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U.S. Citizenship
and Immigration
Services

Date: APR 22 2013 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:

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 with the field office or service center that originally decided your case by filing a 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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) rejected a subsequent appeal for lack of standing. The AAO also rejected a subsequent motion to reopen and motion to reconsider and remanded the matter to the director for reissuance of the decision. The matter is now before the AAO on appeal. The AAO will dismiss the appeal.

The self-petitioner seeks classification 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 an associate minister for [REDACTED] in Wilmington, Delaware. The director determined that the petitioner had not established he 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, copies of regulations and communications published by the United States Citizenship and Immigration Service's (USCIS), copies of two letters from [REDACTED] of [REDACTED] in Jamaica, a copy of a letter from [REDACTED], and 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 USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that he 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 August 27, 2009. Therefore, the petitioner must establish that he was continuously performing qualifying religious work in lawful status throughout the two-year period immediately preceding that date. The regulation at 8 C.F.R. § 204.5(m)(4) also sets forth the requirements for an acceptable break in the continuity of an alien's religious work as follows:

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...

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.

The 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

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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 evidence, the petitioner arrived in the United States on May 6, 2009 in B-2 nonimmigrant visitor status expiring on November 5, 2009. The regulation at 8 C.F.R. § 214.1(e) states that aliens in such status "may not engage in any employment." The record does not indicate that the held any status that would have authorized him to engage in employment in the United States during the qualifying two-year period immediately preceding the filing of the petition. Accordingly, any work performed by the petitioner in the United States during that time is not considered qualifying prior experience under 8 C.F.R. § 204.5(m)(4) and (11).

On the petition, the petitioner stated that he held "formal ordination" and had "more than five (5) years experience as an apostolic minister." The petitioner submitted a copy of his ordination certificate, dated July 22, 2005. The petitioner also submitted letters of recommendation including one dated June 20, 2009 from [REDACTED] of [REDACTED] in St. Ann, Jamaica, who stated the following:

[REDACTED] was grown up in this church and has been groomed personally by me in the calling of evangelism. He is one of our ministers in the [REDACTED] organization and has been for over 4 years.

The letter did not indicate whether the petitioner had been employed in a compensated position, nor did it provide dates of employment. The petitioner also submitted a letter from his prospective employer as well as an employment contract, dated August 25, 2009.

Along with the Form I-360 petition, the petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On his Form G-325A, Biographic Information, dated August 24, 2009, which accompanied the Form I-485 application, the petitioner was instructed to list his employment for the last five years. He indicated that he had worked as a "Restaurtuer [sic], Entrepreneur" for "Self-employed - [REDACTED], Jamaica" from April 2008 to present, as a "bus driver" for "Self - [REDACTED] - Jamaica" from June 2007 to April 2008, as the "owner" of "Self - [REDACTED]" from February 2006 to May 2007, and as a "businessman" for "Self - [REDACTED]" from February 2004 to January 2006. No other employment was listed.

On February 18, 2010, the director denied the petition, finding that the evidence failed to establish that the alien has the requisite two years of lawful, qualifying work experience immediately preceding the filing of the petition. The director stated the following, in pertinent part:

USCIS records of the [petitioner] regarding the two-year period immediately preceding the filing of the I-360 petition indicate that the [petitioner] entered the U.S. on May 6, 2009 as a B-2 visitor. There is no provision in the regulations that allows a B-2 visitor to work in the U.S. in one of the positions described in 8 Code of Federal Regulations 204.5(m)(2). Therefore, 8 Code of Federal Regulations 204.5(m)(4) cannot be met in this case.

Since 8 Code of Federal Regulations 204.5(m)(4) has not been met, the petitioner may not be approved. Any further discussion of the merits of the petition would serve no practical purpose.

On March 22, 2010, an appeal was filed by an attorney, [REDACTED] on behalf of the prospective employer, [REDACTED]. The AAO rejected the appeal on December 27, 2011 noting that, although Part 1 of the Form I-360 petition identifies the church as the petitioner, review of the petition form indicates that the alien is the petitioner as he signed the petition. An applicant or petitioner must sign his or her own application or petition. 8 C.F.R. § 103.2(a)(2). The AAO found that, as [REDACTED] did not file the petition, it was not an affected party and its attorney had no standing to file an appeal. See 8 C.F.R. § 103.3(a)(1)(iii)(B).

