



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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a church and a zonal headquarters of the [REDACTED]. [REDACTED] 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 [REDACTED] at the church [REDACTED] in Des Moines, Iowa. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits a brief from counsel, a letter from the [REDACTED] [REDACTED] in Chicago, Illinois, organizational charts relating to the petitioning organization, and copies of printouts from the [REDACTED] website and Wikipedia.

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 U.S. Citizenship and Immigration Services (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. The petition was filed on November 9, 2011. Therefore, the petitioner must establish that the beneficiary

was continuously performing qualifying religious work in lawful status throughout the two-year period immediately preceding that date.

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.

According to the Form I-360 petition and accompanying materials, the beneficiary entered the United States on November 7, 2007 and was subsequently granted R-1 nonimmigrant status authorizing her employment with [REDACTED] in Milwaukee, Wisconsin from December 5, 2008 to December 7, 2011. In a letter accompanying the petition, the petitioner stated the following:

[REDACTED] is an ordained minister and has been a full time pastor with the [REDACTED] in the United States since 2008. She was a [REDACTED] Milwaukee, which was under [REDACTED]. She was later transferred to the [REDACTED] which is under [REDACTED] zone MN-1.

The petitioner submitted a letter dated October 1, 2009 from the [REDACTED] in Chicago, Illinois, which stated in pertinent part:

Please be informed that with effect from October 1st 2009, [REDACTED] will be transferred from [REDACTED] Milwaukee to [REDACTED]

The petitioner also submitted a handwritten copy of a Form W-2 for 2009, indicating that the beneficiary earned \$3,675 from [REDACTED] during that year, as well as a Form W-2 for 2010, indicating that she earned \$15,100 from [REDACTED] during 2010.

On November 28, 2011, USCIS issued a Request for Evidence, in part requesting documentary evidence to establish whether a connection exists between [REDACTED] the petitioning organization and any other employer for whom the beneficiary worked between December 5, 2008 and the filing of the petition. The notice also stated:

Change of Employer. A different or additional organizational unit of the religious denomination seeking to employ or engage the services of a religious worker must file Form I-129 with the appropriate fee. The alien cannot change employer until the Form I-129 is approved. In the instant case, it appears that the beneficiary has violated the terms and conditions of the approved petition [REDACTED] and, therefore is no longer in status effective October 1, 2009.

The notice also requested additional evidence of the beneficiary's previous R-1 employment including evidence of compensation received. Specifically, the petitioner was instructed to submit certified copies of filed income tax returns, IRS documentation of any non-salaried compensation if available, an itemized record of the beneficiary's earnings from the Social Security Administration (SSA), and copies of the petitioner's quarterly wage reports for the last four quarters.

In a letter responding to the notice, the petitioner stated: "The beneficiary has not changed its employer as she was and is still employed by the [REDACTED]. All employees may be transferred from one location to another." The petitioner submitted a letter from the [REDACTED] Office of the Chairman stating that [REDACTED] is a parish under the petitioning organization and a member of [REDACTED]. The petitioner also submitted a copy of the [REDACTED] 2011 Directory of Parishes, which included [REDACTED] in Des Moines, Iowa, [REDACTED] in Minneapolis, Minnesota, and [REDACTED] in Milwaukee, Wisconsin.

The petitioner submitted a new, printed copy of the beneficiary's 2009 Form W-2 indicating that she received \$3,675 from [REDACTED], along with a 2009 Form 1099-MISC which stated that she received \$5,650 from [REDACTED]. The petitioner also submitted uncertified copies of the beneficiary's 2009 Form 1040 income tax return and Form 1040X Amended U.S. Individual Income Tax Return. The Form 1040, dated April 6, 2010, listed the beneficiary's total income as \$5,650. The Form 1040X, dated February 13, 2012, indicated a net increase of \$3,675 and stated as explanation: "I omitted filing income from a W2 in error." Like a delayed birth certificate, the amended tax returns created several years after the fact raise serious questions regarding the truth of the facts asserted. Cf. *Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991)(discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings). Additionally, the petitioner submitted a 2010 Form W-2 indicating that the beneficiary received \$517 from [REDACTED] in Greenville, Texas, as well as an uncertified copy of her 2010 tax return, dated February 13, 2012, listing her total income as \$7,817. The AAO notes that this total is inconsistent with the previously submitted 2010 Form W-2 which stated that the beneficiary received \$15,100 from [REDACTED]. It is incumbent

upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner also submitted Forms W-2 for 2011, indicating that the beneficiary received \$7,500 in wages and \$7,800 in housing from [REDACTED] as well as \$603.40 in wages and \$5,000 in housing from [REDACTED] in Greenville, Texas. An uncertified copy of the beneficiary's 2011 Form 1040 listed her total income as \$8,103.

The petitioner submitted copies of [REDACTED] Forms 941, Employer's Quarterly Federal Tax Returns for all four quarters of 2011, each of which indicated that the organization had one employee receiving \$1,875 per quarter. The petitioner also submitted copies of its own Forms 941 which did not identify any employees receiving compensation.

Regarding the request for SSA records, the petitioner stated in a letter that the beneficiary had applied for the records but "was informed that it takes 3 months for this record to be ready."

On March 12, 2012, the director denied the petition, finding that the evidence indicated the beneficiary was employed by [REDACTED] beginning in 2009 "in violation of the terms and conditions of the approved I-129 petition." Accordingly, the director found that the petitioner failed to establish that the beneficiary had been performing qualifying work in lawful immigration status for at least the two years immediately preceding the filing of the petition.

