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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



C1

Date: SEP 18 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:

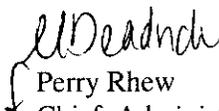
SELF-REPRESENTED

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 resident minister in Vista, California. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits a brief, copies of pages from the beneficiary's passport, copies of bank statements for the congregation in Vista, California, and copies of various requests for payments, bills, wire transfer records and receipts related to the beneficiary's purported employment in [REDACTED]. The petitioner also submits copies of documents already in the record.

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 United States Citizenship and Immigration Service's (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 October 22, 2010. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work 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 supporting documentation, the beneficiary most recently entered the United States on April 12, 2009 in R-1 nonimmigrant status authorizing his employment with the petitioner until April 11, 2012. In a letter accompanying the Form I-360 petition, the petitioner indicated that it currently employed the beneficiary as resident minister of its [REDACTED] and that, prior to that position, he served as resident minister for an [REDACTED]. The petitioner submitted a "Certificate of Service Record" listing the beneficiary's "ministerial assignments showing his extensive experience and continuous service in the Ministry." In that document, the petitioner asserted that the beneficiary served as resident minister in Mexico City from August 2006 to April 2009, and in Vista, California from April 2009 to the present.

The petitioner submitted a copy of the beneficiary's 2009 Form W-2 indicating that the beneficiary received \$15,448.04 in income from the petitioner during that year. The Form W-2 also included the notation "Prsnage 3804.84" under "Other." The petitioner also included an uncertified signed copy of the beneficiary's 2009 Form 1040 listing [REDACTED] as his total income for the year. Additionally, the petitioner submitted photocopies of three checks from the petitioner to the beneficiary for \$[REDACTED] each, dated October 1, 2010, October 9, 2010 and October 15, 2010. The petitioner also submitted a document describing the beneficiary's daily and weekly duties and schedule in his position in Vista, California.

No documentation was submitted in support of the petitioner's assertion that the beneficiary was employed as resident minister in Mexico City from August 2006 to April 2009. 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)).

On March 16, 2011, USCIS issued a Notice of Intent to Deny (NOID) the petition. In the NOID, USCIS noted that the beneficiary's initial entry into the United States using his R-1 nonimmigrant religious worker visa occurred on October 8, 2007, and he was granted the maximum three year validity period, until October 7, 2010. The notice stated that there is no record of the petitioner filing an I-129 petition on behalf of the beneficiary to extend his stay in accordance with 8 C.F.R. § 214.2(r)(5). USCIS concluded that the beneficiary's lawful status expired on October 7, 2010, and that the petitioner therefore failed to establish that the beneficiary held lawful immigration status throughout the two years immediately preceding the filing of the petition.

The AAO notes that, because the beneficiary had been issued a valid R-1 visa under the previous regulations, he was not required to have an approved I-129 for readmission in R-1 status. As the period of his admission on April 12, 2009 did not exceed the duration of the visa's validity, the beneficiary was properly readmitted in R-1 nonimmigrant status authorizing his employment with the petitioner until April 11, 2012.

The NOID also stated that the petitioner had failed to submit evidence of the beneficiary's purported employment in Mexico City from August 2006 to April 2009 and that the evidence was insufficient to establish that the beneficiary was continuously engaged in qualifying employment for at least the two years immediately preceding the filing of the petition. The notice afforded the petitioner an opportunity to submit additional information, evidence and arguments in support of the petition.

In a letter responding to the NOID, the petitioner reasserted that the beneficiary was resident [REDACTED] from August 2006 to April 2009, and has served as the resident minister of the congregation in Vista, California since April 2009. The petitioner noted that the beneficiary entered the United States in R-1 nonimmigrant status on January 14, 2008, December 29, 2008 and April 12, 2009, and argued that: "if the Department of Homeland Security did not believe that [REDACTED] was employed as a religious worker during those times, [it] would not have admitted [him] into the United States."

██████████ be deposited in the beneficiary's bank account for payment of "Chapel Insurance." The petitioner also submitted a "Request for Payment" form, dated April 9, 2007, for ██████████ for "First Payment for the Chapel Annual Insurance [illegible]" listing the beneficiary as "Payee." Most of the document has not been translated into English. The petitioner also submitted three untranslated documents with handwritten English notes at the top indicating that they represent "Apartment Rental" for January, February, and March of 2009. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3).

On June 24, 2011, the director denied the petition. In the decision, the director stated that, contrary to the petitioner's argument, the fact that the beneficiary was admitted in R-1 nonimmigrant status does not establish that he meets the eligibility requirements as a special immigrant religious worker. The director noted that the eligibility requirements for a nonimmigrant religious worker are not identical to those for a special immigrant religious worker and additionally noted that USCIS is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). Neither USCIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). The director found the evidence regarding the beneficiary's employment in Mexico City insufficient to establish that the beneficiary was continuously engaged in qualifying employment. Therefore, the director found that the petitioner failed to establish that the beneficiary has the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition.

On appeal, the petitioner asserts that it previously submitted evidence to establish the beneficiary's employment in ██████████ from August 2006 to April 2009. As additional evidence of that employment, the petitioner submits an untranslated document which it identifies as a "[c]opy of the Beneficiary's FM3 Non-immigrant Minister of the Gospel Visa issued by Mexico." The petitioner also submits numerous letters from the beneficiary at the ██████████ ██████████ requesting release of funds for various expenses. The request letters are accompanied by "Acknowledgement of Receipt" forms from ██████████ ██████████, and records of wire transfers to the beneficiary's bank, ██████████. These documents cover a period from October 2006 to April 2009. Some of the requests include payments to cover pastoral expenses such as "Minister's Apartment Rental," security service, and phone bills, and some of the request letters identify the beneficiary as "Resident Minister."

The AAO agrees with the director's finding that the petitioner has not established that the beneficiary was continuously performing qualifying religious work throughout the two years immediately preceding the filing of the petition. The petitioner has not provided sufficient details regarding the beneficiary's duties and schedule in Mexico City to establish that such position was qualifying religious work. Further, although the evidence submitted on appeal suggests that the beneficiary may have received non-salaried compensation from the petitioner while in Mexico, the

petitioner has not provided an explanation for the lack of documentation comparable to IRS documentation of the compensation as required under 8 C.F.R. § 204.5(m)(11).

The AAO notes that, in her decision, the director included the text of the NOID in its entirety, including a discussion of the petitioner's ability to compensate the beneficiary. On appeal, the petitioner makes arguments and submits evidence regarding how it intends to compensate the beneficiary. As this ground appeared only in the NOID and did not form the basis of the director's decision, the AAO will not address the issue in this decision.

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.