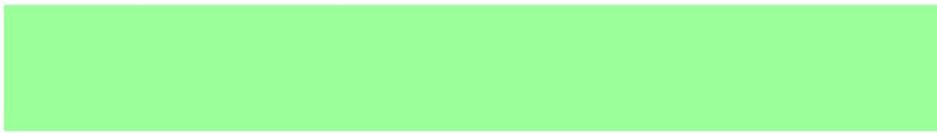


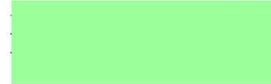


U.S. Citizenship  
and Immigration  
Services

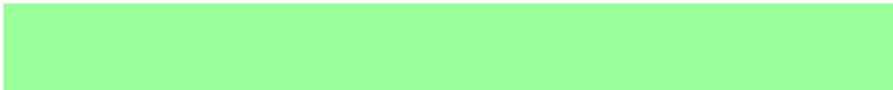
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DATE: JUN 24 2013 OFFICE: CALIFORNIA SERVICE CENTER

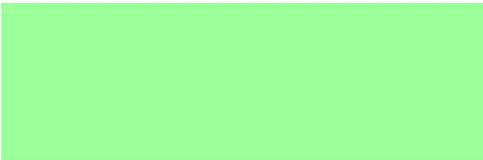


IN RE: Petitioner:  
Beneficiary:



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.

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 withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further action and consideration.

The petitioner is a member church of the [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 its pastor (minister). The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, lawful work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits a brief from counsel and copies of employment authorization cards issued to the beneficiary.

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 February 1, 2012. Part 3, line 13b of the petition form instructed the petitioner to list the beneficiary's current nonimmigrant status. The petitioner answered "AOS Pending." On August 31, 2009, the beneficiary had filed Form I-485, Application to Register Permanent Residence or Adjust Status.

The director denied the petition on June 7, 2012, stating that the beneficiary's status as an R-1 nonimmigrant religious worker expired on February 28, 2008, and therefore the beneficiary was not in lawful immigration status during the 2010-2012 qualifying period.

On appeal, counsel states:

As held by the United States District Court for the Northern District of California in the recent case *Shia Ass'n of Bay Area v. United States*, No. 11-1369 SC, 2012 WL 298220, \*1-8 (N.D. Cal. Feb. 1 2012), 8 C.F.R. §§ 204.5(m)(4) and (11) are not reasonable interpretations of the INA [Immigration and Nationality Act] because they are directly contradictory to INA § 245(k).

In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Here, none of the parties to the present proceeding are within the jurisdiction of the Northern District of California, so the matter did not even arise within the same district. Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719. Counsel has cited no binding authority striking down the regulations at 8 C.F.R. §§ 204.5(m)(4) and (11), and the AAO therefore considers those regulations to remain in force.

Counsel next argues: "A Form I-485 [application] for adjustment of status on behalf of [the beneficiary] was filed on August 31<sup>st</sup>, 2009. . . . This petition was erroneously denied on October 14, 2010, but reinstated by USCIS on January 26, 2011 and is still pending." (The director denied the adjustment application for the second time on October 4, 2012, but the appeal predates that denial.)

While the beneficiary's adjustment application was pending, the beneficiary was entitled to apply for employment authorization under the USCIS regulation at 8 C.F.R. § 274a.12(c)(9). The petitioner submits copies of employment authorization cards permitting the beneficiary to work from October 26, 2009 through October 25, 2012, a period that covered the entire two-year qualifying period. USCIS records verify the information on the submitted copies.

The USCIS regulation at 8 C.F.R. § 274a.14(b)(1)(i) states that employment authorization may be revoked prior to the expiration date, when it appears that any condition upon which it was granted has not been met or no longer exists. The denial of the adjustment application on October 14, 2010, would have ended the conditions that qualified the beneficiary for employment authorization. Nevertheless, such a change of conditions does not automatically terminate employment authorization. Rather, the authorized period remains in effect until revoked on notice. *See* 8 C.F.R. § 274a.14(b)(2). In this instance, there is no evidence that the director revoked the employment authorization or issued a notice of intent to revoke it.

Because the beneficiary held a valid employment authorization card throughout the two-year qualifying period, his employment during that time was authorized under immigration law. Therefore, the petitioner has overcome the only stated basis for denial of the petition.

