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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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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Date: **MAY 22 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 assistant pastor and “director of men Christian religious education.” The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition. The director also determined that the petitioner had not established that the proffered position would be a full time position or that the beneficiary had been a member of the petitioner’s denomination for at least two years immediately prior to filing the petition.

On appeal, the petitioner submits a statement from the petitioner.

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 to be discussed is whether the petitioner has established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition.

The U.S. Citizenship and Immigration Service's (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 February 22, 2010. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work in lawful status throughout the two-year period immediately preceding that date.

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

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.

According to the Form I-360 petition and the record, the beneficiary entered the United States on December 10, 2009 in B-1 nonimmigrant visitor status which expired on March 9, 2010. The regulation at 8 C.F.R. § 214.1(e) states that aliens in such status "may not engage in any employment." On the petition, the petitioner gave the following description of the beneficiary's

qualifications for the proffered position: "Held same position for over 3 years at church of same denomination in Dom. Rep." The petitioner did not indicate on the petition or in supporting documentation whether the beneficiary was currently employed by the petitioner. Service records do not indicate that the beneficiary held any lawful status in the United States that would have authorized him to work for the petitioner during the two-year qualifying period. Accordingly, any work performed by the beneficiary in the United States during that time is not considered qualifying prior experience under 8 C.F.R. § 204.5(m)(11).

On the beneficiary's Form G-325A, Biographic Information, filed with his Form I-485, Application to Adjust Status which he filed concurrently with the Form I-360 petition on February 22, 2010, the beneficiary indicated that he had been "unemployed" from November 2009 to the present, and had been "self-employed" as a "preacher-rel. worker" from August 2005 to October 2009.

On August 19, 2010, USCIS issued a request for evidence, in part instructing the petitioner to submit evidence that the beneficiary had been employed in a qualifying position for at least the two years immediately prior to filing the petition. The notice stated:

Provide experience letters written by the previous and current employers that include a breakdown of duties performed in the religious occupation for an average week. Include the employer's name, specific dates of employment, specific job duties, number of hours worked per week, form and amount of compensation, and level of responsibility/supervision. In addition, submit evidence that shows monetary payment, such as pay stubs or other items showing the beneficiary received payment. If any work was on a volunteer basis, provide evidence to show how the beneficiary supported himself during the two-year period or what other activity the beneficiary was involved in that would show support. If any of the experience was gained while working in the United States provide evidence that the beneficiary was employed while in lawful status.

NOTE: Each experience letter must be written by an authorized official from the specific location at which the experience was gained. The petitioner may only write an experience letter for the experience gained at the petitioner's location.

In a letter dated September 23, 2010, responding to the notice, the petitioner stated in pertinent part:

Work History

In 1997 Beneficiary joined a church of our same denomination in the Dominican Republic, where he grew deeply involved in church activities and bible studies, developing a calling for religious life, a goal he has pursued ever since. During the last years and before relocating to the US he had been working as an itinerant preacher at different independent Pentecostal churches in his Dominican Republic.

He joined our organization soon after arriving in the US in December 2009.

As proof of his religious credentials and activities, we are enclosing copies of his 'exhorting pastor' credentials and photograph of him during preaching activities.

The copy of the beneficiary's "exhorting pastor credentials" submitted by the petitioner consisted of a photocopy of an identification card from [REDACTED] at the petitioner's address, identifying the beneficiary as an ordained "member of the Ministerial Body of this organization." The card did not indicate a date of issue. Additionally, the petitioner submitted photographs purportedly showing the beneficiary engaged in "preaching activities," but the petitioner did not identify the date or location of the photographs.

On March 1, 2011, the director denied the petition, finding that evidence submitted by the petitioner was insufficient establish the beneficiary's continuous, qualifying work experience during the two-year qualifying period either in the United States or abroad. The director additionally noted that "the beneficiary's visa interview in 2004 indicates he is employed as an industrial mechanic and is working for a beer company, not as a church pastor prior to his entry into the United States."

On appeal, the petitioner states:

Prior to entering the US on December 10, 2009, Beneficiary was working as an Assistant pastor for a period of over 4 years as evidence by the letter on record from [REDACTED] a church of same denomination located in [REDACTED] Dominican Rep. Upon arrival, Beneficiary joined our church and continued his work in the same religious capacity. Therefore Beneficiary meets the 2-yr requirement.

Moreover the fact that Beneficiary listed his job as mechanic during Visa interview in Santo Domingo, does not conflict with his religious activities which were conducted during evenings and weekends.

Contrary to the petitioner's assertion on appeal, a review of the record reveals no experience letter from a church in the Dominican Republic or any other documentary evidence to verify the beneficiary's purported work experience abroad. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Further, the petitioner's assertion on appeal that the beneficiary worked for over four years as an Assistant Pastor at [REDACTED] directly conflicts with the petitioner's statement in response to the Request for Evidence that the beneficiary "had been working as an itinerant preacher at different independent Pentecostal churches in his Dominican Republic." Additionally, it conflicts with the beneficiary's Form G-325A, on which the beneficiary indicated that he was self-employed from August 2005 to October 2009. It is incumbent upon the petitioner to resolve any inconsistencies in the record by

independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Regarding the beneficiary's purported employment with the petitioning organization in the United States during the final months of the qualifying period, the petitioner has not submitted evidence of the beneficiary's compensation or self-support as required under 8 C.F.R. § 204.5(m)(11). Further, the petitioner has not established that the beneficiary held lawful status or employment authorization during his employment in the United States as required under 8 C.F.R. § 204.5(m)(4) and (11) respectively.

