



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JUN 20 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 Administrative Appeals Office (AAO) dismissed the petitioner's appeal. The matter is now before the AAO on a motion to reopen and reconsider. The AAO will dismiss the motion.

The petitioner is a church belonging to the Assemblies of God denomination. 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 evangelist and international pan-Asian mission outreach coordinator. The director determined that the petitioner had not established that the beneficiary works in a full-time, compensated position, or that the beneficiary's position qualifies as a religious occupation. In its appellate decision, the AAO withdrew the first finding but agreed with the second.

On motion, the petitioner submits a statement from counsel and copies of materials already in the record.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The motion does not include any new facts, and the evidence submitted with the motion consists of copies of materials already in the record. Therefore, on its face, the motion does not meet the requirements of a motion to reopen at 8 C.F.R. § 103.5(a)(2).

The basis for the motion to reconsider is an allegation of factual error. Briefly, counsel contends that the appellate decision gave too much weight to the beneficiary's title, at the expense of considering the religious duties that the beneficiary performs under that title. Counsel also claims that the appellate decision overemphasized a parenthetical assertion offered as an example rather than as a fixed duty of the position. The following discussion will place these claims in context.

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 USCIS definition of a "religious occupation" at 8 C.F.R. § 204.5(m)(5) requires that the occupation 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.

The petitioner filed the Form I-360 petition on November 21, 2006. The director denied the petition on February 26, 2010. The AAO dismissed the appeal on April 23, 2012, stating:

The Form I-360 petition submitted on November 21, 2006 did not list a job title for the beneficiary's position, but in an accompanying letter, the petitioner described the position as follows:

[The beneficiary's] duties as our evangelist will be: developing ministry strategies for evangelism, providing Christian counseling, assisting our leaders

in our encouragement/helps ministry, involvement in the prayer ministry, and as an International Pan-Asian Mission Outreach Coordinator.

In a weekly schedule submitted in support of the petition, the petitioner lists the beneficiary's daily assignments for Monday through Friday and Sunday, including "Evangelism and Missions Coordination," "Evangelism and Missions," "Prayer," "Evangelism among Asians," "Night Prayer with Nationals and Internationals," and "worship and helping." The durations listed with these scheduled assignments total 20 hours, and an additional line states "Pastoral assignment (sermon typing) 20 hrs per week."

In the Request for Evidence issued on March 5, 2007, USCIS instructed the petitioner to submit additional documentation regarding the proffered position . . . [and] "documentary evidence that the governing body recognizes the position of coordinator" and "documents showing how the governing body defines the position of coordinator."

In response to the request . . . the pastor for the petitioner stated:

The word Coordinator is only used once to describe one of the assignment areas which is the International Pan-Asian Missions Outreach Coordinator role. The word Coordinator is used at times in the Assemblies of God to describe a minister who coordinates people or events. . . .

The petitioner did not submit any documentary evidence in support of the assertion that the Assemblies of God denomination recognizes the position of coordinator. . . .

In the Notice of Intent to Deny, issued on November 16, 2009, USCIS instructed the petitioner to submit evidence that the beneficiary's duties primarily relate to a traditional religious function and the position is recognized as a religious occupation within the denomination.

In the Form I-360 Employer Attestation, submitted in response to the notice, the petitioner lists the title of the position offered as "International Ministry Coordinator." In a cover letter in response to the notice, former counsel for the petitioner argued that "[the beneficiary's] work as an International Coordinator is very similar to Missionary; her work is intended to promote world missions, AND missions among the ethnic communities in [redacted]" A letter from the petitioner included the same description of the beneficiary's duties as contained in previously submitted letters. The petitioner submitted a new work schedule for the beneficiary, but it only listed days and times without any description of the work performed. The petitioner did not submit evidence in support of former counsel's argument that the International Coordinator position is similar to that of Missionary, nor did the petitioner submit

evidence that either of those positions is recognized within the Assemblies of God denomination as a religious occupation. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

. . . In her decision, the director notes that the petitioner was asked to provide evidence that the beneficiary's duties primarily relate to a religious function and the position is recognized as a religious occupation within the denomination. The director goes on to conclude that "[t]he petitioner did not sufficiently address this issue."

On appeal, the petitioner argues that the title of the beneficiary's position is "irrelevant," and states:

With regard to the title for [the beneficiary], the church alternatively gave her the title of International Coordinator, Evangelist and/or International Coordinator/Evangelist. It could just as well have called her a missionary, counselor or teacher, as her duties and job assignments required her to: evangelize within the church and the community; coordinate activities between the church, sister churches, international churches in the area and individuals within the international community; counsel with members of the congregation and other individuals within the [redacted] metropex (particularly those she visited at the nursing homes); teach new communicants and Sunday school classes; conduct religious worship and perform other spiritual functions associated with the beliefs and practices of Assemblies of God. All of these activities relate to a traditional religious function within the church and the denomination.

