



U.S. Citizenship
and Immigration
Services

[REDACTED]

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DATE: **OCT 22 2012** OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

[REDACTED]

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 on July 13, 2009. The petitioner filed an appeal on August 12, 2009. The Administrative Appeals Office (AAO) remanded the matter to the director on March 2, 2011. The director again denied the petition and certified that decision to the AAO for review on October 19, 2011. The AAO will affirm the director's denial of the petition.

The petitioner is a Pentecostal 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 pastor. At the time of filing, the petitioner sought to employ the beneficiary as a pastor in Pompano Beach, Florida. The beneficiary subsequently moved to another of the petitioner's churches in Chelsea, Massachusetts. The director determined that the petitioner failed a compliance review, owing to apparent discrepancies in the claims of various officials.

The AAO remanded the petition to the California Service Center because it found that the petitioner overcame the one stated reason for the failure of the compliance review. The AAO noted that the petition lacked a properly executed attestation and that a new compliance review at the location of the beneficiary's employment would be necessary before the petition could be approved. On certification, the director found that the petitioner submitted an incomplete attestation, that the petitioner failed to explain why it submitted evidence supporting two different addresses of the church, that the petitioner did not submit a letter demonstrating tax exemption for the church of the beneficiary's intended employment, that the petitioner had not demonstrated its ability to compensate the beneficiary, and that the petitioner failed to reconcile the beneficiary's outside employment.

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, 2015, 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, 2015, 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 issues presented are whether the petitioner submitted a complete employer attestation as part of the Form I-360 petition, has provided a sufficient explanation as to why it submitted evidence regarding separate locations in Florida and in Massachusetts for its church, has demonstrated that its church in Massachusetts possesses Internal Revenue Service (IRS) tax exemption, has shown continuous employment of the beneficiary throughout the qualifying period, and has established that the beneficiary worked lawfully in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(7) requires the intending employer to execute a detailed employer attestation.

An authorized official of the prospective employer of an alien seeking religious worker status must complete, sign and date an attestation prescribed by USCIS and submit it along with the petition. If the alien is a self-petitioner and is also an authorized official of the prospective employer, the self-petitioner may sign the attestation. The prospective employer must specifically attest to all of the following:

- (i) That the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation;
- (ii) The number of members of the prospective employer's organization;
- (iii) The number of employees who work at the same location where the beneficiary will be employed and a summary of the type of responsibilities of those employees. USCIS may request a list of all employees, their titles, and a brief description of their duties at its discretion;
- (iv) The number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past five years by the prospective employer's organization;
- (v) The number of special immigrant religious worker and nonimmigrant religious worker petitions and applications filed by or on behalf of any aliens for employment by the prospective employer in the past five years;
- (vi) The title of the position offered to the alien, the complete package of salaried or non-salaried compensation being offered, and a detailed description of the alien's proposed daily duties;
- (vii) That the alien will be employed at least 35 hours per week;

- (viii) The specific location(s) of the proposed employment;
- (ix) That the alien has worked as a religious worker for the two years immediately preceding the filing of the application and is otherwise qualified for the position offered;
- (x) That the alien has been a member of the denomination for at least two years immediately preceding the filing of the application;
- (xi) That the alien will not be engaged in secular employment, and any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer; and
- (xii) That the prospective employer has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges, and that funds to pay the alien's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization.

In her May 2, 2011 Request for Evidence (RFE), the director advised the petitioner that the version of the Form I-360, Petition for Amerasian, Widow or Special Immigrant, was outdated at the time the petition was filed on August 7, 2006. The director noted that additional information was required and instructed the petitioner to submit a current petition, to transfer information from the old form, and to submit the employer attestation. In response, the petitioner submitted a new Form I-360 but failed to transfer all of the information from the old form to the new. Additionally, the petitioner failed to provide a complete employer attestation as required by the form instructions and regulations. The director therefore determined that the petition could not be approved. The AAO concurs with the director's finding. The regulation at 8 C.F.R. § 103.2(1) provides, "Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions, notwithstanding any provision of 8 CFR chapter 1 to the contrary, and such instructions are incorporated into the regulations requiring its submission." The instructions for the Form I-360 instruct the petitioner to "Answer all questions fully and accurately. State that an item is not applicable with "N/A." If the answer is none write "None." In addition, the form specifically requires a completed attestation. The petitioner failed to provide a completed Form I-360 and particularly failed to complete the employer attestation required by the regulation at 8 C.F.R. § 204.5(m)(7).

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.

