



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: JUN 24 2013 OFFICE: CALIFORNIA SERVICE CENTER [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

[Redacted]

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 Presbyterian 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 pastor. The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits a brief from counsel and a statement from [REDACTED] a deacon of the petitioning church, writing on behalf of the petitioning organization.

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 issue in this proceeding centers around the beneficiary's past experience and his immigration status at the time. 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 May 6, 2010. On the petition form, the petitioner listed the beneficiary's "Current Nonimmigrant Status" as "R-1" (nonimmigrant religious worker), "Pending Extension." The petitioner submitted IRS Form W-2 Wage and Tax Statements and uncertified copies of income tax returns, indicating that the petitioner paid the beneficiary \$24,000 per year in 2008 and 2009. The 2009 return is undated; the 2008 return shows a preparation date of December 4, 2009, more than seven months after the April 15 filing deadline.

The petitioner submitted documentation of previous filings on the beneficiary's behalf. The record shows that the beneficiary first obtained R-1 nonimmigrant religious worker status through [REDACTED] valid from September 1, 2005 to August 31, 2008. (The attorney of record in the present proceeding also handled the petition in that matter.)

The petitioner filed a nonimmigrant petition on the beneficiary's behalf in December 2006 and another in 2009. USCIS records show that both nonimmigrant petitions were pending when the petitioner filed the Form I-360 petition, but USCIS subsequently denied them both. There is no evidence that USCIS ever authorized the beneficiary to work in the United States after August 2008 at the latest.

Furthermore, the beneficiary's earlier R-1 nonimmigrant status authorized him to work only at [REDACTED]. The regulation at 8 C.F.R. § 274a.12(b)(16) allows an R-1 nonimmigrant to work only for the religious organization that obtained R-1 status for the alien. More generally, under 8 C.F.R. § 214.1(e) a nonimmigrant may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status.

The petitioner does not claim that the beneficiary worked for [REDACTED] throughout the entire authorized period; as noted above, the petitioner claims to have paid the beneficiary the same amount in 2008 as in 2009. On Form G-325A, Biographic Information, the beneficiary claimed to have left [REDACTED] in August 2007, and begun working for the petitioner the following month.

The director denied the petition on August 19, 2010, because "[t]he record does not show that the beneficiary was granted any . . . authorization to continue to reside and work in the United States after 08/31/2008." The director noted the denials of the petitioner's 2006 and 2009 petitions.

On the Form I-290-B, Notice of Appeal, the petitioner alleged procedural errors relating to one of the denied nonimmigrant petitions. The petitioner did not, however, demonstrate that the beneficiary held lawful nonimmigrant status throughout the 2008-2010 qualifying period. The petitions from 2006 and 2009 would not confer lawful status unless and until USCIS approved those petitions.

In a subsequent brief, counsel contests the rejection of an appeal relating to one of the petitioner's nonimmigrant petitions. The present decision is limited to the record of proceeding for the petitioner's special immigrant petition, and as such is not the forum for a detailed discussion of a separate petition. Nevertheless, the AAO notes that USCIS reversed its rejection of the appeal, and the AAO has given that appeal full consideration in a separate decision.

Counsel claims that the contested rejection of the above appeal "caused a chain reaction domino effect resulting in the wrongful denial of this I-360." The record offers no support for this claim. The director noted the denial of both of the nonimmigrant petitions, but the denial notice contains no mention of the rejected appeal. The key issue is not the rejection of an appeal in August 2010, but rather the lack of evidence of qualifying nonimmigrant status from May 2008 through May 2010. Because USCIS did not approve either of the petitioner's two nonimmigrant petitions on the beneficiary's behalf, those petitions never resulted in lawful status or employment authorization.

Furthermore, the petition underlying the rejected appeal had a filing date of December 21, 2009, and sought to classify the beneficiary as an R-1 nonimmigrant beginning January 1, 2010. Therefore, even if USCIS had approved that petition, which it did not do, that petition would have covered less than five months of the two-year qualifying period.

