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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

Date **APR 24 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 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,

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) dismissed the petitioner's subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion is granted. The AAO will reaffirm the denial of the petition.

The petitioner is a Roman Catholic school. 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 middle school teacher of religion. 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. The petitioner filed a Form I-290B, Notice of Appeal, on August 15, 2011. The AAO summarily dismissed the appeal. The AAO noted that, although counsel had indicated that a brief and/or additional evidence in support of the appeal would be submitted within 30 days, nothing further had been received. The AAO found that the petitioner failed to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

On motion, the petitioner submits a brief from counsel.

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 Service (USCIS) regulation at 8 C.F.R. § 204.5(m)(2) states that an alien must:

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)(4) requires the petitioner to show that the beneficiary has been working in one of the positions described above, 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 September 27, 2010. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work in lawful immigration status throughout the two-year period immediately preceding that date.

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:

Religious occupation means an occupation that meets all of the following requirements:

- (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.
- (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.
- (C) The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible.
- (D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

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.

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 and accompanying materials, the beneficiary arrived in the United States on April 7, 2004 in B-2 nonimmigrant visitor status and was subsequently granted H-1B nonimmigrant status authorizing his employment with the petitioner from October 1, 2004 to October 1, 2007 and from February 11, 2008 to September 30, 2010. In a letter accompanying the petition, the petitioner stated that the beneficiary was hired as a middle school religion teacher in August 2005, and that, "[a]s is typical, he is also teaching another subject in an integrated curriculum based on Catholic religious principles." In a description of the proposed daily duties, the petitioner indicated that the beneficiary is currently "responsible to provide Religion classes in sixth through eighth grade regularly" and "is also teaching Computer Applications in an integrated curriculum based on Catholic religious principles." The description also indicated that the beneficiary is currently a choir director, a sports coach, and is "in charge of assigning the Altar Servers in every Friday's Mass."

The petitioner submitted evidence of the beneficiary's qualifications as a teacher of religion according to the requirements of the [REDACTED]. The petitioner also submitted a copy of the beneficiary's Form W-2 for 2009, indicating that he earned \$21,932.30 from the petitioner during that year, as well as an uncertified copy of the beneficiary's 2009 Form 1040EZ tax return reporting the same amount as the beneficiary's total income for the year. The petitioner also submitted copies of paystubs from the petitioner to the beneficiary issued between November 20, 2009 and June 30, 2010, showing approximately monthly payments of \$1,854.07.

Additionally, the petitioner submitted copies of two March 12, 2009 letters from the petitioning school which were originally submitted in support of an appeal from the denial of a previous Form I-360 petition filed on behalf of the beneficiary. In one of the letters, [REDACTED] Pastor of the petitioning school, stated the following:

[REDACTED] in his position is responsible for teaching daily three class periods of religion and theology. In addition he is responsible for teaching daily three class periods of social studies, which has a particular attention to the history of the Roman Catholic Church and the role and the teachings of the Church. In addition he has responsibilities for training the school choir, principally in music for liturgical services in which he and the students regularly participate. ...

[REDACTED] has been employed full time as a middle school teacher of religion and social studies continuously since August 2005, to the present time.

On May 20, 2011, USCIS issued a Notice of Intent to Deny the petition (NOID). USCIS noted the beneficiary's work teaching social studies and questioned whether the beneficiary's past experience qualified as a religious occupation according to the regulations.

In a letter responding to the notice, counsel for the petitioner asserted: "The beneficiary teaches religion approximately slightly more than half time and computer applications, (previously social studies) approximately slightly less than half time." In support of this assertion, the petitioner submitted "Standard Daily and Weekly Work Schedules" for the beneficiary for the periods 2008 to 2010 and 2010 to 2011. In the 2008 to 2010 schedule, the petitioner listed 34 hours and 50 minutes of duties, and included the following tables summarizing the schedule:

Items	Job	Time (per Week)	Remarks
A	Religion Teacher	11 hrs.	Religious Worker Job
B	Social Studies Teacher	10 hrs and 45 mins..	Social Studies Teacher Job
C	Art Teacher	3 hrs.	Art Teacher Job
D	Liturgical Choir Director	3 hrs.	Religious Worker Job
E	Altar Server Advisor	30 mins.	Religious Worker Job
F	Homeroom Teacher	6 hrs. and 5 mins.	Religious Worker Job
G	Liturgical Coordinator	30 mins.	Religious Worker Job

	Total Time	34.83 hrs.	
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Items	Summary	Ratio	Percentage
A	Religious Worker Job	21.08/34.83 hrs.	61%
B	Social Studies Job	10.75/34.83 hrs.	31%
C	Art Teacher Job	3/34.83 hrs.	8%

The 2010 to 2011 schedule listed 33 hours and 20 minutes of duties and included the following tables summarizing the schedule:

Items	Job	Time (per Week)	Remarks
A	Religion Teacher	11 hrs.	Religious Worker Job
B	Computer Teacher	10 hrs.	Computer Teacher Job
C	Computer Applications Teacher	3 hrs.	Computer Applications Teacher
D	Liturgical Choir Director	3 hrs.	Religious Worker Job
E	Altar Server Advisor	30 mins.	Religious Worker Job
F	Homeroom Teacher	5 hrs. and 20 mins.	Religious Worker Job
G	Liturgical Coordinator	30 mins.	Religious Worker Job
	Total Time	34.83 hrs.	

