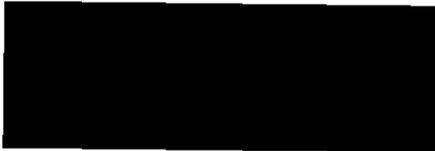




U.S. Citizenship
and Immigration
Services



C1

DATE: NOV 28 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 in accordance with the instructions on 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 a Hispanic pastor. The director determined that the petitioner failed to demonstrate its ability to compensate the beneficiary for his employment in the United States.

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 presented on appeal is whether the petitioner established its ability to compensate the beneficiary the proffered wage.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(10) states:

Evidence relating to compensation. Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided;

or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

The petitioner seeks classification for the beneficiary to perform religious work as a Hispanic pastor with a salary of \$14,400.00 per year plus non-salaried compensation of \$800.00 per month, for a total of \$24,000.00 in compensation per year.

USCIS issued a Request for Evidence (RFE) to the petitioner on November 8, 2011, to which the petitioner responded on February 1, 2012. The director asked the petitioner to provide evidence of how it intends to compensate the beneficiary, such as past evidence of compensation for similar positions, budgets showing amounts set aside for salaries, verifiable documentation that room and board will be provided, and/or Internal Revenue Service (IRS) documentation including Forms W-2 or certified tax returns.

In response, the petitioner submitted an undated letter of support from the signatory of the petition, [REDACTED] and a copy of its 2012 budget. The petitioner has not asserted that it has previously employed the beneficiary. [REDACTED] states that the petitioner set aside \$22,800.00 per year to compensate the beneficiary, including \$12,000.00 of free will offerings from the Spanish speaking congregation that the beneficiary will be serving, which was not included in the petitioner's 2012 budget. He asserts that an unnamed sister church previously made these payments to a different pastor who traveled once a week to serve the petitioner's congregation. The petitioner did not submit any evidence to substantiate these claims. 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 petitioner's 2012 budget does not show funding amounts set aside for a Hispanic pastor. Additionally, the petitioner's listed total expenses are equal to its listed total income for the year, showing no surplus from which the petitioner could pay the beneficiary. Contrary to [REDACTED] statements, the 2012 budget shows that only \$2,400.00 in offerings is expected from the Hispanic offering. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988), states:

[i]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence. Attempts to explain or reconcile the conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.

The 2012 budget also shows a handwritten figure of \$3,600.00 in midland support, for a total of \$6,000.00 claimed funds set aside to pay the beneficiary's salary.

On appeal, the petitioner concedes that the prior documents it submitted with regard to its ability to compensate the beneficiary were not clear. The petitioner submits a document reflecting its income for

2009 through 2011, including income from midland support ranging from \$3,600.00 to \$3,300.00 per year and income from a Hispanic offering ranging from \$3,000.00 to \$2,000.00 per year.

The petitioner resubmits a copy of its 2012 budget and highlights that an additional \$4,800.00 was allocated for a language missions pastor. The AAO finds that, even if the amount allocated for a language missions pastor in 2012 were added to the aforementioned \$6,000.00, the total would still not equal the proffered wage.

The petitioner submits what it identifies as a bank statement of its Hispanic congregation with which the beneficiary will work. The petitioner asserts that the balance shows funds saved for the purpose of supporting the beneficiary "for the next two years." The bank statement, addressed to the petitioner, covers the period of January through February 2012. The AAO finds that this bank statement reflects funds available for only one month in time and does not demonstrate the petitioner's continuing ability to compensate the beneficiary. Moreover, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). Bank statements from 2012 do not establish the petitioner's ability to compensate the beneficiary as of the date of filing, October 4, 2011.

The petitioner submits a copy of a handwritten document chronicling the money that the Hispanic congregation purportedly spent paying its current interim pastor during the past eight months, which the petitioner asserts could instead be used to pay the beneficiary the proffered wage. The petitioner submitted no documentary evidence corroborating these claims. 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

Regarding the beneficiary's non-salaried compensation, the petitioner asserts that a member of its church will provide the beneficiary with housing in Gunnison, Colorado estimated at a value of \$800.00 per month. The petitioner notes that its budget and financial figures do not show this prospective benefit because it is a commitment from an individual. The petitioner states that it will provide more documentation regarding this future exchange arrangement if needed. The regulations do not permit the prospective employer to claim that unnamed third parties will meet the beneficiary's remaining material needs. The regulation at 8 C.F.R. § 204.5(m)(10) requires the petitioner to submit initial evidence of "how the **petitioner** intends to compensate the alien" (emphasis added), and the regulation at 8 C.F.R. § 204.5(m)(7)(xi) requires the petitioning employer to attest to the statement that "any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer." Even if parishioners have, in the past, provided the beneficiary with food, shelter, or other necessities, this is not a binding guarantee that they or others will continue to provide these amenities in the future.

The AAO concludes that the petitioner failed to establish that it will have the ability to compensate the beneficiary the proffered wage.

As an additional matter, the AAO finds that the petitioner has not established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately

preceding the filing date of the petition. 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 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

The USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the alien 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. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work in lawful status throughout the two-year period immediately preceding October 4, 2011.

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.

On the Form I-360 petition, the petitioner indicated that the beneficiary currently resides in Mexico. The petitioner submitted a June 11, 2010 letter from [REDACTED] in Huimanguillo Tabasco, Mexico, which stated that the beneficiary "is an active member of my church" and additionally stated the following:

I would also like to confirm that he is a graduate of the "Betsaida" Bible Institute of Las Choapas, Veracruz Mexico, where he prepared to serve the lord in the ministry of preaching, which he has practiced since then. He was also Pastor of a few churches of our same denomination, in other places: [REDACTED] Tuxtla Gutierrez Chiapas Mexico, La Nueva Reforma Chiapas, and in San Miguel Zxapotal 1st Sec. Huimanguillo Tabasco Mexico, where he had the Lord's support and excelled in his ministry.

In the November 8, 2011 Request for Evidence, USCIS requested additional evidence regarding the beneficiary's work history during the two-year qualifying period immediately preceding the filing of the petition. The petitioner was specifically instructed to submit experience letters from previous and current employers providing details about the beneficiary's duties, schedule, and dates of employment, as well as evidence to show monetary payment. The notice specified that "each experience letter must be written by an authorized official from the specific location at which the experience was gained."

In response to the notice, the petitioner submitted a November 30, 2011 letter from [REDACTED] and [REDACTED]. The letter stated in pertinent part that the beneficiary "is a minister of cult of the Church Nehiel, for 2 years and works in it being very responsible." No further description of the beneficiary's duties or schedule was provided in order to establish the qualifying nature of the beneficiary's experience.

Furthermore, the regulation at 8 C.F.R. § 204.5(m)(11) requires verifiable evidence of compensation comparable to IRS documentation for any work performed abroad during the qualifying period. Although the petitioner has submitted evidence suggesting that the beneficiary worked as a minister in Mexico during the two years prior to the filing of the petition, it has submitted no evidence regarding the beneficiary's compensation for that employment.

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.