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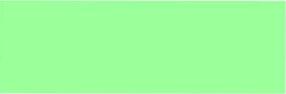
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

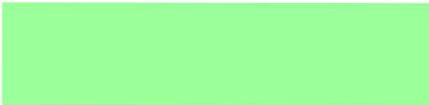


U.S. Citizenship
and Immigration
Services



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:

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,

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 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 director of children's ministry/associate pastor. 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 letter from the petitioner, a letter and paychecks relating to the employment of the beneficiary's husband, a lease agreement for the property at [REDACTED] Melville, New York, and website printouts from the [REDACTED] the New York State Department of State, and Google Maps. The petitioner also submits copies of the beneficiary's Form 1040 tax returns and Form 1040X tax returns from the years 2010 and 2011, as well as 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 Services (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 petition was filed on February 3, 2012. 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:

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 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 the record, the beneficiary arrived in the United States on January 26, 2010 in A-1 nonimmigrant status as a dependent of a foreign government official. Pursuant to the regulation at § 214.2(a)(6), A-1 dependents may apply for employment authorization, but the regulation at § 214.2(a)(10) prohibits employment "outside the scope of" such authorized employment. 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. The record indicates that the beneficiary was granted employment authorization with validity dates of August 12, 2010 to January 29, 2013. The record does not indicate and the petitioner has not claimed that the beneficiary held employment authorization prior to August 12, 2010. Accordingly, any work performed in the United States prior to that date would not be considered qualifying experience under § 204.5(m)(11).

Accompanying the petition, the petitioner submitted a copy of the beneficiary's ordination certificate, dated July 19, 1994, as well as copies of other certificates related to religious training.

On April 24, 2012, USCIS issued a Request for Evidence (RFE), in part requesting additional evidence regarding the beneficiary's work history during the two-year qualifying period immediately preceding the filing of the petition. The notice specifically instructed the petitioner to submit experience letters providing detailed information about the beneficiary's employment during the qualifying period. The petitioner was also instructed to submit evidence of compensation received, including tax documentation.

In a letter responding to the notice, the petitioner stated the following:

The beneficiary has been working with the Church since January of 2010, initially as a Volunteer Minister and then as a Paid Minister on a monthly salary of \$2,000 from October 2010 after receiving her work permit. She received a total salary of \$6,000 for the year 2010 and \$24,000 for the year 2011. She came to the United States on January 26th 2010 and got her work permit in September of 2010.

The petitioner additionally stated that the beneficiary had served as a religious minister since her ordination in Nigeria on July 19, 1994, and provided a description of the duties performed by the

beneficiary as “an associate pastor and director of our children’s ministry department since January 2010.”

The petitioner submitted a copy of the beneficiary’s 2010 Form 1099-MISC, indicating that she received \$6,000 from the petitioner during that year. The petitioner submitted a copy of the beneficiary’s Form 1040 tax return for 2010, which indicated total business income of \$14,000 for the year. The beneficiary’s Schedule C indicated that the income came from two sources. For the first source, the beneficiary listed the “Principal business or profession, including product or service” as [REDACTED] and the business name as [REDACTED] and indicated that she earned \$8,000 from this source. The beneficiary indicated that she earned \$6,000 from the second source, and she listed the principal business as “Unclassified” and the business name as [REDACTED]. The petitioner also submitted a copy of a Form 1040X, Amended U.S. Individual Tax Return for 2010, which did not include amendments to any of the information described above. For the year 2011, the petitioner submitted a copy of the beneficiary’s Form 1099-MISC, indicating that she received \$24,000 from the petitioner during that year. The petitioner also submitted a copy of the beneficiary’s 2011 Internal Revenue Service (IRS) Account Transcript, which listed total adjusted gross income of \$26,760 for the year. Additionally, the petitioner submitted copies of 15 processed checks for \$500 each issued from the petitioner to the beneficiary between February 27, 2012 and June 26, 2012.

On September 5, 2012, the director denied the petition, finding the petitioner’s evidence insufficient to establish that the beneficiary was continuously engaged in qualifying religious work throughout the two years immediately preceding the filing of the petition. The director noted that the 2010 tax returns indicated that, in addition to her work for the petitioner, the beneficiary was engaged in secular self-employment. The director also noted that the IRS transcript for 2011 showed income beyond the amount indicated on the beneficiary’s Form 1099 from the petitioner, and that the petitioner had not identified the source of the extra income. Regarding the beneficiary’s outside income, the director also stated the following:

Further review of the [REDACTED] business indicates the beneficiary owns a business located at [REDACTED] Melville New York [REDACTED]. The business is called [REDACTED]. The business is still in an active status.

Additionally, the director noted that, according to the petitioner’s statements and evidence, the beneficiary had only been engaged in compensated employment for the petitioner since October 2010, instead of for the two full years prior to filing as required under the regulations.

