



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: JUN 18 2013

OFFICE: CALIFORNIA SERVICE CENTER

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 member church of the Church [REDACTED] a religious denomination whose head office is in [REDACTED]. 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 assistant pastor. The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, lawful work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits a statement from counsel, a letter from the denomination's headquarters, and evidence intended to show past compensation.

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, 2015, 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, 2015, 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 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 USCIS regulation at 8

C.F.R. § 204.5(m)(11) requires that qualifying prior experience, if acquired in the United States, must have been authorized under United States immigration law.

The petitioner filed the Form I-360 petition on September 27, 2010. The director denied the petition on December 16, 2011, stating:

The record indicates that on August 14, 2006 the beneficiary was approved for a change of status from B-2, visitor to R-1, Religious Worker, with petitioner The Church of [REDACTED] located in [REDACTED]. The petition was valid from August 12, 2006 to August 11, 2009. Form I-797A issued to the petitioner reads "The foreign worker(s) can work for the petitioner but only as detailed in the petition and for the period authorized. **Any change in employment requires a new petition.**" When the beneficiary accepted employment with the instant petitioner on January 1, 2007, he rendered the previous petition null and void leaving the beneficiary without lawful immigration status. (Emphasis added).

USCIS records show that on August 10, 2009, [the present petitioner] filed Form I-129 on behalf of the beneficiary for "continuation of previously approved employment..." however, the petition was denied.

The director concluded that the beneficiary lacked authorization for employment performed for the petitioner in Newark, New Jersey.

On appeal, counsel states that the beneficiary's apparent employment was merely a "special accounting arrangement":

[T]he church that paid the beneficiary is affiliated to the R1 sponsor, in fact it serves as the headquarter [*sic*] for the sponsoring church. In a letter dated 12/15/2006 from the [REDACTED], which was the R-1 visa sponsor, the Bishop stated that all the payroll would be processed through the headquarter church in Newark, NJ. . . .

So unlike [what was] alleged by the [director in the] I-360 denial that the beneficiary worked without authorization for the Headquarter church in NJ, the only difference is that the payroll was processed through the headquarter while the beneficiary remained as an employee of the church in [REDACTED]

The petitioner's own evidence contradicts counsel's claim on appeal. The initial filing included a letter in which Bishop [REDACTED] of the petitioning entity stated:

[T]he above name[d] denomination [*sic*] has currently only two paid employees. Their names are [REDACTED] (overseer) and [the beneficiary] (pastor/elder). . . .

[The beneficiary's] duties and responsibilities are to assist with teaching bible class, officiates baptismal services (5 hrs) and lead community outreach ministry (4 hrs)

He is also the president for the Youth Department where he conducts youth development training and Counseling (3 hrs), assist with maintenance and up keeping of the church building. [The beneficiary] is also our representative to our churches in [redacted] Louisiana and Philadelphia.

He also prepares and sends reports concerning our churches to our Headquarters. He travels about 4-months per year.

Date of hire was January 1, 2007. His salary is Four Hundred Dollars (\$250.00) [sic] weekly. Housing is provided for [the beneficiary] and his family. His travel expenses are provided.

The petitioner's initial submission included a copy of the beneficiary's business card, showing the Newark address of the petitioning church. Internal Revenue Service (IRS) transcripts of the beneficiary's federal income tax returns for 2007, 2008, and 2009 all show a residential address in [redacted] New Jersey. Denominational documents dated 2009 and 2010, listing numerous "sister churches" in several countries, show the beneficiary's name and address, followed by the petitioner's Newark address. A list of members of the petitioner's congregation showed the beneficiary's name, followed by a telephone number with area code 862, which corresponds to northern New Jersey.

The evidence listed above shows that the petitioner did not originally claim that the beneficiary worked in Louisiana, and received payment from New Jersey for accounting reasons. Rather, the petitioner indicated that the beneficiary worked at the petitioning church in Newark, occasionally traveling elsewhere.