The petitioner filed a motion to reopen and motion to reconsider the AAO's decision on January 27, 2012 noting that the director's February 18, 2010 decision was sent to [REDACTED] and therefore [REDACTED] did not have an opportunity to file an appeal. The AAO rejected the motions and remanded the matter to the director for reissuance of the decision to the self-petitioning alien "in order to give the actual petitioner that opportunity."

The director reissued the decision according to the AAO's instructions and the petitioner filed the instant appeal on November 15, 2012.

On appeal, counsel for the petitioner argues that USCIS failed to consider whether the petitioner's stay in the United States during the qualifying period constituted a qualifying break in the continuity of work under the regulations or USCIS policy. Counsel argues that the petitioner's visit to the United States was "for further religious training or for sabbatical that did not involve unauthorized work in the United States," and therefore meets the requirement of 8 C.F.R. § 204.5(m)(4)(iii). In support of this argument, the petitioner submits a letter dated April 2, 2009 from [REDACTED] of [REDACTED] to the petitioner, stating:

As we discussed in light of the fact that you have accumulated these four months of vacation you will be allowed to use the time away from your regular functions here at the assembly to visit the USA also if you need more time I am willing to allow an additional two months.

I trust that the time spent in America will be very refreshing and enlightening as you improve your ministerial knowledge through studies and research of this great faith in which we stand.

I will await your instructions as to how your salary should be treated during your vacation. Please be assured that your position will be here for you upon your return to the Island.

A second letter from [REDACTED] dated March 11, 2010, states:

Please be advised that [REDACTED] was employed in a fulltime salaried position in the above referenced Church since March of 2005 up to and including May 2009 when he left on sabbatical to the United States, [REDACTED] was expected to return to his position in our Church after a six months paid leave of absence.

During his absence, the position he held as Associate Minister was kept open for him. [REDACTED] was to have used his time in the United States as a sabbatical for studies and research in to the faith which would, upon his return to Jamaica helped him to more thoroughly and skillfully execute his duties in the Church. Although he had several side businesses over the years, [REDACTED] main job was to assist in the shepherding of the saints.

The petitioner also submits a March 9, 2010 letter from his prospective employer asserting that the purpose of the petitioner's visit to [REDACTED] in the United States was for a sabbatical, to "allow the young Minister to gain some valuable knowledge of the working of the

Apostolic Faith in America,” and to perform research. The letter further states that “[a]t no time since he came in the Country, and up to this time, was [REDACTED] paid monies for any service rendered to the Church neither do we have any intention of doing so until the petition is approved.”

Although the petitioner has submitted letters referring to his time in the United States as a “sabbatical,” the petitioner has not submitted sufficient documentary evidence to support counsel’s argument that the period in question is a qualifying break under 8 C.F.R. § 204.5(m)(4). The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). The regulation requires that the alien was still employed as a religious worker and that the “nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States.” In the March 11, 2010 letter, [REDACTED] asserted that the petitioner was on a “paid leave of absence” during his stay in the United States. However, the petitioner has not submitted any documentary evidence to show that he was compensated by [REDACTED] during his time in the United States or any portion of the qualifying period. 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 AAO also notes that no mention was made of this employment in the initial filing, nor did the petitioner list such employment on Form G-325A. 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). Accordingly, the petitioner has not shown that the petitioner “was still employed as a religious worker” during the break as required under 8 C.F.R. § 204.5(m)(4)(i).

Additionally, the AAO notes that both the April 2, 2009 and March 11, 2010 letters submitted on appeal from [REDACTED] are printed on identical letterhead for [REDACTED]. However, the June 20, 2009 letter from [REDACTED] submitted at the time of filing was printed on a different letterhead for [REDACTED]. This calls into question whether the letter purportedly written on April 2, 2009 was in fact created at a later date. 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*, 19 I&N Dec. 582, 591 (BIA 1988).