On appeal, the petitioner states the following with regard to the director’s finding that the beneficiary had less than the required two years of qualifying employment:

Her immigrant petition was filed on 02/03/2012, more than two years after her arrival to the United States and more than 16 years of active full time ministry with our affiliate churches.

Her two year qualifying period was at our Queens New York church. She has been working from January 2010 till date. She started working January 2012 as a volunteer unpaid minister and then becoming a paid minister upon receipt of her work permit in August of 2010.

She was supported during her period of unpaid volunteer status from January 2010 through September 2010 by her husband. See attached letter of employment of her husband for your review.

The AAO first notes that the petitioner asserts on appeal that the beneficiary became a paid employee "upon receipt of her work permit in August of 2010." The record also indicates that the beneficiary received employment authorization beginning August 12, 2010. However, in its letter responding to the RFE, the petitioner previously indicated that the beneficiary began receiving pay in October 2010. Further, the petitioner indicated that she was paid at a rate of \$2,000 per month and the beneficiary's tax documentation indicates that she received only \$6,000 from the petitioner during 2010, consistent with an October start date. The petitioner does not provide an explanation for these inconsistencies regarding the beneficiary's start date as a paid employee. 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).

Regarding the petitioner's claim of the beneficiary's volunteer work within the United States, such work is not considered to be qualifying experience. In the preamble to the proposed rule, USCIS recognized that although "legitimate religious work is sometimes performed on a voluntary basis ... allowing such work to be the basis for ... special immigrant religious worker classification opens the door to an unacceptable amount of fraud and increased risk to the integrity of the program." See 72 Fed. Reg. 20442, 20446 (April 25, 2007). The regulation at 8 C.F.R. § 204.5(m)(11) specifically requires that the alien's prior experience have been compensated either by salaried or non-salaried compensation (such as room and board), but can also include self-support under limited conditions. In elaborating on this issue in the final rule, USCIS determined that the sole instances where aliens may be uncompensated are those aliens "participating in an established, traditionally non-compensated, missionary program." See 73 Fed. Reg. at 72278. See also 8 C.F.R. § 214.2(r)(11)(ii). The petitioner has neither claimed nor established that the beneficiary was participating in such a program. Accordingly, any time the beneficiary may have spent in the United States "working" as a volunteer for the petitioner cannot be considered qualifying employment.

The AAO also notes that, pursuant to the regulation at 8 C.F.R. § 204.5(m)(11), "Qualifying prior experience ... if acquired in the United States, must have been authorized under United States immigration law." As mentioned above, the petitioner has not established that the beneficiary held employment authorization prior to August 12, 2010, so any work before this date is not considered qualifying.

With regard to the director's finding that the beneficiary engaged in secular work during the qualifying period, the petitioner states the following on appeal, in pertinent part:

-The beneficiary was employed as a full time -40 hours a week religious minister with [REDACTED] through out [sic] the qualifying two year period in the United States and was not self employed.

-The beneficiary was not employed by any other organization during this qualifying period.

-The referenced business [REDACTED] does not exist. I have attached copies of the New York State Business Registration searches confirming that no such company exists or is linked to the beneficiary. The beneficiary purchases clothes on a seasonal basis on sale and sells to individuals privately on her own time and the sale does not affect her routine ministerial duties. She does not own a store/shop/boutique for clothes etc. As Christians we are under divine mandate to report all incomes on our tax returns.

-Upon speaking with the tax preparer, she tells me that the work - [REDACTED] came up when she choose the IRS code [REDACTED] which was the nearest code she could use to describe the trading activity and does not represent a registered business but simply an IRS code. You can contact her at [REDACTED] [REDACTED] for additional questions. See attached amended tax returns [sic] reflecting the business code changes. ...

-The referenced address in Melville [is] the residence of the beneficiary and family and not a boutique or store. I have attached a Google map picture localizing the address and no business activity is done from that house by the beneficiary.

-The beneficiary is unaware of any business name [REDACTED] and has no connection with them.

-Upon search of the New York State corporation registration records, I was able to locate the referenced company at the address. The state records shows that the company [REDACTED] is not in active status, was dissolved in October 26th, 2011 and was filed with the Suffolk county clerk's office on February 10th, 2009, more than one year before the beneficiary arrived in the United States.

-The beneficiary has no relationship with this company. I have attached NYS department of State records on [REDACTED] for your review.

The 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 during the

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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 in the United States.” The petitioner acknowledges that the beneficiary was engaged in the buying and selling of clothing for profit during the qualifying period. Regardless of whether the activity was affiliated with an officially registered business, the AAO finds it inconsistent with the definition of a minister under the regulations. As the beneficiary was not working “solely as a minister” during the qualifying period, her work as a minister cannot be considered qualifying experience. *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 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 appeal is dismissed.