USCIS previously conducted a compliance review based upon the petitioner's original indication that the beneficiary would be working in Pompano Beach, Florida. Only after USCIS requested further evidence did the petitioner subsequently inform USCIS that it transferred the beneficiary to work in Chelsea, Massachusetts. The regulation at 8 C.F.R. § 204.5(m)(7)(viii) requires the intending employer to specify the location of the beneficiary's intended employment. On the revised Form I-360 submitted in response to the director's May 2, 2011 RFE, the petitioner indicated that the beneficiary would be working at its church located at ██████████ Chelsea, Massachusetts.

The petitioner submitted a copy of a September 15, 1999 deed for its purchase of the Shurtleff Street property and documentation from the Secretary of the Commonwealth Registry of Deeds reflecting that the lien on the property had been released on December 23, 2008. The petitioner also submitted copies of insurance documents for the Chelsea property covering the periods August 12, 2009 to August 12, 2011, copies of utility and telephone bills dated in May, June and July, 2011, and a copy of a June 22, 2011 "Certificate of Good Standing and/or Tax Compliance" from the Massachusetts Department of Revenue, certifying that the petitioner "is in compliance with its tax obligations payable under M.G.L. c. 62C." The petitioner also submitted photographs but failed to indicate what they depicted. The AAO notes that the address on the building appears to be 140; there is no other indication, however, of the location of the building.

The petitioner also submitted a copy of a June 30, 2011 "Application for Reinstatement of Authority to Transact Business" that it filed with the Commonwealth of Massachusetts. The document indicates that the petitioner's authority to conduct business was revoked on March 31, 2008. The application for reinstatement was approved by the Secretary of the Commonwealth on June 30, 2011. The director accordingly concluded that the petitioner failed to demonstrate the physical address of the beneficiary's work and to provide sufficient evidence of activity at that location. The AAO concurs with the director's finding, as the petitioner's Massachusetts church site appears not to have been authorized to operate in that state from March 31, 2008 to June 30, 2011.

The USCIS regulation at 8 C.F.R. § 204.5(m)(8) reads, in full:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or

(iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, as something other than a religious organization:

(A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

The director noted that the petitioner submitted an IRS letter indicating that its church was tax exempt. However, the director stated that the IRS letter granted tax exemption for the petitioner at its Florida location, not in Massachusetts. The letter did not grant a group exemption, nor has the petitioner submitted evidence of such an exemption. The director again highlighted that the beneficiary's intended employment was at a separate church in Chelsea, Massachusetts as claimed by the petitioner. Thus, the IRS tax exemption letter does not cover that church. Therefore, the petitioner has not satisfied 8 C.F.R. § 204.5(m)(8)(i) or (iii), both of which require such a letter. Accordingly, the AAO concurs with the director's finding that the petitioner has failed to establish that it was operating as a 501(c)(3) federally tax exempt religious organization at its Chelsea, Massachusetts location as of the petition's filing date.

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

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.

Therefore, the petitioner must show that the beneficiary worked 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 Form I-360 on August 7, 2006. Accordingly, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

On the petition, the petitioner indicated that the beneficiary last arrived in the United States on June 26, 2002. Under "Current Nonimmigrant Status," the petitioner wrote "R-1" with an expiration date of January 1, 2008. The petitioner submitted copies of Form I-797, Notice of Action, indicating that the

beneficiary was approved for R-1 religious worker status from April 15, 2003 to January 1, 2006, and again from January 2, 2006 to January 1, 2008 to work for the petitioning organization.

The director noted that in response to the RFE, the petitioner provided copies of the beneficiary's IRS Form W-2, Wage and Tax Statement, from 2004 to 2010. The respective amounts of the statements were \$29,101.71, \$39,696.19, \$58,552.18, \$39,491.04, \$54,916.00, \$63,851.21, and \$44,807.87. The director stated that the W-2s reflected that the [REDACTED] located in Dover, New Jersey actually paid the beneficiary for those years. The director highlighted that she requested that the petitioner provide copies of the beneficiary's IRS wage and income transcripts dating back to 2004. The petitioner instead submitted IRS account transcripts for the beneficiary from 2004 to 2006 and IRS tax return transcripts for the beneficiary from 2007 to 2010. Notwithstanding the fact that the petitioner did not submit the exact documentation requested in the RFE, the AAO finds that the petitioner has submitted sufficient evidence regarding his compensation and reflecting his religious employment during the qualifying period. Thus, the AAO withdraws this part of the director's decision.

On his 2004 IRS Form 1040, U.S. Individual Income Tax Return, the beneficiary reported \$362 in self-employment income from a religious telemarketing business. On his IRS Form 1040 for 2005, the beneficiary reported a non-passive loss of \$1,392 from an S Corporation, a designation allowed by the IRS for small businesses that elect to be treated as a corporation. The beneficiary also reported a non-passive loss of \$6,040 on his 2006 IRS Form 1040. The non-passive losses reported by the beneficiary indicate that he was actively involved in the business.

