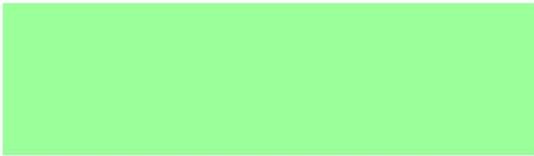




U.S. Citizenship
and Immigration
Services

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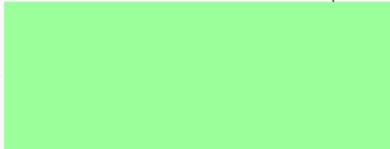


Date: **MAR 26 2013** Office: CALIFORNIA SERVICE CENTER FILE:

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:



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 with the field office or service center that originally decided your case by filing a 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 non-profit corporation. 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 multicultural minister for [REDACTED] in National City, California. The director determined that the petitioner failed to establish that it qualifies as a bona fide non-profit religious organization in the United States and that the beneficiary will be working for the petitioner in a qualifying position.

On appeal, the petitioner submits a brief from counsel and a printout from the Internal Revenue Service (IRS) website regarding private foundations.

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 United States Citizenship and Immigration Service (USCIS) regulation at 8 C.F.R. § 204.5(m)(3) provides that in order to be eligible for classification as a special immigrant religious worker, an alien must be coming to work for a bona fide non-profit religious organization in the United States, or a bona fide organization which is affiliated with the religious denomination in the United States. 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:

Bona fide non-profit religious organization in the United States means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the IRS confirming such exemption.

Bona fide organization which is affiliated with the religious denomination means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code and possessing a currently valid determination letter from the IRS confirming such exemption.

Tax-exempt organization means an organization that has received a determination letter from the IRS establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the Internal Revenue Code . . .

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

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or
- (iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, as something other than a religious organization:
 - (A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;
 - (B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

The petitioner filed the Form I-360 petition on March 22, 2012. Accompanying the petition, the petitioner submitted a March 31, 2000 letter from the IRS confirming that Global Action International is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code. The letter stated, in part:

Your exempt status under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3) is still in effect. Based on the information you submitted, we have determined that you are not a private foundation within the meaning of section 509(a) of the Code because you are an organization of the type described in section 509(a)(1) and 170(b)(1)(A)(vi).

The petitioner submitted a Religious Denomination Certification signed by [REDACTED] president of the petitioning organization and signatory of the petition, which stated "nondenominational" as the name of the religious denomination with which the petitioner is affiliated. In a letter submitted with the petition, the petitioner described itself as a "not-for-profit religious organization" whose mission includes "supporting religious organizations that provide medical, educational and orphanages to the disadvantaged located around the world." The petitioner submitted a copy of its Articles of Incorporation, filed March 9, 1995, which list the corporation's purpose as follows:

Minister of the Gospel of the Lord Jesus Christ by providing religious literature, food, clothing, medical needs to those in eeds [sic] both spiritual and material in Mexico, other third world countries and to Eastern Bloc countries.

On June 5, 2012, USCIS issued a Request for Evidence (RFE), in part requesting additional evidence that the petitioner qualifies as a non-profit religious organization and regarding the petitioner's denomination.

In a letter responding to the notice, the petitioner identified itself as a non-denominational Christian organization and stated the following, in pertinent part:

The IRS tax laws contain sections for traditional churches and associated organizations. As we do not fit into the precise definition of a church, nor is [REDACTED] supported by a particular church or Christian denomination, [REDACTED] was formed, on the advice of a tax attorney, as a not-for-profit corporation. However, it has always been part of [REDACTED] calling and ministry to support Christian missionaries and others dedicated to spreading

the Good News of the New Testament. Our mission is clearly summarized in our tax filings on IRS form 990, where a description of our activities is required.

The petitioner submitted a copy of its Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, which included a statement regarding its purpose as a "ministry of helps to indigenous churches and missionaries." The petitioner also submitted copies of brochures relating to its activities.

On October 4, 2012, the director denied the petition, in part finding that the petitioner failed to establish that it qualifies as a bona fide non-profit religious organization in the United States. The director stated:

[T]he IRS determined that the petitioner is an organization of the type described in sections 509(a)(1) and 170(b)(1)(A)(vi), one that normally receives a substantial part of its support from a governmental unit or from the general public. Per the regulations listed above [(8 C.F.R. 204.5(m)(5)(iii))] the petitioner is something other than a religious organization.

The director found the petitioner's evidence insufficient to show that the petitioner qualifies "as a bona fide non-profit religious organization as provided in the service regulations."