The petitioner also submits a list of job duties and a detailed sample weekly schedule for the beneficiary's position. In support of the petitioner's assertion that the beneficiary's position is recognized as a religious occupation by the Assemblies of God denomination, the petitioner has submitted pages printed from the website of the General Council of the Assemblies of God, which make numerous mentions of "evangelism." The petitioner also submits an excerpt from the Constitution of the General Council of the Assemblies of God, in which the petitioner has highlighted the following statement: "Each General Council affiliated assembly has the right of self-government under Jesus Christ, its living Head, and shall have the power to choose or call its pastor, elect its official board, and transact all other business pertaining to its life as a local unit."

Additionally, the petitioner submits a copy of a cover letter from the petitioner's R-1 [nonimmigrant] petition on behalf of the beneficiary, in which it listed her job title as "Evangelist." . . .

The AAO finds the evidence submitted by the petitioner insufficient to establish that the beneficiary's duties and position are recognized within the Assemblies of God denomination. Although the evidence submitted on appeal supports the assertion that the beneficiary's evangelizing duties are recognized by the denomination, the petitioner has offered no evidence beyond its own assertions that the beneficiary's duties as a coordinator are recognized by the Assemblies of God. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). . . .

The AAO further notes that the weekly schedule originally submitted with the Form I-360 petition states that 20 hours of the beneficiary's 40-hour schedule are dedicated to "Pastoral assignment (sermon typing)," suggesting that administrative duties may make up a major portion of the beneficiary's position. This assignment is not listed on any of the other schedules or descriptions of the beneficiary's job duties, and no explanation is given for this discrepancy. As stated above, 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).

For the reasons discussed above, the AAO agrees with the director's finding that the petitioner has failed to establish that the beneficiary's duties primarily relate to a traditional religious function and the position is recognized as a religious occupation within the denomination. Therefore, the petitioner has failed to establish that the proffered position is a religious occupation as defined at 8 C.F.R. 204.5(m)(5).

On motion, counsel states:

According to the evidence previously submitted, the beneficiary's title is "Evangelist." The petitioning church also called the title "International Coordinator," since the beneficiary's evangelistic work . . . is focused on other foreign nationals. . . . But the petitioner has been consistent in describing the beneficiary's title as "Evangelist." Certainly, the USCIS recognizes the title of "Evangelist" as a well documented religious occupation, without need of corroboration from the petitioner's denomination.

The regulation at 8 C.F.R. § 204.5(m)(5) states that the duties must be recognized as a religious occupation within the denomination. As noted in the appellate decision, “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.” By asserting that the beneficiary’s occupation is so obviously a religious occupation that there is no “need of corroboration from the petitioner’s denomination,” counsel attempts to shift the burden of proof from the petitioner to USCIS. USCIS, including the AAO, need not establish, demonstrate, or prove that the beneficiary’s occupation does not qualify as a religious occupation. There is no presumption in the petitioner’s favor that USCIS must overcome in order to deny the petition or dismiss the appeal.

The record does not support the claim that the terms “evangelist” and “international coordinator” are essentially interchangeable. The beneficiary’s own income tax returns refer to her occupation as “coordinator” or “international coordinator.” The beneficiary’s previous claimed employer, [REDACTED] called her an “international coordinator,” stating, in a May 6, 2004 letter:

The duties and responsibilities would include the following:

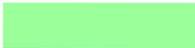
- 1.) Planed [*sic*] counsel, through communication set up, with natives from the Pacific Realm and Middle Eastern Countries
- 2.) Establishing Ministry strategies for Evangelism – this would include the interpretation of maps, family counseling, cultures review [*sic*], and administration protocols.

The above description indicates a largely administrative and logistical role, rather than the hands-on, face-to-face contact that counsel now describes.

Pastor [REDACTED] of the petitioning church, in a letter dated October 25, 2006, stated:

[The beneficiary’s] duties have been and will continue to be: developing ministry strategies for evangelism, providing Christian counseling, assisting our leaders in our encouragement/helps ministry, involvement in the prayer ministry, and as an International Pan-Asian Missions Outreach Coordinator.

