



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]

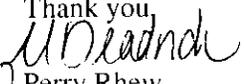
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

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 (CSC), 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 pastor/evangelist minister. The director determined that the petitioner failed to establish that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

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 has established that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

The U.S. Citizenship and Immigration Services (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 September 22, 2008. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work throughout the two years immediately prior to that date.

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

(11) *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 arrived in the United States on February 23, 2005. Under "Current Nonimmigrant Status," the petitioner wrote "R-1" with an expiration date of September 7, 2008.

The director denied the petition on August 31, 2011, finding that the petitioner failed to establish the beneficiary's continuous qualifying work experience throughout the two years immediately preceding the filing date of the petition. The director also noted that the [REDACTED] filed a Form I-129 on the beneficiary's behalf that was approved from September 8, 2005 to September 7, 2008. The director highlighted that the petitioner did not successfully file the instant Form I-360 petition with USCIS according to 8 C.F.R. §§ 103.2(a)(1) and (a)(7)(i) until September 22, 2008. The director also highlighted that the employer listed on the beneficiary's R-1 nonimmigrant visa was [REDACTED]. The director noted that the beneficiary indicated on his 2008 Internal Revenue Service (IRS) income tax

return that he only received compensation for work performed for the petitioner. The director found that the beneficiary did not have authorization to work for any organization other than [REDACTED] according to the terms of his R-1 nonimmigrant status. For these additional reasons, the director accordingly concluded that the petitioner failed to demonstrate that the beneficiary maintained lawful nonimmigrant status throughout the two-year qualifying period.

On appeal, counsel asserts that it submitted the instant Form I-360 to USCIS along with a Form I-485, both on behalf of the beneficiary, at an earlier date in time. Counsel states that the petitioner properly indicated to USCIS that it was filing both petitions together as part of an adjustment package. Counsel claims that USCIS erroneously rejected the forms, which the petitioner had to re-mail subsequently and separately to USCIS, and that the beneficiary did not engage in any unauthorized employment following the expiration of the beneficiary's R-1 nonimmigrant status. The AAO is not persuaded by counsel's argument that the petitioner properly submitted the forms on behalf of the beneficiary prior to September 7, 2008, as the petitioner did not correctly follow the requirements of 8 C.F.R. §§ 103.2(a)(1) and (7)(i). The USCIS notice regarding its receipt of the Form I-360, which the petitioner submitted on appeal, shows that the petitioner originally submitted the petition to the Missouri Service Center rather than to the CSC as was indicated on the petition's filing instructions. Accordingly, counsel failed to show any error on the part of USCIS in not accepting the filing until it was properly filed in accordance with the CSC on September 22, 2008.

Counsel claims that [REDACTED] assigned the beneficiary to perform encounter seminars with the petitioner's church under the supervision of [REDACTED]. Thus, counsel contends that the beneficiary was not engaged in unauthorized employment according to the terms of his R-1 nonimmigrant visa. The petitioner submits a signed copy of a letter dated May 7, 2008 from [REDACTED] indicating that the beneficiary would be assigned to ministry in encounter seminars, but the AAO finds that the petitioner has failed to provide any information concretely evidencing that the beneficiary was employed with [REDACTED] rather than the petitioner from 2008 onwards. The AAO further notes that the petitioner has submitted a certificate reflecting that the beneficiary was an ordained elder with its church as early as April 27, 2007 and that the beneficiary's 2008 tax return indicates that he only worked for the petitioner that year.

The regulation at 8 C.F.R. § 214.2(r)(3)(ii)(E) as in effect when the beneficiary was approved as an R-1 nonimmigrant indicated that the beneficiary could only work for the specific organizational unit of the religious organization which would be employing and paying the beneficiary. Further, the regulation at 8 C.F.R. § 214.2(r)(6) indicated that "a different or additional organizational unit of the religious denomination seeking to employ or engage the services of a religious worker" shall file a new petition and that "any unauthorized change to a new religious organizational unit will constitute a failure to maintain status . . ."

Further, 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*;

Finally, under 8 C.F.R. § 214.1(e), a nonimmigrant may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status.

Pursuant to the beneficiary's R-1 approval, he was also authorized to work only for [REDACTED] from September 8, 2005 until September 7, 2008. Any work performed by the beneficiary for the petitioner during that time was not authorized and therefore not qualifying. According to the petitioner's description of the beneficiary's employment history as well as documentary evidence such as the beneficiary's 2008 tax returns, the beneficiary received compensation for work performed in 2008 from the petitioner. As soon as the beneficiary began work for any employer other than [REDACTED] he failed to maintain status as an R-1 nonimmigrant.

Under 8 C.F.R. §§ 204.5(m)(4) and (11), the petition cannot be approved, because the beneficiary's employment in the United States during the qualifying period was not continuous and was not authorized under United States immigration law.

Finally, regarding the beneficiary's continuous employment during the two-year qualifying period counsel asserts that the beneficiary was continuously employed and he beneficiary did not begin working for the petitioner's church until after the petitioner filed the Form I-360. Counsel does not address the fact that the director and the AAO previously discussed in their decisions that the beneficiary's employment did not appear to be continuous. For example, the AAO stated in its January 20, 2011 decision that [REDACTED] checks to the beneficiary showed an interrupted sequence of payments between 2006 and 2008, also reflecting unexplained, differing payment amounts. The AAO additionally stated in its decision that the beneficiary's 2005 through 2008 tax returns showed widely varying amounts of payment. Counsel fails to address these issues regarding the beneficiary's continuous employment or lack thereof on appeal.

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. Accordingly, the AAO will dismiss the appeal.

ORDER: The appeal is dismissed.