements described the beneficiary's counseling work in significant detail. The emphasis, instead, was that the beneficiary was committed to serving as a mentor regardless of the nature of the duties assigned. [REDACTED] himself, in a new letter dated November 21, 2008,

provided no details about the beneficiary's work, stating only that he "is a great servant, his skills are many, and he works with both young adult clients and adult clients every day."

[REDACTED], the beneficiary's "supervisor at the youth dorm," praised the beneficiary's "countless interactions with young men, one-on-one," and stated that he "has also embraced opportunities to serve collective groups of young people here at [REDACTED] functioning as a discipleship group leader and even speaking to large groups of youths at the school."

[REDACTED], who has been "at [REDACTED] almost nine years" in an unspecified capacity, discussed the range of the beneficiary's work, ranging from "going out in the [REDACTED] to help someone having issues" to "[h]elping teach in school or speaking to the group in the program at the Auto Shop while getting an oil change, or while on a two days milk promo."

Two letters, respectively signed by two employees of [REDACTED], contain nearly identical language. The letter signed by [REDACTED] reads:

I am writing this letter on behalf of [the beneficiary]. I have known [the beneficiary] since 2006.. [sic] [The beneficiary] has played a very intrical [sic] part to my life. As a resident in the [REDACTED] [the beneficiary] was a religious counselor who took men and tried to disciple them. [The beneficiary] was a very helpful man in my life, as through my program [sic] Not only was [the beneficiary] a religious counselor growing up, he also has [sic] and still is a great friend. Through his counseling I am now the Admissions Department Supervisor to the [REDACTED] [sic] Center. [The beneficiary's] diligence in his religious counseling helped me achieve all I am today. Thank you.

The letter signed by [REDACTED] contains very similar language, including many of the same errors of grammar and spelling. It reads:

I am writing this letter on behalf of [the beneficiary]. I have known [the beneficiary] since 2001. [The beneficiary] has played a very intrical [sic] part to my life. As a student in the [REDACTED] [the beneficiary] was a religious counselor who undertook young men and tried to disciple them. [The beneficiary] was a very helpful man growing up in my life. Not only was [the beneficiary] a religious counselor growing up, he also has [sic] and still is a great friend. Through his counseling I am now the administrative assistant to the Director of the [REDACTED] Mens [sic] Center. [The beneficiary's] diligence in his religious counseling helped me achieve all I am today. Thank you.

While the appeal was pending, USCIS published new regulations for special immigrant religious worker petitions. Supplementary information published with the new rule specified: "All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). The AAO remanded the petition to the director on May 5,

2009, instructing the director to issue a new decision under the updated regulations and, if the director again denied the petition, to certify the decision to the AAO for review.

The revised regulation at 8 C.F.R. § 204.5(m)(5) defines a “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 director denied the petition for the second time on December 22, 2010. The director observed that, during the compliance review inspection, the beneficiary appeared to be unfamiliar with the duties of a counselor and unable to describe those duties in any detail. The director also noted the beneficiary’s secular duties at the creamery. The director discussed the many statements submitted on appeal, but found them, too, to be lacking in detail, and observed that a number of witnesses alluded to the broad range of the beneficiary’s duties at a facility that includes not only a church and a rehabilitation center but also a fully functioning commercial dairy and creamery. The director concluded: “the evidence is insufficient to establish that the beneficiary has been performing full-time work as a Christian Missionary/Spiritual Counselor for at least the two-year period immediately preceding the filing of the petition.”

The AAO notes that the new regulation at 8 C.F.R. § 204.5(m)(12) reads:

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.

As discussed above, the petitioner did not satisfactorily complete the pre-approval inspection, because that inspection called into question the actual nature of the beneficiary's duties.

As noted previously, the director certified the decision to the AAO and advised the petitioner of its right to submit a brief within 30 days, but the record contains no further response from the petitioner.

Based on a review of the record, the AAO will affirm the director's finding that the petitioner has not established that the beneficiary continuously engaged in qualifying religious employment throughout the two years immediately preceding the filing of the petition.

Beyond the director's decision, a number of other disqualifying factors prevent 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).

The revised regulations published in 2008 included several new evidentiary requirements. The director did not discuss these new requirements or use them as a basis for denial of the petition in 2010, but nevertheless the absence of required initial evidence is grounds for denial and thus bears mentioning here. To request the missing evidence would serve no useful purpose, because the previously stated grounds for denial still stand.

The USCIS regulation at 8 C.F.R. § 204.5(m)(7) requires the petitioner to submit a detailed employer attestation containing information about the petitioner, the beneficiary, and the job offer. The regulation at 8 C.F.R. § 204.5(m)(8) requires the petitioner to submit a determination letter from the Internal Revenue Service (IRS) to show that the IRS recognizes the employer as tax-exempt under section 501(c)(3) of the Internal Revenue Code.

██████████ in the initial filing, stated that the beneficiary would receive "housing, food, clothing, health insurance and a spending allowance each month" worth "\$31,960.00 per year." He added: "Our offer of remuneration is not contingent upon [the beneficiary] performing work at [the petitioning entity], but is a gift to a spirit-filled missionary." This last statement is of concern because ██████████ seemed to indicate that the beneficiary would receive the above benefits whether or not he performed any work for the petitioner. If the benefits are "a gift" that "is not contingent upon [the beneficiary] performing work," then there is no coherent job offer, and ██████████ has effectively asserted that the beneficiary's work will be uncompensated; the beneficiary will receive full material support whether he is "performing work" or not. If, on the other hand, the past and intended future payments to the beneficiary have been in compensation for work performed, then those payments have indeed been contingent on the beneficiary's work for the petitioner, and ██████████ assertion to the contrary is false. Either of these alternatives is of concern.

Finally, the AAO notes that a qualifying employer must be tax-exempt. See section 101(a)(27)(C)(ii) of the Act and 8 C.F.R. § 204.5(m)(3). Apart from the petitioner's failure to document its tax-exempt status, the record amply documents that much of the beneficiary's work takes place at a dairy/creamery. [REDACTED] himself indicated that the dairy is part of [REDACTED] rather than the petitioning ministry itself. The AAO acknowledges that the beneficiary's compensation has come from the church. Nevertheless, if the beneficiary has been, and will continue, performing much of his work on the premises of a commercial dairy owned by a for-profit corporation, and his work has directly benefited that corporation in furtherance of its commercial purposes, then the commercial business would appear to have some hand in the beneficiary's employment. The assertion that the beneficiary works at a commercial dairy while providing religious counseling does not definitively resolve the matter in the petitioner's favor, nor does channeling the beneficiary's compensation through a church rather than through the dairy. Given the beneficiary's integral involvement with a commercial dairy/creamery, the petitioner has not established that the beneficiary has worked, and will work, for and on behalf of a qualifying tax-exempt religious organization.

The AAO will affirm the denial of the petition 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 director's decision of December 22, 2010 is affirmed. The petition is denied.