Other letters from [REDACTED] contain very similar lists of duties, always listing International Pan-Asian Mission [or Missions] Outreach Coordinator” as a distinct function. It is, therefore, apparent that the functions of “an International Pan-Asian Missions Outreach Coordinator” are distinct from the other duties listed, rather than simply a different collective name for those duties. Otherwise, the phrase “and as an International Pan-Asian Ministries Outreach Coordinator” would be redundant. [REDACTED] did not say what specific functions the outreach coordinator position entailed. The beneficiary herself made a similarly general claim, asserting that she “did many outreaches among [the] International community in [REDACTED]”



On December 15, 2009, counsel contended that the beneficiary's "work as an International Coordinator is very similar to [that of a] Missionary: her work is intended to promote world missions, AND missions among the ethnic communities in [redacted]." As the AAO previously stated, the assertions of counsel do not constitute evidence, and nothing in the record directly supports counsel's claim. Counsel identified Asian members of the petitioner's congregation, said to have joined specifically due to the beneficiary's efforts, but a previously submitted weekly schedule indicated that the beneficiary devoted four hours every Monday to "Missions Coordination," and three hours on Thursday afternoons to "Evangelism among Asians," indicating that the two functions are distinct. (It was this same schedule that indicated that 20 hours of the beneficiary's 40-hour work week consisted of "Pastoral assignment (sermon typing).")

In a letter submitted at the same time as counsel's December 2009 letter, [redacted] asserted that the petitioner "has about 100 members" and four employees: "a pastor, a secretary and 2 religious workers." The petitioner has not established or explained what sort of "Pan-Asian Missions" the beneficiary coordinates as an employee of this relatively small church.

Counsel repeats the assertion that USCIS approved a nonimmigrant petition for the beneficiary, based on essentially the same job description. Page 9 of the appellate decision addressed this assertion, and cited case law in rebuttal to it. Repeating the same claim on motion, while citing no support for that claim, is not grounds for reconsideration.

Counsel states:

The AAO's comment that 20 hours of the beneficiary's job description is "sermon typing" is referring to the "Weekly Schedule" . . . where it lists "Pastoral Assignment (sermon typing): 20 hrs. per week." The "sermon typing" is in paranthesis [sic] and should be seen as an example of assignments, not the exhaustive list. To refute this narrow construction, we ask that you please look at the additional evidence of the R-1 job description and the i-360 [sic] job description, which lists other examples of evangelism and mission work for the 20 hours of "Pastoral Assignment."

The "sermon typing" schedule reads, in full:

Monday	11-3	Evangelism and Missions Coordination	4 hrs.
Tuesday	11-3	Evangelism and Missions	4 hrs.
Wednesday	11-12	Evangelism and Missions	
	6.45-8.15	Prayer	2½ hrs
Thursday	4-7	Evangelism among Asians	3 hrs.
Friday	11-3	Night Prayer with Nationals and Internationals	4 hrs
Sunday	9.45-12.15	Worship and helping	2½ hrs
		Pastoral assignment (sermon typing)	20 hrs

The record contains another version of the beneficiary's schedule, not reproduced on motion. This schedule does not show specific duties; it only shows work hours:

Mon.	9-4	7 hrs.
Tue.	9-4	7 hrs.
Wed.	9-3, 7-9	8 hrs.
Thu.	9-4	7 hrs.
Frid.	9-4	7 hrs.
Sun.	9-1	4 hrs.

The beneficiary expanded on the second version of the schedule, providing over a page of details regarding her duties on a typical Monday. Those details do not include "evangelism and missions coordination" from 11:00 to 3:00. Rather, she stated that, from 9:00 to 12:00 noon, she would work in her office preparing a sermon and performing other tasks. After a half hour lunch break, the beneficiary stated that she worked from 12:30 to 2:30 meeting with the pastor, organizing volunteer programs or "have a group prayer from 1-2:30 every day," followed by a visit "to the nursing home" from 2:30 to 4:00.

The two schedules are almost entirely different, and therefore neither one is reliable or credible. As previously stated in the appellate decision, doubt cast on any aspect of the petitioner's proof may 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. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92.

Like the schedule, the stated nature of the beneficiary's duties as an "International Coordinator" has changed significantly over the course of this proceeding. The assertion that those duties are synonymous with other duties listed alongside it lacks credibility.

Counsel, on motion, has not adequately addressed issues cited in the appellate decision or shown that the decision was incorrect based on the evidence of record at the time of that decision. Therefore, the motion does not meet the requirements of a motion to reconsider at 8 C.F.R. § 103.5(a)(3).

The AAO may identify additional grounds for denial beyond what the Service Center identified 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). Review of the record on motion reveals additional grounds for denial.

