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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 22 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:

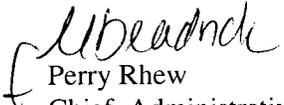
SELF-REPRESENTED

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, (“the director”) denied the employment-based immigrant visa petition. The petitioner timely filed an appeal to the denied petition<sup>1</sup>. The matter is now before the Administrative Appeals Office (“AAO”) on appeal. The AAO will dismiss the appeal.

The petitioner is a Buddhist organization. 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 Buddhist nun. On October 19, 2009, the petitioner filed a Form I-360 petition. On June 7, 2010, the director issued a Notice of Intent to Deny (“NOID”) to the petitioner, to which the petitioner timely responded. On October 12, 2010, the director denied the petition, finding that the beneficiary had not been continuously working in lawful status for at least the two year period immediately preceding the filing of the petition.

On appeal, the petitioner submits a letter.

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).

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<sup>1</sup> Prior to filing the appeal, the petitioner was represented by [REDACTED] However, the petitioner is self-represented on appeal.

The issue is whether the beneficiary possesses two years of continuous lawful work experience in the United States immediately prior to the filing of the form I-360 petition. The regulation at 8 C.F.R. § 204.5(m)(4) states that:

(m) *Religious workers.* This paragraph governs classification of an alien as a special immigrant religious worker as defined in section 101(a)(27)(C) of the Act and under section 203(b)(4) of the Act. To be eligible for classification as a special immigrant religious worker, the alien (either abroad or in the United States) must:

\* \* \*

(4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in *lawful immigration status* in the United States, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed. A break in the continuity of the work during the preceding two years will not affect eligibility so long as:

- (i) The alien was still employed as a religious worker;
- (ii) The break did not exceed two years; and
- (iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

(Emphasis added)

Further, the regulation at 8 C.F.R. § 204.5(m)(11) states that:

*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.  
(Emphasis added)

The current Form I-360 petition was filed on October 19, 2009. According to the regulation above, the beneficiary must have been working in lawful status for two years immediately prior to the filing of the petition, from October 19, 2007 to October 19, 2009. The record reflects that initially, the beneficiary entered the United States in R-1 nonimmigrant status on May 2, 2005 to work for the [REDACTED] until May 12, 2008. On February 22, 2006, [REDACTED] filed a Form I-360 petition on the beneficiary's behalf. The petition was approved on May 8, 2006. However, on January 5, 2007, [REDACTED] sent USCIS a letter explaining that it no longer wanted to sponsor the beneficiary, alleging that the beneficiary deceived them and stole from them. The petition was revoked on January 17, 2008. Subsequently, a Notice to Appear was issued to the beneficiary on August 28, 2008. The beneficiary had a master calendar hearing on May 5, 2009. The beneficiary did not show up for this master calendar hearing, and on that day, the beneficiary was ordered removed *in absentia* from the United States. Subsequently, the petitioner's I-129 petition was approved, and the beneficiary reentered the country in lawful R-1 nonimmigrant status on July 28, 2009. However, the petitioner has not shown that the beneficiary was in lawful immigration status from January 17, 2008 to July 28, 2009. Therefore, the petition will be dismissed on this basis.

In her decision, the director noted that the petitioner failed to respond to allegations regarding the beneficiary's R-1 visa. The director stated:

On 7/7/2010, USCIS issued a Notice of Intent to Deny to the petitioner informing the petitioning Organization that the US Embassy at Ho Chi Minh had received information alleging that the beneficiary paid to obtain the religious worker (R1) visa in order to seek admission into the United States. The petitioner failed to respond to these specific allegations contained in USCIS's Notice of Intent to Deny.

On appeal, the petitioner stated:

I am writing to file the appeal for the I-360 petition filed on behalf of our temple for [REDACTED]. I certify that she has maintained status as a religious worker for the two year time period, prior to filing, from October 19, 2007 to October 19, 2009. At all times, she was under the direction and control of our temple and she has come to advance her monastic training. During the time period, the temple cover [sic] her daily expenses for food, lodging and clothing.