In a May 1, 2007 RFE, the director sought additional documentation about the beneficiary's self-employment income:

- The beneficiary's 2005 tax return indicates he was involved in a business named "[REDACTED]". Submit a statement and evidence indicating the number of hours worked per week, amount of remuneration, type of work performed, exact job duties, and job title.
- The beneficiary's 2004 tax return indicates he was involved in Religious Telemarketing. Submit a statement and evidence indicating the number of hours worked per week, amount of remuneration, type of work performed, exact job duties, and job title.
- Does the beneficiary perform Religious Telemarketing for the petitioning church? If so, submit a statement and evidence indicating the number of hours worked per week, amount of remuneration, type of work performed, exact job duties, and job title.

In a July 13, 2007 letter, the beneficiary stated that he formed [REDACTED] on June 15, 2005 and served as its president. The beneficiary stated that he created the corporation "with the sole purpose of gaining a wholesale price on bibles and religious merchandise to supply the needs of the

churches in our organization.” The beneficiary states that there were no set hours for the corporation and that his wife managed the orders.

In her May 2, 2011 RFE, issued after the AAO’s remand, the director again instructed the petitioner to submit information regarding the beneficiary’s self-employment income and his income from his business. The director advised the petitioner that the beneficiary’s work for himself or for others indicated he may have violated his R-1 status. In response, the petitioner submitted a July 20, 2011 letter from the beneficiary, in which he again stated that he formed the corporation in 2005 to meet the needs of churches in the organization. The beneficiary stated that he did “not carry out a ‘telemarketing’ job in our church nor we the church employee [sic] any telemarketers.” The petitioner submitted a copy of a September 26, 2008 Notice of Dissolution or Revocation issued to [REDACTED] by the State of Florida Secretary of State. The notice indicated that the organization was administratively dissolved or revoked because the organization failed to file its 2008 annual report.

In denying the petition, the director stated that the beneficiary was engaged in self-employment which was not authorized as an R-1 nonimmigrant. The director also stated that the petitioner failed to respond to the question regarding the beneficiary’s telemarketing reported on his 2004 tax return.

8 C.F.R. § 274a.12(b) provides, in pertinent part:

Aliens authorized for employment with a specific employer incident to status. The following classes of non-immigrant aliens are authorized to be employed in the United States by the specific employer and subject to the restrictions described in the section(s) of this chapter indicated as a condition of their admission in, or subsequent change to, such classification...

(16) An alien having a religious occupation, pursuant to § 214.2(r) of this chapter. An alien in this status may be employed only by the religious organization through whom the status was obtained;

The regulation at 8 C.F.R. § 214.1(e) states, in pertinent part:

Employment... Any other nonimmigrant in the United States may not engage in an employment unless he has been accorded a nonimmigrant classification which authorizes employment or he has been granted permission to engage in employment in accordance with the provisions in this chapter. A nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a non-immigrant constitutes a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act.

Although the beneficiary indicates that he created his outside corporation for the sole purpose of providing bibles and religious merchandise to churches in his organization and that he only spent a minimal amount of hours working for it, the AAO concurs with the director’s finding that the beneficiary was engaged in unauthorized work during the qualifying period. The AAO also concurs that the petitioner failed to fully address the director’s concerns in her May 2, 2011 RFE regarding

the beneficiary's self-employment as a religious telemarketer . Although the beneficiary stated that he had not worked as a telemarketer for the petitioner and that the petitioner did not engage telemarketers, he did not explain the nature of the telemarketing income reported on his 2004 tax return.

The regulation in effect at the time the last R-1 petition was filed provided that to be eligible for R-1 status:

The alien must be coming to the United States for one of the following purposes: solely to carry on the vocation of a minister of the religious denomination; to work for the religious denomination at the request of the organization in a professional capacity; or to work for the organization, or a bona fide organization which is affiliated with the religious denomination, at the request of the organization in a religious vocation or occupation. 8 C.F.R. § 214.2(r)(1).

As previously indicated, the beneficiary was approved to work for the petitioning organization as an R-1 nonimmigrant from January 2, 2006 to January 1, 2008. The beneficiary's work with any entity other than the petitioner, including his self-employment, is a violation of his R-1 status and constitutes unauthorized work in the United States.

The regulations at 8 C.F.R. § 204.5(m)(4) and (11) provide that qualifying work for this immigrant visa classification must be in a lawful immigration status. The beneficiary was no longer in lawful immigration status as soon as he engaged in unauthorized employment. Accordingly, the petitioner has failed to establish that the beneficiary worked continuously in a lawful immigration status and therefore in qualifying work for two full years immediately preceding the filing of the visa petition.

The AAO will affirm the certified denial. The burden of proof in these proceedings rests solely 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 October 19, 2011 is affirmed. The petition is denied.