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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

**PUBLIC COPY**



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DATE:

**MAY 23 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, (“the director”) 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 alien seeks classification 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 at [REDACTED]. On July 9, 2010, the petitioner filed the Form I-360 petition. On August 17, 2010, the director issued a Request For Evidence (“RFE”), to which the petitioner responded. On November 26, 2010, the director issued a Notice of Intent to Deny (“NOID”), to which the petitioner responded. On January 27, 2011, the director denied the petition. The director found that the petitioner did not submit sufficient evidence to establish that it had a place for practice or regular worship.

On appeal, the petitioner submits a letter from the petitioner 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 issue is whether the petitioner has a place for practice or regular worship, in accordance with the regulation at 8 C.F.R. § 204.5(m)(7)(viii). This part of the regulation requires that the petitioner

provide the specific location(s) of the proposed employment. On the Form I-360 attestation clauses that the petitioner submitted and in response to the RFE, the self-petitioner stated that the Church had two locations. The first location is [REDACTED], which is [REDACTED] home and home office and the mailing address for [REDACTED]. The second address is [REDACTED] which is the church address and the church office, where they conduct regular services.

The record, when read in full, shows that the director's denial of the petition due to the petitioner's location arises from a failed site visit that a United States Citizenship and Immigration Services (USCIS) officer conducted on October 21, 2010. 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.

The director presented her findings to the petitioner in the NOID. The director stated:

On October 21, 2010, a site visit was conducted by an Immigration Officer from Buffalo, New York. The petitioner exists as a religious organization registered in Erie County, New York. However, there are currently 5 adherents and the petitioner has not held a Sunday Service since March, 2010. The beneficiary travelled to Europe in January, 2010. He was unable to return to the U.S. and filed the instant petition to obtain a U.S. visa. Prior to the beneficiary's departure, the petitioner saw 25 people attending weekly services. The petitioner occupied a room, within a suite, in an office building at [REDACTED]. The Immigration Officer viewed the darkened room which contained some sound equipment and chairs. The room can accommodate about 50 people. When the

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<sup>1</sup> On the first attestation clause, and numerous times in the record, the petitioner states that the address is [REDACTED]. However, the lease shows that the address is [REDACTED] Avenue. The petitioner explains the discrepancy between the two addresses in a letter dated December 23, 2010, in which the petitioner explains, "There are two entrances [sic] for our facility – on the first [sic] door there is number [REDACTED] but we don't use this entrance. The next door, which we use is with [sic] number [REDACTED] – that's why we announce this address to the public."

petitioner held services, it paid the property owner about \$250.00 a month for rent. Currently the petitioner pays \$50.00 a month to store its equipment. The petitioner has fixed a sign on its door which advises that all services are cancelled while the beneficiary is in Bulgaria. The address at [REDACTED] is the beneficiary's two bedroom apartment, currently occupied by his spouse, [REDACTED] and three children. The petitioning organization exists on paper, but since the beneficiary's departure from the U.S., his congregation has diminished. As the beneficiary has self petitioned, he makes no specific claims about the capacity of the organization. However, his petition is based completely upon his role as a "Senior Pastor" and as of this date he does not have a congregation which could support his pastorate.

The self-petitioner was given an opportunity to rebut the director's findings. The self-petitioner submitted a letter explaining the director's findings and containing a proposed work schedule, letters and a petition, an electric bill, a lease for [REDACTED] money wires to the self-petitioner, pay stubs, page nine of an IRS Form 1023 and a letter from [REDACTED]

The director found this evidence insufficient to establish the self-petitioner's location. In her decision, the director stated:

The record fails to support the location where the beneficiary will be working. The petitioner submitted a proposed work schedule for the beneficiary. However, the proposed schedule fails to identify the complete work location, address, and contact information/responsibility in the scheduled activities. Furthermore, there is no verifiable documentation to demonstrate the locations where the beneficiary will be working.

The petitioner has not submitted sufficient evidence in rebuttal to the USCIS's notice of intent to deny and has not overcome the grounds for denial. Therefore, the petition is denied.

The evidence submitted both in response to the NOID and on appeal is insufficient to overcome the failed site visit. When the site visit was conducted on October 21, 2010, there was no one at [REDACTED]. The self-petitioner stated in the appeal that the last service was held there in March of 2010, which 25 people attended. Since that time, from April of 2010 to December of 2010, the self-petitioner stated that they had left that facility. The self-petitioner had explained that there was a flood and it was impossible to use the building, and they were not able to return there until December of 2010. The petitioner provides no evidence that there was a flood, outside of his own statements. 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)).