Items	Summary	Ratio	Percentage
A	Religious Worker Job	20.33/33.33 hrs.	61%
B	Computer Teacher Job	10/33.33 hrs.	30%
C	Computer Applications Teacher Job	3/33.33 hrs.	9%

On both of the "Standard Daily and Weekly Work Schedules," the "Homeroom Teacher" duties were described as follows: "Prepare lesson plans for Religion classes of 6th, 7th, and 8th Grade students. In charge [sic] of Guidance and Values Development classes." The petitioner also submitted copies of the beneficiary's weekly class schedule for the school years 2008-2009, 2009-2010, and 2010-2011. Each of these class schedules showed three hours per week devoted to "Lesson Planning." None of the class schedules included "Guidance and Values Development classes," but the 2010-2011 schedule included one hour per week of "Classroom Guidance." Further, neither the class schedules nor the "Standard Daily and Weekly Work Schedules" indicated the amount of time spent by the beneficiary on his duties as a sports coach. 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).

On July 14, 2012, the director found that the petitioner failed to establish that the beneficiary's work during the qualifying period met the definition of a religious occupation. The director denied the

petition based on the petitioner's failure to establish that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition.

On motion, counsel for the petitioner asserts that the petitioner's evidence demonstrates that the beneficiary spent the majority of his work time in a religious occupation as a Teacher of Religion; although he was not solely a Teacher of Religion." Counsel therefore argues that the beneficiary's duties were "primarily" religious in nature.

The AAO agrees with the director's finding that the petitioner failed to establish that the beneficiary has been continuously engaged in qualifying religious work for at least the two-year period immediately preceding the filing of the petition.

First, the AAO is not persuaded by counsel's assertion that the petitioner's evidence is sufficient to establish that the beneficiary spent most of his time on duties which were religious in nature. The "Standard Daily and Weekly Work Schedules" and class schedules submitted by the petitioner indicate that the beneficiary spent more hours per week teaching secular classes than religion classes during the qualifying period.

The petitioner additionally classifies the beneficiary's "Homeroom Teacher" duties as religious, asserting that they consist of planning lessons for religion classes and being in charge of guidance and values development classes. The AAO does not find this assertion convincing. No explanation is provided for why the time spent planning lessons would not also include planning lessons for the beneficiary's secular classes. Further, the amount of time devoted to these homeroom teacher duties on the "Standard Daily and Weekly Work Schedules" (6 hours and 5 minutes in 2008 to 2010, and 5 hours and 20 minutes in 2010 to 2011) is not supported by the class schedules. As mentioned above, the class schedules for each year show only three hours per week dedicated to lesson planning and only the 2010-2011 schedule includes one hour per week of "Classroom Guidance." 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. at 591.

In calculating the proportion of time spent on religious versus secular duties, the petitioner also includes the time purportedly spent by the beneficiary as a choir director, altar server advisor, and liturgical coordinator, but omits any time spent by the beneficiary as a sports coach. Moreover, it is unclear that any of these duties related to the beneficiary's position as a teacher.

The petitioner has not resolved these inconsistencies relating to the beneficiary's work schedule during the two-year qualifying period immediately preceding the filing date of the petition. 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. *Id.*, at 591-92. Until these inconsistencies have been overcome, the AAO cannot determine that the beneficiary's duties primarily related to a traditional religious function and are primarily related to and clearly involve inculcating or carrying out the religious creed and beliefs of the denomination. Although

the petitioner claims the position offered to the beneficiary is that of a "Middle School Teacher of Religion," the evidence submitted does not establish that the duties associated with this position are primarily religious.

Given the petitioner's failure to establish that the beneficiary has been working in a religious occupation for the two years prior to filing, the regulation at 8 C.F.R. § 204.5(m)(4) has not been satisfied.

If the petitioner cannot establish that the beneficiary's position is considered a religious occupation, it also cannot establish that the beneficiary is coming to work in a full time religious occupation as required by section 204(b)(4)(ii)(II) of the Act and 8 C.F.R. §204.5(m)(2).

Further, the AAO notes that the petitioner has not submitted sufficient evidence of prior compensation. The regulation at 8 C.F.R. § 204.5(m)(11) requires continuous, compensated employment during the qualifying period. The petitioner must submit evidence of prior salaried or non-salaried compensation in the form of IRS documentation, or evidence of qualifying self-support. Permissible circumstances for self-support, outlined in the USCIS regulations at 8 C.F.R. § 214.2(r)(11)(ii), involve the beneficiary's participation in an established program for temporary, uncompensated missionary work. The petitioner has not shown or claimed that he participated in such a program. The only IRS documentation submitted by the petitioner relates to the year 2009. No documentation was submitted to show that the beneficiary received compensation during 2008, and the only documentation submitted for 2010 consisted of non-verifiable paystubs.

For the reasons discussed above, the AAO agrees with the director's determination regarding the beneficiary's position and 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.

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 AAO reaffirms the director's decision of July 14, 2011. The petition remains denied.