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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

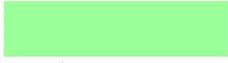


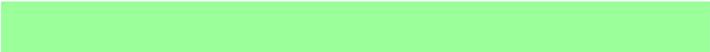
U.S. Citizenship
and Immigration
Services



Date: **FEB 27 2013**

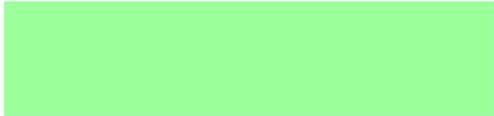
Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

The petitioner is a [REDACTED] temple. 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 priest. 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 letter from counsel and an excerpt from the Federal Register regarding publication of the current regulations for special immigrant religious workers on November 26, 2008.

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 February 17, 2012. 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.

In a letter accompanying the Form I-360 petition, the petitioner stated that the beneficiary "has been working in the U.S. in R1 classification as a Priest since July 2005, except when travelling to other countries." The petitioner indicated that the beneficiary worked for [REDACTED] in Richmond Hill, New York from July 21, 2005 to December 4, 2005, and from March 8, 2006 to September 30, 2006. The petitioner stated that the beneficiary then worked for the petitioning temple from October 2006 to August 2007, from August 2009 to February 2011, and from October 2011 to the present.

The petitioner submitted evidence that the beneficiary entered the United States on July 21, 2005 in R-1 nonimmigrant status authorizing his work for the [REDACTED] until July 20, 2008. The petitioner submitted an approval notice showing that a Form I-129, Petition for a Nonimmigrant Worker, filed by the petitioning temple on behalf of the beneficiary was approved with validity dates of September 11, 2007 to September 10, 2009. The petitioner submitted a copy

of a Form I-94A departure record showing that the beneficiary entered the United States on August 23, 2009 in R-1 status with an expiration date of August 22, 2012. The petitioner also submitted a notice showing that a Form I-129 petition filed by the [REDACTED] was approved with validity dates of November 10, 2011 to February 15, 2012.

Accompanying the petition, the petitioner also submitted uncertified copies of the beneficiary's Form 1040 tax returns for the years 2008, 2009, 2010, and 2011, reporting that the beneficiary earned total income of \$7,562, \$6,150, \$8,640, and \$7,501 in those years respectively. The forms did not identify the sources of the beneficiary's income.

On June 1, 2012, USCIS issued a Request for Evidence requesting additional evidence regarding the beneficiary's work history during the two-year qualifying period immediately preceding the filing of the petition, including evidence that the beneficiary held employment authorization for any employment in the United States during that time.

In a letter responding to the notice, counsel for the petitioner referred USCIS to the petitioner's previously submitted letter for a summary of the beneficiary's work history. Counsel additionally indicated that the beneficiary worked for the [REDACTED] from February 2011 to September 2011. The petitioner submitted a letter from the [REDACTED] which stated that the beneficiary served that organization as head priest from February 2011 to September 2011 and described his duties. The petitioner also submitted a copy of the [REDACTED] 2011 "Payroll Register" records relating to the beneficiary indicating monthly payments between February and August of 2011, as well as photocopies of checks made out from that organization to the beneficiary during that period.

The petitioner submitted a copy of a 2011 Form W-2 from the petitioning organization showing that it paid the beneficiary \$4,300.50 during that year. The petitioner also submitted photocopies of checks from the petitioner to the beneficiary with the following dates: October 3, 2010, November 7, 2010, January 1, 2011, January 20, 2011, February 1, 2011, December 21, 2011, January 8, 2012, February 12, 2012, and July 10, 2012.

The director denied the petition on August 27, 2012, finding that the beneficiary engaged in unauthorized employment and therefore lacked the requisite two years of lawful qualifying work experience immediately preceding the filing of the petition. The director, in part, noted that the beneficiary worked for the [REDACTED] prior to receiving R-1 approval to work for that employer.

On appeal, counsel for the petitioner notes that the beneficiary was granted R-1 approval to work for the petitioner before the current regulations took effect on November 26, 2008. Counsel argues that "the old rule under which the applicant was admitted does not require the priest to work at any specific work location, it is only the new rule that took effect on 11/26/2008 that specifically requires the work location to be specified in the petition."

The AAO disagrees with counsel's interpretation of the previous regulations. The regulation at 8 C.F.R. § 214.2(r)(3)(ii)(E) required an authorized official of the organization to provide the "name and location of the **specific organizational unit** of the religious organization" for which the alien would work (emphasis added). The regulation at 8 C.F.R. § 214.2(r)(6) 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"

Similarly, the current regulation at 8 C.F.R. § 274a.12(b)(16) states that "[a]n alien having a religious occupation, pursuant to § 214.2(r) of this chapter ... may be employed only by the religious organization through whom the status was obtained." The regulation at 8 C.F.R. § 214.2(r)(2) provides that "[a]n alien may work for more than one qualifying employer as long as each qualifying employer submits a petition plus all additional required documentation as prescribed by USCIS regulations."

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.

Regardless of any relationship between the [REDACTED] and his named R-1 employer, 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 AAO agrees with the director's determination that the beneficiary's employment with the [REDACTED] beginning in February 2011 constituted unauthorized employment and a failure to maintain his lawful R-1 status. Accordingly, the petitioner has failed to establish that the beneficiary has the requisite two years of lawful qualifying experience and the AAO need not discuss any further issues related to the beneficiary's lawful immigration status or employment authorization during the qualifying period.

Additionally, the AAO finds that the petitioner has not submitted sufficient verifiable evidence of the beneficiary's compensation during the qualifying period. The regulation at 8 C.F.R. § 204.5(m)(11) requires compensated employment. 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 the beneficiary participated in such a program.

As mentioned above, the Form 1040 tax returns submitted by the petitioner were not certified, nor did they identify the source of the beneficiary's income. Although the petitioner submitted a

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copy of the beneficiary's Form W-2 from the petitioner for 2011, the only evidence of the beneficiary's purported compensation from the [REDACTED] during 2011 consisted of photocopies of checks and internal payroll records. As only the fronts of the checks were photocopied, it cannot be determined whether the checks were processed. Further, the internal payroll records contain only the unverifiable assertions of the [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)). As evidence of the beneficiary's purported compensation during 2010, the petitioner submitted photocopies of two checks dated October 3, 2010 and November 7, 2010, which again included no evidence that they had been processed.

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.

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.