Regarding the [June] 7, 2010 Notice intent to Deny [sic], our Temple did not receive a notice regarding the allegations that beneficiary paid our temple to obtain R-1 status. This is a false allegation, and neither I, nor any authorized individual, at this Temple have received any monetary compensation of any kind from [REDACTED]. We are also not aware of a removal order and have not received notice of such orders. Please provide our temple with copies of the documents pertaining to this matter.

The AAO is not persuaded by the petitioner's arguments. First, although the petitioner "certifies" that the beneficiary maintained her status for the two year period, it fails to provide documentary evidence to support its assertions. Further, the petitioner fails to provide evidence showing that the beneficiary has been working continuously for the two year period immediately preceding the filing of the petition. This requirement is set forth in 8 C.F.R. § 204.5(m)(11). The record contains no IRS Forms W-2, IRS Forms 1099, or certified tax returns of the beneficiary, as required by the regulation above. In the response to the NOID, the petitioner explained that these documents do not exist, and the beneficiary received compensation purely on a cash basis. However, the petitioner has provided no evidence at all that the beneficiary has been continuously working for it in lawful status for the two years immediately preceding the filing of the petition. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Therefore, the AAO finds that the petitioner has not met its burden of proof, and will uphold the decision of the director.

Second, the petitioner asserts that its temple did not receive notice regarding the allegations that the beneficiary paid its temple to obtain the R-1 nonimmigrant status. The AAO has reviewed the NOID, to which the petitioner had submitted a response. The NOID states:

The Consulate at [REDACTED] has received information alleging that the beneficiary paid to obtain the beneficiary's Religious Worker visa, hence the beneficiary's status or condition of entry.

The NOID clearly gives notice that the petitioner about the USCIS's findings. Therefore, the petitioner was not correct in stating that the director never gave notice.

The AAO notes that the only rebuttal that the petitioner submitted to the director's finding was a statement on appeal, in which she stated:

This is a false allegation, and neither I, nor any authorized individual, at this Temple have received any monetary compensation of any kind from [REDACTED]

*Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988), states:

It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.

In the present case, the petitioner has not submitted any objective evidence to rebut the director's decision. The AAO finds that this is insufficient to overcome the director's finding. Therefore, the AAO cannot find that the beneficiary worked continuously in lawful immigration status during the two year period immediately preceding the filing of the petition, as required by the regulations above. As a result, the AAO will dismiss the appeal.

As an additional matter, the AAO also finds that the petitioner failed to establish that it is a bona fide religious organization, and that it has the ability to compensate the beneficiary. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial 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 (9<sup>th</sup> 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 regulation at 8 C.F.R. § 204.5(m)(1) requires that for at least the two years immediately preceding the filing of the petition have been a member of a religious denomination that has a bona fide non-profit religious organization in the United States. The regulation at 8 C.F.R. § 204.5(m)(5) defines a bona fide non-profit religious organization as a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, and possessing a currently valid determination letter from the IRS confirming such exemption. Further, the regulation at 8 C.F.R. § 204.5(m)(8) requires that the petitioner submit a currently valid determination letter from the Internal Revenue Service ("IRS") establishing that the organization is a tax-exempt organization. In this case, the petitioner has not submitted a tax exemption letter from the IRS showing that it is a tax exempt organization under IRS Section 501(c)(3). Therefore, the petition will be dismissed on this basis as well.

Further, the regulation at 8 C.F.R. § 204.5(m)(10) requires that the petitioner submit verifiable evidence of how the petitioner intends to compensate the alien. In the Form I-360 petition attestation clause, the petitioner did not state the amount of salaried or non-salaried compensation the beneficiary would receive. The petitioner showed no evidence of past compensation that the beneficiary received during the two years immediately preceding the filing of the petition. Further, the petitioner provided no evidence of its ability to compensate, such as a budget, taxes, or salaries

showing that it compensated others in similar positions. Therefore, the AAO finds that the evidence is insufficient to show that the petitioner has the ability to compensate the beneficiary.

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.

**ORDER:** The appeal is dismissed