On appeal, counsel for the petitioner states the following:

The Center Director incorrectly determines that the petitioner receives its funding from the government, which is incorrect. Attached to this letter is the portion of the Internal Revenue Manual as located on the IRS website. It makes clear that the sections listed above do not conflict at all with the IRS determination that the petitioner is a not for profit organization as described in section 501(c)(3).

Under the regulations at 8 C.F.R. §§ 204.5(m)(5) and (8) the petitioner cannot simply establish that it holds tax-exempt status under section 501(c)(3) of the Internal Revenue Code (the Code). The petitioner's determination letter from the IRS indicates that the petitioner qualifies for 501(c)(3) tax-exempt status as "an organization of the type described in section 509(a)(1) and 170(b)(1)(A)(vi)" of the Code. While section 170(b)(1)(A)(i) of the Code refers specifically to churches and related organizations, section 170(b)(1)(A)(vi) of the Code has no such limitations. Therefore, the IRS determination letter is evidence of the petitioner's tax-exempt status, but it is not evidence of the petitioner's religious nature or purpose or of its affiliation with a religious denomination. If, as in this instance, the petitioning organization "was granted tax-exempt status under section 501(c)(3) ... as something other than a religious organization," the petitioner must submit the additional evidence listed under 8 C.F.R. § 204.5(m)(8)(iii).

The petitioner submitted documentation of its religious nature and purpose in the form of its organizing instrument as well as organizational literature in compliance with 8 C.F.R. §§ 204.5(m)(8)(iii)(A) and (B). However, the petitioner is additionally required to submit the following:

A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition. 8 C.F.R. § 204.5(m)(8)(iii)(D).

The religious denomination certification has not been properly completed. The certification was signed, not by a representative of an attesting organization within the religious denomination, but rather by a representative of the petitioning organization. Further, the petitioner has indicated that it is not affiliated with a religious denomination.

Accordingly, the petitioner does not meet the definition of a bona fide non-profit religious organization or a bona fide organization which is affiliated with the denomination.

The second issue to be discussed is whether the petitioner established that it will employ the beneficiary in a qualifying, full-time 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.

On the employer attestation portion of the Form I-360 petition, the petitioner identified the petitioning organization as the intended employer, and indicated that it will employ the beneficiary as a multicultural minister to lead "his congregation, [REDACTED] in National City, California. In an addendum accompanying the petition, the petitioner described the proposed compensation as "Full time position at \$10.00 per hour plus other allowances as authorized by Board." The petitioner indicated that the beneficiary also "receives a housing allowance of \$20,000.00, which is not recorded as income on his 1099 form." The petitioner submitted a copy of its 2012 budget, which included \$20,000 for [REDACTED] Housing" and \$4,000 for [REDACTED] income."

In the addendum, the petitioner additionally stated the following:

[REDACTED] is overseeing a San Diego mission church outreach to the Hispanics & Filipino's. He will continue to receive compensation from [REDACTED] As the church grows and finances are sufficient there will be less need for support from [REDACTED] When

██████████ is fully supported by this mission church ██████████ commits to a long term relationship with him & his church as we do our International outreaches.

In a separate letter submitted with the petition, the petitioner described the process of “planting” a church and its role in the planting of the beneficiary’s church, ██████████. The petitioner indicated that, in the early stages of a church planting, “the salary and living expenses of the minister are completely covered by the missionary organization.” As the congregation grows and begins providing monetary offerings during services, the offerings “generally go first to the physical needs of the congregation – paying rent, purchasing hymnals and other supplies, saving for the purchase or building of a church, etc.” The petitioner further stated:

Eventually, the congregation has sufficient members that it becomes self-supporting. The amount of time between the initial proposal to plant a church and when the church becomes self sustaining varies, but generally is no less than two years and no more than six.

Once the church reaches the self-supporting stage, the church becomes part of the missionary organization’s support network, and provides support to the missionary organization for the planting of additional churches. ...

Once ██████████ becomes self-sustaining, ██████████ may be asked to plant other churches for us in the United States, or he may be asked to provide counseling and training to other religious ministers in the planting of other churches.

The petitioner also indicated in the letter that its employees are “treated as independent contractors” for the purpose of minimizing expenses and that they therefore receive Form 1099. The petitioner submitted evidence of its past compensation to the beneficiary in the form of bank statements, copies of checks and deposit slips, and a Form 1099-MISC for 2011 which indicated compensation of \$7,935.00 for the year.

As part of the response to the June 5, 2012 RFE, the petitioner submitted a copy of a 2011 Form 1099-MISC indicating \$1,350 paid to the beneficiary from ██████████ in Chula Vista, California. The petitioner also submitted checks made out to the beneficiary during 2011 from ██████████ in San Diego, California and from various individuals.