On appeal, counsel for the petitioner discusses the rapid growth of [REDACTED] and the need to regularly reorganize and reassign personnel to new parishes. Counsel argues as follows:

The pertinent question to ask here is "what constitutes a change in employment?" With utmost respect, the transfer of the beneficiary from one parish of the petitioner to another parish is not a change of employment. The transfer in this case is in furtherance of petitioner's objective as contained in the petitioner's constitution, a copy of which was provided in response to the request for evidence in this case. (Copy attached). The decentralization of [REDACTED] [REDACTED] is simply for administrative convenience. ...

A parish of [REDACTED] could be likened to a branch of Bank of America. An employee of Bank of America could be transferred to a different location if it is believed that the employee's skill would be more utilized. For the same reason, a parish pastor of the church could be transferred to a new location where his/her spiritual or secular skill would be more useful. This is an internal arrangement of the church and should not be construed as a change in employment. [REDACTED] [REDACTED] has communicated its internal working arrangements to USCIS multiple times in the past and did so in the present petition.

The AAO does not find counsel's argument convincing. The regulation at 8 C.F.R. § 274a.12(b)(16) allows an R-1 nonimmigrant to work only for the religious organization that obtained R-1 status for

the alien. The former regulation at 8 C.F.R. § 214.2(r)(6), in effect prior to November 26, 2008, stated:

Change of employers. A different or additional organizational unit of the religious denomination seeking to employ or engage the services of a religious worker admitted under this section shall file Form I-129 with the appropriate fee. . . . Any unauthorized change to a new religious organizational unit will constitute a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act.

Similar provisions now exist at 8 C.F.R. § 214.2(r)(13). Further, the regulation at 8 C.F.R. § 214.1(e) provides that a nonimmigrant may engage only in such employment as has been authorized. Any unlawful employment by a nonimmigrant constitutes a failure to maintain status.

In this instance, the beneficiary's R-1 status only authorized her employment with the named employer, [REDACTED] in Milwaukee, Wisconsin. Regardless of the shared governance of [REDACTED] and the petitioner by [REDACTED] the beneficiary was not authorized to engage in employment with any affiliated organization or organizational unit without first obtaining authorization **through the filing of a separate Form I-129 petition.** The petitioner's purported communication to USCIS of its "internal working arrangements" is not sufficient under the regulations. The evidence indicates that the beneficiary began working for [REDACTED] in October, 2009. By doing so, the beneficiary engaged in unauthorized employment, thereby failing to maintain her R-1 nonimmigrant status.

Additionally, the AAO notes that the petitioner has not submitted sufficient evidence of compensation during the qualifying period as required under 8 C.F.R. § 204.5(m)(11). That regulation specifies that, if the beneficiary 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." In this instance, the petitioner submitted only uncertified copies of the beneficiary's tax returns and there were unresolved inconsistencies in the tax returns and the Forms W-2 as discussed above. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, at 591. Although the petitioner indicated in response to the Request for Evidence that the beneficiary applied for her SSA records, no records were ever submitted to USCIS.

For the reasons discussed above, the AAO agrees with the director's finding 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.

As an additional matter, the AAO finds that the petitioner has not established that the beneficiary is qualified for the proffered position according to the regulations. The AAO may deny an application or petition that fails to comply with the technical requirements of the law 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 conducts appellate review on a *de novo* basis).

The USCIS regulation at 8 C.F.R. § 204.5(m)(2) provides that in order to be eligible for classification as a special immigrant religious worker, an alien must:

(2) Be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position in one of the following occupations as they are defined in paragraph (m)(5) of this section:

- (i) Solely in the vocation of a minister of that religious denomination;
- (ii) A religious vocation either in a professional or nonprofessional capacity;
or
- (iii) A religious occupation either in a professional or nonprofessional capacity.

The regulation at 8 C.F.R. § 204.5(m)(5) states, in pertinent part:

(5) Definitions. As used in paragraph (m) of this section, the term:

Minister means an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct such religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and
- (D) Works solely as a minister in the United States, which may include administrative duties incidental to the duties of a minister. ...

Religious worker means an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister.

On the Form I-360 petition, the petitioner indicated that the beneficiary would be employed in a ministerial position as a pastor, and in a letter accompanying the petition, the petitioner indicated that the beneficiary was ordained. The petitioner submitted an "Identity Card" from [REDACTED] in Lagos, Nigeria, which indicated that the beneficiary was ordained as an "Assistant Pastor" by that organization on August 7, 1996. No evidence was submitted to indicate that the beneficiary received any subsequent ordination.

In a letter responding to the November 28, 2011 Request for Evidence, the petitioner stated the following:

The [REDACTED] set up new parishes in order to handle its rapid expansion. The beneficiary can be transferred from one location to another within the organization. ... All tithes and monetary donations are reported to the headquarters. **All Pastors are ordained at the headquarters.**

According to the regulation at 8 C.F.R. § 204.5(m)(5), a minister must be “fully authorized by a religious denomination, and fully trained according to the denomination's standards,” and a religious worker must be fully qualified “according to the denomination’s standards.” Although the petitioner indicated that the beneficiary is an ordained pastor, the evidence submitted by the petitioner does not establish that the beneficiary has been ordained as a pastor according to the standards of [REDACTED]. 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 submitted documentation indicates that the beneficiary holds the “rank” of “Assistant Pastor” and, furthermore, her ordination as assistant pastor was performed not by the headquarters of [REDACTED] but by [REDACTED] in Lagos, Nigeria. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, at 591-92.

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.