The AAO has reviewed the petitioner's appeals of both denied nonimmigrant petitions, and has dismissed both of those appeals in separate decisions. The beneficiary never derived lawful status or employment authorization from either of those petitions, and therefore the director did not err in finding that the petitioner failed to establish the beneficiary's continuous, lawful employment during the two-year qualifying period. The AAO will, accordingly, dismiss the present appeal.

Beyond the director's stated basis for denial, review of the record reveals additional grounds for denial of the petition. 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).

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

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.

The petitioner's initial submission contains conflicting claims about the beneficiary's intended compensation. On Form I-360, prepared by counsel, the petitioner stated that the beneficiary would receive \$2,000 per month. In an April 29, 2010 letter, however, Sang Kon Pae, a deacon of the petitioning church, stated that the beneficiary "will be paid \$3,200 per month." Counsel repeated the \$3,200 figure in a separate letter. The petitioner claims to have paid the beneficiary \$24,000 per year since 2008, but the evidence submitted does not show that the petitioner can pay the beneficiary \$3,200 per month. 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).

Also, the USCIS regulation at 8 C.F.R. § 204.5(m)(12) reads:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The record of proceeding for the present Form I-360 petition contains copies of two IRS Form 8822 Change of Address notices. The first notice, dated December 5, 2006, indicated that the petitioner moved from 1585 Kapiolani Boulevard to 1507 South King Street (both in Honolulu, Hawaii). The second notice, dated August 1, 2007, reported the petitioner's move from 1507 South King Street to its present address on University Avenue, also in Honolulu.

The petitioner has previously filed two Form I-129 petitions seeking to classify the beneficiary as an R-1 nonimmigrant religious worker. The first nonimmigrant petition, filed in December 2006, listed the petitioner's address as 1507 S. King Street, Suite 401, Honolulu. The petitioner submitted various documents relating to its claimed occupancy of that address, including the December 2006 IRS Form 8822 described above and a copy of a rental agreement dated June 23, 2006.

On July 8, 2007, a USCIS officer found a different tenant at the King Street location. A property manager at Lani Properties stated that Premier Consulting LLC leased the King Street property from January 1, 2007 until its eviction on April 30, 2007. The property then remained vacant until June 2007, when the new tenant moved into the space.

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A USCIS officer interviewed the beneficiary and [REDACTED] pastor of the petitioning church, on July 16, 2007. At that time, the beneficiary stated that the church left the [REDACTED] address upon the expiration of its lease, rather than pay a substantially higher rent.

USCIS has previously advised the petitioner of the above information under the regulation at 8 C.F.R. § 103.2(b)(16)(i). With the present Form I-360 petition, the petitioner has submitted copies of the IRS Forms 8822, although the date “12.05.06” is now visible on the first change of address notice. Thus, the petitioner has incorporated the claimed [REDACTED] address into the Form I-360 petition.

The director advised the petitioner of the conflicting claims regarding the [REDACTED] address, leading to several contradictory assertions. In 2008, counsel stated that confusion had resulted because the petitioner “was no longer” at the [REDACTED] address; in 2010, the petitioner submitted copies of the two IRS Forms 8822, and asserted “The Petitioner has moved it’s [sic] location twice.” Later in 2010, counsel claimed that “the lease agreement did not work out with [REDACTED] Street, [and therefore the petitioner] held services at [REDACTED] until a physical location was found [on] [REDACTED].”

Most recently, counsel asserts that funding problems and disagreements over renovations “forced [the petitioner] to cancel the lease agreement and looked for an alternative location.” Counsel states that the petitioner “was not located [REDACTED] nor had they ever been physically in possession of that unit.” This latest assertion is consistent with the property manager’s statements, but it does not explain why the petitioner previously claimed to be located at the [REDACTED] address, or why the petitioner continued to claim that address upon subsequent inquiries.

The petitioner has made conflicting claims regarding the [REDACTED] and has not submitted any independent, verifiable evidence to show which of those claims is true. The petitioner has failed a compliance review, which is an additional basis for denial of the petition. 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. *Matter of Ho*, at 591-92.

The AAO will dismiss the appeal 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. The petitioner has not met that burden.

ORDER: The appeal is dismissed.