



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **FEB 28 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:

101(a)(27)(C)
C1

Enclosed please find the decision of the Administrative Appeals Office for 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

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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 an instructor/support person/liaison facilitator. 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 the beneficiary, copies of the beneficiary's Form 1040 tax returns from 2008, 2009, and 2010, copies of the beneficiary's Forms 1099-MISC from 2009 and 2010, copies of processed checks, paystubs, and payment vouchers, and letters from [REDACTED]

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)(4) requires the petitioner to show that the beneficiary has been working as a minister or in a qualifying

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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 April 10, 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)(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 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.

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If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

On the Form I-360 petition, the petitioner indicated that the beneficiary arrived in the United States on May 2, 2006 and that he had held R-1 nonimmigrant status expiring on April 2, 2009. On the petition, the petitioner described the beneficiary's qualifications for the proffered position as follows:

[REDACTED] has worked effectively and extensively in Church infra-structure and ministry development with the world of [REDACTED] and in the [REDACTED] through his National Conferences and Ministry Presentations.

The petitioner submitted a copy of a Ministerial Credential Certificate from the [REDACTED] in [REDACTED] issued to the beneficiary on June 24, 2011, as well as a Certificate of Ordination from The Pentecostal Assemblies issued to the beneficiary on August 24, 1997.

The petitioner did not specifically indicate on the petition or in accompanying materials whether it currently employed the beneficiary, but the petitioner submitted a job offer letter regarding a position beginning in the Fall of 2012. No further information was provided at the time of filing regarding the beneficiary's work history during the two-year qualifying period immediately preceding the filing of the petition.

On April 26, 2012, USCIS issued a Request for Evidence (RFE), in part requesting additional evidence regarding the beneficiary's work history during the two years immediately preceding the filing of the petition. The notice specifically instructed the petitioner to submit experience letters from previous and current employers providing detailed information about the beneficiary's dates of employment, schedule, and the work performed during the qualifying period. The petitioner was also instructed to submit evidence of compensation received and, if the experience was gained in the United States, evidence that the beneficiary was authorized to accept employment.

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

This is to advise that the [REDACTED] [REDACTED] – the formal employer of [REDACTED] – have from 2009 to present date been engaged with [REDACTED] in primarily two specific roles:

- (a) As a guest preacher (Sunday morning/Wednesday night); and
- (b) Ministry consultant for the development of church administrative infrastructure.

...

The payment [REDACTED] has received in the past has been by way of love offerings paid in cash.

[REDACTED] served in the [REDACTED] with no formal employment contract, as his remuneration would be in the form of love offerings. His role was as an itinerant minister, who provided support and help to local churches, who in turn assisted him with his living expenses including accommodation, meals and transportation.

The petitioner also submitted letters written by officials of seven churches, each of whom asserted that the beneficiary had served their congregations on one or more specified occasions. Some of the letters included attached church bulletins or programs highlighting the beneficiary's name as a guest speaker.

On August 7, 2012, the director denied the petition based on the petitioner's failure to establish that the beneficiary had the requisite two years of continuous, lawful, qualifying experience. The director found that the petitioner had failed to submit verifiable documentation of the beneficiary's compensated employment during the two-year qualifying period immediately preceding the filing of the petition. The director additionally found that the beneficiary lacked lawful immigration status throughout the qualifying period.

In a letter submitted on appeal, the beneficiary states the following:

From the period of October 31, 2008 to April 2010, I travelled as a full-time itinerant Minister of the Gospel; involved in religious work as it pertained to preaching, teaching, counseling and mentoring leaders, pastors and individuals who are actively involved in full-time religious work.

In this time, I was not a member of a particular religious denomination, but was self-contractualised in that I ran my own ministry [REDACTED] being self-employed.

Pertaining to full-time religious work, churches would use my services differently as to what their specific needs would be.

All of the religious work I conducted was in the self-employed status of a religious worker. The above-mentioned break from October 2008 to April 2010 did not exceed two years.

The AAO notes that, as the petition was filed on April 10, 2012, the relevant qualifying period consists of the two years immediately preceding that date, or April 10, 2010 to April 9, 2012. Additionally, although the beneficiary uses the word "break" to refer to time spent self-employed as

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an itinerant minister, such activity would not qualify as an acceptable break under the regulations at 8 C.F.R. § 204.5(m)(4).

On appeal, the petitioner submits uncertified copies of the beneficiary's Form 1040 tax returns for 2008, 2009, and 2010 which indicate total income of \$37,973, \$43,214, and \$29,665 in those years respectively. The petitioner also submits copies of Forms 1099-MISC for 2009, indicating that the beneficiary earned \$2,500 from [REDACTED] Texas, \$750 from [REDACTED] Maryland, and \$1,000 from [REDACTED] Ohio. The petitioner submits copies of Forms 1099-MISC for 2010, indicating that the beneficiary earned \$11,100 from [REDACTED] Texas, \$1,500 from [REDACTED] Louisiana, \$16,170.64 from [REDACTED] Texas, \$1,200 from [REDACTED] Texas, \$2,000 from [REDACTED] in [REDACTED] South Carolina, and \$600 from [REDACTED] Texas. Additionally, the petitioner submits copies of checks, paystubs and other records of payment to the beneficiary from various churches and individuals, all dated during the year 2010. A letter from [REDACTED] also submitted on appeal, states that the checks from that organization were "Honorariums that he received for speaking at our church," and that he was additionally paid \$1,700 in cash for services during July 2010.