Counsel alternately argues that, if not considered a qualifying break under 8 C.F.R. § 204.5(m)(4), the petitioner’s visit to the United States should not be considered a break in the continuity of his work as it was a “vacation.” Counsel states:

Per Question 2 to the USCIS Supplement Questions and Answers: Final Religious Worker Rule Effective November 26, 2008, vacations are typical in the normal course of employment and are not a break of the two-year requirement as long as the

[] or self-petitioner is still considered employed during that time. In the instant matter, Self-Petitioner was still considered employed by his church in Jamaica.

In the document to which counsel refers, USCIS noted that, according to supplemental information published with the final rule for special immigrant religious workers, events which are typical in the normal course of any employment, including vacations, "will not be seen as a break of the two-year requirement as long as the [self-petitioner] is still considered employed during that time." As discussed above, the petitioner has not submitted verifiable documentary evidence to establish that he was actually employed by [] during the period in question.

In addition, counsel argues on appeal that it was "legally incorrect" for the director to deny the petition "without providing [the petitioner] an opportunity to present additional evidence" regarding his visit to the United States. The regulation at 8 C.F.R. § 103.2(b)(8) provides in pertinent part:

(ii) Initial evidence. If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.

(iii) Other evidence. If all required initial evidence has been submitted but the evidence submitted does not establish eligibility, USCIS may: deny the application or petition for ineligibility; request more information or evidence from the applicant or petitioner, to be submitted within a specified period of time as determined by USCIS; or notify the applicant or petitioner of its intent to deny the application or petition and the basis for the proposed denial, and require that the applicant or petitioner submit a response within a specified period of time as determined by USCIS.

A review of the record reflects that the director adjudicated the petition based on the evidence submitted at the time the petition was filed. The director did not deny the petition because initial evidence was missing; rather the submitted evidence failed to establish eligibility for the benefit. We find that in denying the petition, the director complied with 8 C.F.R. §§ 103.2(b)(8)(ii) and (iii). Furthermore, 8 C.F.R. §§ 103.2(b)(8)(ii) and (iii) provides for discretionary authority to request additional evidence, provide notice of the director's intent to deny the application or petition, or deny the petition or application. In this case, the director exercised her discretionary authority and denied the petition based on the evidence submitted by the petitioner not establishing eligibility for the benefit. For these reasons, we are not persuaded by counsel's argument that the director erred in her decision regarding this matter.

The AAO additionally notes that, regardless of the portion of the qualifying period spent in the United States, the petitioner has not submitted sufficient evidence to establish that he was continuously engaged in qualifying religious work during the two-year qualifying period

immediately preceding the filing of the petition. 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. The petitioner has submitted a letter asserting that he was employed in a “fulltime salaried position” by [REDACTED] from March 2005 to May 2009. However, the petitioner has submitted no documentary evidence of compensation from that purported employer.

Further, the regulation at 8 C.F.R. § 204.5(m)(4) requires that the alien has been working as a minister or in a qualifying religious occupation or vocation during the qualifying period, and the regulation at 8 C.F.R. § 204.5(m)(5) defines “minister” as one who “[w]orks solely as a minister.” The petitioner has consistently indicated that he was working as an ordained minister during the qualifying period, and the Form I-360 petition stated, in Part 2. Classification Requested, that the petitioner’s position is ministerial. However, the petitioner indicated on his Form G-325A that he was engaged in various secular positions throughout the qualifying period. [REDACTED] asserts in a letter submitted on appeal that “[a]lthough he had several side businesses over the years, [REDACTED] main job was to assist in the shepherding of the saints.” However, in addition to the lack of evidence of prior compensation and the failure to establish that his time in the United States was a qualifying break, the AAO finds that the petitioner’s purported work as a minister cannot be considered qualifying experience as he was not working “solely as a minister” during the qualifying period as required by the regulations. *See Matter of Faith Assembly Church*, 19 I&N 391, 393 (Comm’r. 1986). The Ninth Circuit Court of Appeals, whose jurisdiction includes the California Service Center, has upheld the AAO’s interpretation of the two-year experience requirement. *See Hawaii Saeronam Presbyterian Church v. Ziglar*, 243 Fed. Appx. 224, 226 (9th Cir. 2007).

For the reasons discussed above, the AAO agrees with the director’s finding that the petitioner has not established that he has the requisite two years of continuous, qualifying religious work in lawful immigration status for at least the two-year period immediately preceding the filing date of the petition.

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.