The 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 date of the petition. The USCIS regulation at 8 C.F.R. § 204.5(m)(11) reads, in part:

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.

The petitioner's initial submission included documentation showing that the beneficiary held R-1 nonimmigrant religious worker status through [REDACTED] from August 5, 2004 to August 5, 2007, and through the petitioner from August 9, 2006 to July 10, 2008. Proof of status, however, is not proof of qualifying employment.

The record contains a January 10, 2005 letter from [REDACTED] senior pastor of [REDACTED] indicating that the beneficiary "is employed with us since September 01, 2004 on a full time basis as an International Coordinator. Her annual gross salary is \$24,000/year."

The petitioner submitted copies of the beneficiary's federal income tax returns, with IRS transcripts, for 2004 and 2005, respectively stating her occupation as "coordinator" and "international coordinator," but did not identify the beneficiary's employer(s) during those years. Both returns were joint returns, and therefore should show the beneficiary's income as well as that of her spouse (whose occupation appeared as "other" on the 2004 return and "OPT," possibly short for "optional practical training," on the 2005 return). Both returns identified the reported income as business income from self-employment, and each return showed the "SSN [Social Security number] of self-employed taxpayer." The 2005 return showed \$24,000 in self-employment income, matched with the beneficiary's SSN, which is consistent with letters from [REDACTED] and the petitioner indicating that each paid her \$2,000 per month. The 2004 return showed \$16,750 in self-employment income, all of it linked to the SSN of the beneficiary's spouse, not the beneficiary herself. Therefore, the beneficiary reported no income on her 2004 income tax return. Furthermore, the petitioner submitted no IRS documentation showing that [REDACTED] paid the beneficiary in 2004, 2005, or 2006. The petitioner submitted copies of IRS Form 1099-MISC, Miscellaneous Income, showing that the petitioner paid the beneficiary in 2006, but there is no similar form from [REDACTED] for any year. The petitioner submitted copies of four paychecks from [REDACTED] dated from May to July of 2006, but these checks are not IRS documentation and they do not establish employment or compensation prior to 2006. Three of the checks (each labeled "mission support") are in the amount of \$2,000 each, the beneficiary's stated monthly salary, but the first check, dated May 1, 2006, is for only \$500.

For the reasons described above, the petitioner has not submitted evidence of past employment required by the USCIS regulation at 8 C.F.R. § 204.5(m)(11)(i).

The other issue concerns the beneficiary's denominational membership. Section 101(a)(27)(C)(i) of the Act requires the beneficiary to have belonged to the petitioner's religious denomination throughout the two years immediately preceding the petition's filing date. The petitioner has claimed that the [REDACTED] employed the beneficiary for all but the last few months of the two-year qualifying period. In his October 25, 2006 letter, [REDACTED] stated that the beneficiary worked "for an affiliated ministry, the [REDACTED] Counsel's accompanying November 10, 2006 cover letter likewise stated that the beneficiary worked for "an affiliated ministry" before working for the petitioner. When the director called on the petitioner to document this claimed affiliation, counsel stated, in a May 26, 2007 letter:

[REDACTED] is a nondenominational ministry, but exactly like the Assemblies of God in that it is a Christian, Protestant Charismatic/Pentecostal ministry. Although [REDACTED] [International] Christian Center is NOT formally affiliated with the Assemblies of God denomination, we did show several theological and ministry links between the two ministries.

Counsel did not elaborate as to how the petitioner "did show several theological and ministry links between the two ministries." The record contains nothing from [REDACTED] claiming any affiliation with, or even similarity to, the Assemblies of God denomination. Counsel's acknowledgment that the two churches are "not formally affiliated" conflicts with counsel's earlier reference to [REDACTED] as "an affiliated ministry" with the petitioner.

The beneficiary claimed that "[REDACTED] closed in August 2006." This claim, even if true (the petitioner submitted no evidence to support it), would not relieve the petitioner of the obligation to submit supporting evidence relating to that church. Likewise, the record contains no IRS documentation from [REDACTED] either to establish its prior employment of the beneficiary or to show that TICC is (or was) tax-exempt under section 501(c)(3) of the Internal Revenue Code.

For the reasons stated above, the petitioner has not established that the beneficiary was a member or employee of a religious organization in the petitioner's denomination (Assemblies of God) continuously throughout the two years immediately preceding the petition's filing date.

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. The petitioner's latest filing does not meet the requirements of a motion to reopen or a motion to reconsider. Accordingly, the AAO will dismiss the motion, as required by the regulation at 8 C.F.R. § 103.5(a)(4).

ORDER: The motion is dismissed.