In the decision denying the petition, the director noted the petitioner’s statements regarding the treatment of the beneficiary as an independent contractor and regarding the intention that the beneficiary’s congregation will become a self-supporting church. The director found that “there is no employer-employee relationship between ██████████ and that “[t]he ██████████ has no permanent full-time position to offer the beneficiary.”

On appeal, counsel for the petitioner argues as follows:

The petitioner clearly stated its intention to continue to have the beneficiary continue his relationship with the petitioner, even after the church becomes self-sufficient. The

petitioner stated "Once [REDACTED] becomes self-sustaining, [REDACTED] may be asked to plant other churches for us in the United States, or he may be asked to provide counseling and training to other religious ministers in the planting of other churches." Clearly the petitioner intends there to be a permanent, on-going position available to the beneficiary.

The Center Director also found that because the beneficiary was paid as an independent contractor, he was not offered a full-time position as a minister. The payment of all employees of the petitioner as independent contractors was explained in response to the request for evidence.

The AAO agrees with counsel that the beneficiary's status as an independent contractor for tax purposes is not dispositive of whether or not he is in effect an employee of the petitioner. In this instance, however, the AAO agrees with the director that the petitioner has not established that an employer-employee relationship exists and that the beneficiary will be working for the petitioner in a full-time compensated position.

Although the petitioner has asserted that it will provide the beneficiary with income and a housing allowance, it is not clear that the beneficiary will in fact be an employee of the petitioner in the traditional sense. Instead, the evidence indicates that the petitioner will provide temporary support to the beneficiary, and that [REDACTED] will operate as an independent church with the goal of self-sufficiency. The petitioner has indicated its intent to continue providing compensation to the beneficiary until such time as the beneficiary's congregation becomes self-sustaining, at which time the congregation will instead begin providing support to the petitioner. According to the petitioner's own timeline, this process is likely to take between two and six years from the time the planting was initially proposed. The evidence indicates that, at the time the petition was filed in March of 2012, the petitioner had already been providing support to the beneficiary for well over a year. Therefore, the petitioner's prospective "employment" of the beneficiary in his role as multicultural minister for [REDACTED] is an admittedly temporary arrangement set to last an additional one to five years.

Regarding the petitioner's statement that the beneficiary "may be asked" by the petitioning organization to plant other churches or provide training after his church becomes self-sufficient, the AAO disagrees with counsel's assertion that this demonstrates a continuing intent to employ the beneficiary in a full-time position.

The AAO additionally notes that the evidence indicates the beneficiary receives support not only from the petitioner, but from other churches and individuals as well. This further indicates that the petitioner is not the beneficiary's employer, but rather one of several organizations supporting the beneficiary in his planting of [REDACTED]

Finally, although the petitioner stated on the addendum that the beneficiary will be working "full-time" for \$10.00 per hour plus a housing allowance, the 2012 budget submitted by the petitioner shows only \$4,000 set aside for the beneficiary's income for the year in addition to the housing allowance. At a rate of \$10.00 per hour, this amount would cover only 400 hours of employment for the year, thus calling into question the petitioner's intent to compensate the beneficiary on a full-time basis.

For the reasons discussed above, the AAO agrees with the director that the petitioner has not established that it will employ the beneficiary in a qualifying full-time position.

As an additional matter, the AAO finds that the petitioner has not established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition. The USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the alien 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. Therefore, petitioner alien must establish that the beneficiary was continuously performing qualifying religious work in lawful status throughout the two-year period immediately preceding March 22, 2012.

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.

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

According to evidence accompanying the Form I-360 petition, the beneficiary was granted R-1 nonimmigrant status authorizing his employment with the petitioner from December 16, 2009 to June 15, 2012.

As mentioned above, the petitioner submitted evidence showing that, in addition to income from the petitioner, the beneficiary received \$1,350 in income from [REDACTED] in Chula Vista, California and at least \$550 from [REDACTED] in San Diego, California

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during 2011. The record does not indicate that the beneficiary held authorization to work for either of those organizations during the period in question.

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. The regulations at 8 C.F.R. §§ 214.2(r)(2) and (13) provide that “[a]n alien may work for more than one qualifying employer as long as each qualifying employer submits a petition plus all additional required documentation as prescribed by USCIS regulation” and that an R-1 “may not be compensated for work for any religious organization other than the one for which a petition has been approved or the alien will be out of status.”

Further, the regulation at 8 C.F.R. § 214.1(e) provides that a nonimmigrant may engage only in such employment as has been authorized. Any unlawful employment by a nonimmigrant constitutes a failure to maintain status.

In this instance, the beneficiary’s R-1 status during the qualifying period authorized his employment only with the named employer, [REDACTED]. Any compensation for work for another organization would constitute unauthorized employment and a failure by the beneficiary to maintain his R-1 nonimmigrant status during the qualifying period.

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.