The evidence in the record does not support the petitioner's explanation that there was a flood. In the director's site visit, the director noted a sign on the window advising that the petitioner's services

are canceled while the self-petitioner is in Bulgaria. There was no indication that they were not holding services due to a flood. During that same site visit, the self-petitioner's wife told the director that there was a leak in the roof, and the landlord would notify her when the repair was made. A leak in the roof is very different from a flood. *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.

The documentary evidence also does not support the petitioner's contention that there was a flood. There is also a letter in the record from the landlord dated September 16, 2010. In this letter, the landlord states that the self-petitioner's employer has rented space since November 13, 2008, and that "the rental has taken place on and off to date since that time." The landlord never mentioned a flood. Further, the lease itself, which was signed during the period that the self-petitioner claimed to have vacated the premises due to a flood, says nothing about the fact that there was a flood and the self-petitioner is waiting for the landlord to complete repairs, or that the self-petitioner will pay a lower rent while waiting for repairs to be made. The petitioner's statements and evidence are insufficient to overcome the failed site visit report.

The USCIS officer visited the self-petitioner's home at [REDACTED] and described the place as a two-bedroom apartment of the petitioner that did not have an office. All of the papers relating to the ministry were stored in a cabinet. This contradicts the attestation clause and the RFE in which the self-petitioner stated that this address contained the church's "home office." The self-petitioner has not shown that this apartment is being used for religious activities or that it had an office space specifically designated for the petitioner's church.

The petitioner had two opportunities to submit an attestation clause. In both instances, the petitioner listed its address as [REDACTED], and the worship center and church office was [REDACTED]. It was only on appeal that the petitioner stated that from March until December of 2010, "during that time our organization operated basically as self groups usually at [REDACTED] and [REDACTED] at church member's houses/apartments. Location varies from week to week." The record shows that [REDACTED] is the address of [REDACTED], who is a board member of the church. The petitioner did not state this on the attestation clause or in response to the RFE. A petitioner must establish the elements for the approval of the petition at the time of filing. A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). It is apparent that at the priority date, the petitioner did not have a place in which to conduct religious services. Therefore, the appeal will be dismissed.

Beyond the decision of the director, the AAO also finds that the petitioner failed to establish that he had been working continuously for the two years immediately preceding the filing of the petition,

and that the petitioner's religious organization 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 self-petitioner has not established that he worked continuously and in lawful immigration status when he was in the United States continuously for at least the two-year period immediately preceding the filing of the petition. 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 self-petitioner entered the country on September 17, 2007 in R-1 nonimmigrant status. He was supposed to work for the [REDACTED]. The evidence in the record does not show that the self-petitioner worked for this church. The self-petitioner's wife stated that never worked for this church. This is in violation of the regulation at 8 C.F.R. § 214.1(e), which requires the self-petitioner to engage only in the employment authorized by USCIS. Therefore, the self-petitioner was in violation of his R-1 status. Further, the self-petitioner left the United States in January of 2010. Although the petitioner's wife stated in the appeal letter dated February 23, 2011 that "currently [the self-petitioner] is pastoring in a church associated with our ministry, located at [REDACTED]. Also he is travelling across Bulgaria and Europe on behalf of our organization for the past year since the beneficiary left the United States." The self-petitioner failed to provide any documentary evidence that he has been working continuously since he left the United States until the date that he filed the petition, such as through pay records or an employment letter. 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)). The self-petitioner has not established that he continuously worked in lawful status in the United States or outside of the United States for the two years immediately preceding the filing of the petition. For this additional reason, the appeal will be dismissed.

Finally, the regulation at 8 C.F.R. § 204.5(m)(10) requires that the petitioner submit verifiable evidence of how the religious organization intends to compensate the alien. In the Form I-360 petition attestation clause, the petitioner stated that he would be paid \$350 per week, plus room and board. The self-petitioner's employer has submitted no IRS Forms W-2 or 1099 to show that it paid the self-petitioner the proffered wage over the past few years. Further, the AAO notes that the self-petitioner's employer did not submit any evidence showing that it provided room and board to the self-petitioner. It only submitted one pay stub dated 12/1/2010 to show that it paid the self-petitioner \$430.00 one week. This document was dated well after the priority date. Further, the only document that the self-petitioner's employer submitted to show that it has the ability to pay the proffered wage is page 9 of the IRS Form 1023. The AAO finds that this one page is insufficient to show that the religious organization has the ability to pay the proffered wage to the self-petitioner. On December 20, 2010, a bishop from [REDACTED] submitted a letter stating that it would be assisting

financially with the work of [REDACTED]. The petitioner also submitted letters from other churches, such as the [REDACTED], showing that they are supporting the self-petitioner. The AAO notes that these churches are not the self-petitioner's employer, even though the self-petitioner is associated with these churches. Therefore, the AAO finds that the petitioner has failed to establish that the self-petitioner's employer has the ability to compensate him.

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.