Review of the record, however, reveals other 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 (9<sup>th</sup> 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 first issue concerns compliance review. The 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 does not demonstrate satisfactory completion of a compliance review. A USCIS officer attempted a site visit on Wednesday, June 9, 2010, at approximately 11:00 a.m. There was no answer at the door. A worker at a nearby business indicated that there was rarely anyone at the church during weekday business hours. On a Sunday morning, the worker saw "approximately 6 to 8 cars" parked outside the church, which is not consistent with the petitioner's claim to have 200 members.

Three hours after the unsuccessful site visit to the petitioning church, the officer traveled to the [REDACTED] where [REDACTED] works. [REDACTED]

told the officer that the beneficiary worked full-time as the principal of [REDACTED] in [REDACTED], from 7:00 a.m. to 3:00 p.m. on weekdays, and then at the petitioning church from 4:00 p.m. to 7:00 p.m. on Mondays, Wednesdays, and Thursdays, from 4:00 p.m. to 9:00 p.m. Tuesdays and Fridays, and from 9:00 a.m. to 5:00 p.m. on Sundays.

The above work schedule conflicts with a letter from [REDACTED] treasurer of the petitioning church, indicating that the beneficiary “works six days a week at an average of 8 hours per day to perform his duties” at the petitioning church. The listed duties do not mention administrative or teaching duties at [REDACTED]. When the petitioner listed the addresses where the beneficiary would work on the employment attestation that accompanied the petition, the petitioner did not provide any [REDACTED] address.

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.

The conflicting information regarding the beneficiary’s duties leads to the second ground for denial. Section 101(a)(27)(C)(ii)(I) of the Act provides for admission of an immigrant who will enter the United States solely for the purpose of carrying on the vocation of a minister. The USCIS regulation at 8 C.F.R. § 204.5(m)(5) defines the term “minister” as an individual who “[p]erforms activities with a rational relationship to the religious calling of the minister,” and “[w]orks solely as a minister . . . , which may include administrative duties incidental to the duties of a minister.”

Certified copies of the beneficiary’s 2009 and 2010 federal tax returns showed his occupation as “school teacher clergyman.” The petitioner submitted no evidence to show that the duties of a “school teacher” have a rational relationship to the religious calling of a minister of the RCCG denomination (*i.e.*, that RCCG ministers frequently or routinely work as school teachers). The word “teaching” appears in the beneficiary’s job description, in the general context of religious instruction, but this is not “school” teaching.

The petitioner submitted two Internal Revenue Service (IRS) Form W-2 Wage and Tax Statements issued to the beneficiary for 2010. The first showed that the petitioner paid him \$26,000 in salary and a housing allowance of \$6,000. The second showed that [REDACTED] t [REDACTED] paid him \$23,400. A printout from the Social Security Administration repeats the above figures, and indicates that [REDACTED] paid the beneficiary \$35,387 in 2009. [REDACTED] has the same address as [REDACTED] but a different Employer Identification Number, indicating that it exists as a separate corporate entity from the church. The record does not establish the nature of the beneficiary’s duties at [REDACTED], or even the basic nature of

that entity, and therefore the petitioner has not shown that he worked solely as a minister during the 2010-2012 qualifying period.

The various subsections of section 101(a)(27)(C) of the Act, read together and in context, require the petitioner's qualifying past employment to have occurred at a bona fide nonprofit, religious organization in the United States, 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. According to the IRS, [REDACTED] was formerly registered as a 501(c)(3) tax-exempt organization, but the IRS automatically revoked that status on June 19, 2011 for failure to meet reporting requirements.<sup>1</sup>

The above information, by itself, casts doubt on whether the petitioner has been or will be employed solely as a minister. In combination with the information gathered during the compliance review site visits, the above information raises further questions about the nature and extent of the petitioner's actual duties with the church and with other entities.

Therefore, the AAO will remand this matter for a new decision, taking the above factors into account. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.

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<sup>1</sup> Source: <http://apps.irs.gov/app/eos/mainSearch.do?mainSearchChoice=revoked&dispatchMethod=selectSearch> (search conducted and printout added to record June 7, 2013).