The AAO finds 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. Although the petitioner's letter in response to the RFE stated that it has "been engaged with" the beneficiary since 2009, the evidence does not demonstrate that the beneficiary was continuously employed by the petitioner during that time. 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 letters submitted from various churches in response to the RFE and on appeal did not indicate continuous employment, but rather that the beneficiary had provided services as a guest speaker or in the role of a consultant on various specified dates which did not cover the entire qualifying period. Further, the petitioner has not submitted any documentation of compensation, as required under 8 C.F.R. § 204.5(m)(11), for the years 2011 or 2012.

Regarding the beneficiary's immigration status, in his letter submitted on appeal the beneficiary acknowledges his lack of lawful status, but asks for understanding and mercy, and asserts that he has continued to pay taxes and has been a "law-abiding and God-fearing" individual following the expiration of this status. The AAO notes that the regulation at 8 C.F.R. § 204.5(m)(4) requires that the beneficiary must have been in lawful immigration status during the qualifying period and the regulation at 8 C.F.R. § 204.5(m)(11) requires that the beneficiary's employment in the United States during that time must have been authorized under immigration law. The regulations make no provision for any exception to these requirements and the AAO does not have authority under the Act or the regulations to make such an exception.

For the reasons discussed above, the AAO agrees with the director's determination that the petitioner failed to establish that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition.

As an additional matter, the AAO finds that the petitioner has not established its ability to compensate the beneficiary. The AAO may deny an application or petition that fails to comply with the technical requirements of the law even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The USCIS regulation at 8 C.F.R. § 204.5(m)(10) states:

Evidence relating to compensation. Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

On the Form I-360 petition, the petitioner indicated that it "has committed [\$]35,000 yearly for his support with additional honorariums available as he ministers to local congregations." In a job offer letter accompanying the petition, the petitioner additionally stated the following:

Financial provisions will come from three sources. In regard to the [REDACTED], your remuneration will be based on the number of students enrolled in your courses. Secondly, remuneration will come from the churches that utilize your services. Thirdly, remuneration will come through local church love offerings as a result of your evangelistic ministry throughout the [REDACTED]. The above stated financial assistance is the extent to which the united [REDACTED] is presently able to support you.

The petitioner also submitted an "Addendum," which stated:

Pastor [REDACTED] annual income will amount to \$35,000.00. This amount will be derived from his teaching as a faculty member of the [REDACTED] as mentioned above.

Although the petitioner asserted that it "has committed" \$35,000 per year to compensate the beneficiary, no documentary evidence was submitted to demonstrate that the petitioner has the ability to pay that amount. Further, the job offer letter seems to contradict the assertion that the petitioner has committed that amount, as it states that the compensation will be contingent on the number of the beneficiary's students, and will otherwise come from local churches. Additionally, no IRS documentation was submitted regarding the petitioner's ability to compensate the beneficiary, nor was an explanation for its absence provided along with comparable, verifiable documentation.

Finally, the AAO finds that the petitioner has not established that the beneficiary will be employed in a qualifying position.

The USCIS regulation at 8 C.F.R. § 204.5(m)(2) provides that in order to be eligible for classification as a special immigrant religious worker, an alien must:

(2) 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)(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

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(D) Works solely as a minister in the United States, which may include administrative duties incidental to the duties of a minister.

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.

On the Form I-360 petition, Part 2. Classification Requested, the petitioner indicated that the beneficiary will be working as a minister. In Part 8, Employer Attestation, the petitioner stated that the beneficiary's title would be "Instructor/Support Person/Liaison Facilitator," and described his proposed daily duties as follows:

- 1- [REDACTED] will interact on a daily basis with local Church Pastors in the development of local Church infra-structure and ministry implementation.
- 2- [REDACTED] will structure and Teach Church and Ministry Courses in the [REDACTED]

In the job offer letter, the petitioner additionally described the beneficiary's prospective position as follows:

The [REDACTED] is pleased to have you join us in the capacity of faculty member of the [REDACTED] [REDACTED] fall 2012. In that position you are expected to develop and

implement courses in [REDACTED] In addition, we are asking you to train and be of support to new pastors as they begin their initial pastoral assignments. Lastly, we are counting you to be the liaison between the increasing African memberships within the diocese churches.

The petitioner identified itself as affiliated with the denomination of [REDACTED] and submitted a copy of the beneficiary's ministerial credential from the [REDACTED] in [REDACTED]

Although the petitioner characterized the prospective job as a ministerial position on the petition, the petitioner has not established that the position meets the definition of a "Minister" under 8 C.F.R. § 204.5(m)(5). According to the descriptions of the proposed duties, it is not clear that the beneficiary will be performing duties "with a rational relationship to the religious calling of the minister," nor that he will be working "solely as a minister" as required by the regulations.

Alternately, in order for a position to qualify as a religious occupation, the regulations require that the duties "must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination." The petitioner failed to submit evidence that the position of instructor/support person/liasion facilitator is recognized as a religious occupation within the [REDACTED] denomination. Accordingly, the petitioner has not established that this position meets the definition of "religious occupation" under 8 C.F.R. § 204.5(m)(5).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.