Therefore, the AAO agrees with the director's determination that the petitioner has not submitted sufficient evidence to establish the beneficiary's continuous, lawful, qualifying work experience during the two years immediately preceding the filing date of the petition.

In the decision, the director also found that the petitioner failed to demonstrate that the beneficiary's prospective position will be a full time position of at least 35 hours per week.

The USCIS regulation at 8 C.F.R. § 204.5(m)(2) provides that in order to be eligible for classification as a special immigrant religious worker, an alien must:

(2) Be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position in one of the following occupations as they are defined in paragraph (m)(5) of this section:

- (i) Solely in the vocation of a minister of that religious denomination;
- (ii) A religious vocation either in a professional or nonprofessional capacity;
or
- (iii) A religious occupation either in a professional or nonprofessional capacity.

The USCIS 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.

In a letter accompanying the Form I-360 petition, the petitioner indicated that the beneficiary would be employed as a full time assistant pastor. The petitioner stated:

On average the position implies a minimum of 35 hrs/ per week, distributed roughly as follows

	<u>Hr/wk</u>
Assisting senior pastor during religious services and ceremonies	10.00
Sunday School	3.00
Greeting members before/after religious services	6.00
Meeting and planning with Elders, dept directors and committees	6.00
Visiting current & prospective members for good will and Community outreach	6.00
Administrative	<u>4.00</u>
Average weekly hours	<u>35.00</u>

In the letter responding to the August 19, 2010 Request for Evidence, the petitioner repeated a similar weekly schedule of duties for the beneficiary, changing "Sunday School" to "Sunday school (and pre/after-class meetings with teachers)." As part of the response to the notice, the petitioner also listed its "Hours of Service" as follows:

Sunday School:	12 PM – 1 PM
Sunday Evangelistic Service:	1 PM – 3 PM
Tuesday (Women's Fellowship):	8 PM – 9:30 PM
Thursday (Men's Fellowship):	8 PM – 9:30 PM
Friday (Youth Fellowship):	8 PM – 9:30 PM

In her decision, the director discussed a site inspection which was conducted at the petitioner's location on December 30, 2010. The director noted that the petitioner's sign, as observed during the inspection, indicated that the church is open at 8:00 p.m. on Tuesday, Thursday and Friday and on Sunday from 1:00 p.m. until approximately 4:00 p.m., or approximately 10 hours per week. The director observed that the hours of service listed by the petitioner in response to the Request for Evidence supported this information. The director asserted that the beneficiary's purported weekly schedule of 35 hours per week was not consistent with the petitioning organization's listed hours of operation.

On appeal, the petitioner asserts that the schedule written on its sign "refers only [to] the actual hours of worship services, not to the total number of hours of religious activities taking place at our church." However, even if the "Fellowship" hours on petitioner's "Hours of Service" are considered worship services, the petitioner has a total of 6.5 hours of religious services per week.

The petitioner has not resolved the inconsistency with the beneficiary's weekly schedule which indicates he will spend 10 hours per week assisting in religious services and ceremonies. Further, the petitioner asserts that the beneficiary will spend three hours per week on Sunday school, while it acknowledges that Sunday school lasts for one hour. Although the petitioner later changed the description to "Sunday school (and pre/after-class meetings with teachers)," the AAO notes that Sunday school is directly followed by the Sunday service in which the beneficiary will purportedly be providing assistance to the senior pastor. The AAO agrees with the director that the petitioner has not submitted sufficient documentation to establish that the beneficiary will actually be employed for at least 35 hours per week.

In the decision, the director additionally found that the petitioner had not submitted evidence to establish the beneficiary's membership in the petitioner's denomination prior to the filing of the petition.

The USCIS regulation at 8 C.F.R. § 204.5(m)(1) provides that in order to be eligible for classification as a special immigrant religious worker, an alien must have been a member of the petitioning organization's religious denomination for at least the two years immediately preceding the filing date of the petition.

As stated above, the beneficiary entered the United States on December 10, 2009, and the petition was filed on February 22, 2010. On the Form I-360 petition, the petitioner asserted that the petitioning organization and the church abroad of which the beneficiary is a member "share the same Christian denomination." Additionally, in the letter responding to the Request for Evidence, the petitioner indicated that the beneficiary "joined a church of our same denomination in the Dominican Republic" in 1997. However, the petitioner has offered no evidence to establish the beneficiary's membership in any religious organization in the Dominican Republic. The [REDACTED] credentials" document submitted by the petitioner, discussed above, was issued by an organization in the United States and the document does not indicate when it was issued. Therefore, the AAO agrees that the petitioner has not established that the beneficiary has been a member of the petitioning organization's religious denomination for at least the two years prior to filing the 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.