The appeal includes copies of IRS Form 1099-MISC Miscellaneous Income statements for 2007 and 2008. These forms show that the beneficiary received payment from the petitioner in Newark, but this does not establish that the beneficiary lived and worked in [redacted] Louisiana, at the time. Rather, both of these IRS forms show the same East Orange, New Jersey, residential address that appeared on the beneficiary's previously submitted tax return transcripts.

The appeal also includes a letter, dated December 15, 2006, attributed to [redacted] pastor and overseer of the [redacted] The letter reads, in part:

[The beneficiary's] salaries will be \$1,200/month at the Headquarters church in Newark, New Jersey and at our church in [redacted] Louisiana, \$1,000/month.

Please note that all accounting will be done through our Headquarters church . . . [in] Newark, NJ.

Counsel cites the above letter to support the claim that the beneficiary worked in [redacted] while receiving payment from Newark, but the letter indicated that the beneficiary would work in both locations. The separate record of proceeding for the Louisiana church's 2006 nonimmigrant petition

included a February 5, 2006 letter co-signed by [REDACTED] (identified as “communication secretary”), on the letterhead of the petitioning church in Newark, making a similar claim to the one in [REDACTED] letter quoted above. [REDACTED] letter indicated that the beneficiary would work “here in New Jersey,” and traveling to “the sister church in [REDACTED] Louisiana . . . once every two months.” Because the present petitioner provided this letter for submission to USCIS, it does not constitute derogatory evidence previously undisclosed to the petitioner.

The petitioner has not submitted any evidence to support the new claim that the beneficiary worked exclusively in [REDACTED] while receiving payment from Newark. This new claim is in conflict with much of the petitioner’s own previously submitted evidence, and therefore it lacks credibility. Counsel failed to explain how the beneficiary “remained . . . an employee of the church in [REDACTED] even though he lived and worked in New Jersey while a church in New Jersey paid his salary.

The evidence shows that, when the [REDACTED] church filed its nonimmigrant petition on the beneficiary’s behalf in 2006, the church stated that the beneficiary would also work in Newark. This annotation on the petition form, however, cannot suffice to show that the approval of that petition allowed the beneficiary to work at both locations. The regulation at 8 C.F.R. § 214.2(r)(6) that was in effect in 2006 stated, in part: “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.” As the director stated in the denial notice, the churches in [REDACTED] and Newark have different employer identification numbers, and exist as separate corporate entities. Thus, the organizational unit in [REDACTED] could not properly petition for the beneficiary to work in Newark.

Furthermore, the director raised a second, related issue that the petitioner does not address on appeal. The approval of the [REDACTED] church’s petition granted the beneficiary R-1 nonimmigrant status from August 12, 2006 to August 11, 2009. The status that the beneficiary gained from that petition expired more than a year before the petitioner filed the present petition on September 27, 2010. The director noted that the petitioning church in Newark filed its own Form I-129 nonimmigrant petition on the beneficiary’s behalf on August 10, 2009, but the director denied that petition on March 26, 2010, and that petition never conferred nonimmigrant status on the beneficiary.

On the Form I-360 petition, asked if the beneficiary had ever worked in the United States without authorization, the petitioner answered “no,” and stated that his current nonimmigrant status was that of an R-1 nonimmigrant religious worker. (The petitioner left blank the line asking the petitioner to specify the expiration date of that status.) The record does not support the petitioner’s claims regarding the beneficiary’s status, and USCIS records indicate that the beneficiary had no lawful status as of September 2010. If the beneficiary continued working for the petitioner after his R-1 nonimmigrant status expired in August 2009, then he did so without authorization.

On appeal, the petitioner does not challenge the finding that the beneficiary’s nonimmigrant status had previously expired, and the petitioner does not submit evidence that the beneficiary held lawful status or employment authorization from any other source. Therefore, the petitioner has abandoned that issue. *Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005) (“When an appellant

fails to offer argument on an issue, that issue is abandoned.”). *See also Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (plaintiff abandoned his claims as he failed to raise them on appeal to the AAO).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the AAO will dismiss the appeal.

**ORDER:** The appeal is dismissed.