



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **MAY 17 2013** Office: CALIFORNIA SERVICE CENTER FILE: [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.

Thank you,

Ron Rosenberg
Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. On a subsequent appeal, the Administrative Appeals Office (AAO) remanded the matter for consideration under current regulations. The matter is again before the AAO on appeal. The AAO will withdraw the director's decision and will remand the petition for further action and consideration.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Act to perform services as its senior pastor. The director determined that the petitioner had not established how it intends to compensate the beneficiary.

The petitioner submits a letter and additional documentation in support of the appeal.

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 presented on appeal is whether the petitioner has established how it intends to compensate the beneficiary.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(10) provides:

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 [Internal Revenue Service] documentation, such as IRS Form W-2 [Wage and Tax Statement] 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.

In its September 26, 2007 letter submitted in support of the petition, the petitioner stated that the beneficiary “has faithfully been serving for our church as senior pastor since December 2003 and under valid R-1 visa.” The petitioner did not specify a salary or other compensation that it would provide to the beneficiary. With the petition, the petitioner submitted a copy of its 2007 budget which provided for the senior pastor’s salary of \$28,000. The budget projected revenue of \$164,000 and expenses of \$129,800. The petitioner also provided a copy of its unaudited financial statement for the year 2006, on which it claimed revenue of \$131,735.46 and expenses of \$127,580.13, which included the senior pastor’s salary of \$25,500. Similar documentation was provided for 2005. The petitioner also provided copies of IRS Forms W-2 that it issued to the beneficiary in 2005 and 2006 on which it reported wages paid of \$24,400 and \$25,500, respectively, and uncertified copies of the beneficiary’s IRS Form 1040, U.S. Individual Income Tax Return, for the same years on which he reported this income.

In a letter of October 16, 2009, counsel notified USCIS of the petitioner’s change of address and stated that the petitioner’s membership had decreased from 100 to “approximately 80” registered members, of whom about 20 to 30 members “attend Sunday worship service regularly.” Counsel stated that the individual who signed the petition on behalf of the petitioner was no longer with the organization. Counsel included copies of IRS Forms W-2 issued to the beneficiary by the petitioner for the years 2006, 2007, and 2008, reflecting wages paid of \$25,500, \$23,830, and \$9,000, respectively.

In a March 29, 2011 Notice of Intent to Deny (NOID) the petition, the director advised the petitioner of the results of an onsite inspection conducted in February 2011 at its then address of record, [REDACTED] Pennsylvania. The director reported that the immigration officer (IO) who conducted the inspection questioned whether the petitioner was operating as a bona fide nonprofit religious organization and stated that the beneficiary signed checks from the petitioner to pay his own salary and could not tell the IO the source of the funds used to pay his salary. The director instructed the petitioner to, *inter alia*, submit copies of its IRS Forms W-3, Transmittal of Wage and Tax Statements, for the years 2005 and 2006 and copies of the beneficiary’s IRS Forms W-2 and federal tax returns “in [] official IRS printouts in a sealed IRS envelope.”

In response, the petitioner submitted copies of IRS account transcripts of its IRS Form 941, Employer's Quarterly Tax Return, for all quarters of 2005 and 2006. No return was filed for the June 2005 quarter. The petitioner also provided copies of the IRS printouts of the IRS Forms W-2 that it submitted for the beneficiary for tax years 2005 and 2006. Counsel stated that the IRS did not provide these documents under seal but did provide verification stamps on the documents.

The director initially denied the petition, citing to outdated regulations, stating that the petitioner had failed to provide IRS Form W-3 and that:

The petitioner is the beneficiary himself and did not specify where the money is coming from and who is paying the beneficiary's salary. As such, the current offer fails to establish that the beneficiary will not be dependent on supplemental employment or the solicitation of funds for support.

With its June 2011 appeal, the petitioner submitted copies of IRS Forms W-2, reflecting that the petitioner paid the beneficiary \$27,000 in 2009 and 2010. Counsel stated that the petitioner only paid the beneficiary \$9,000 in 2008 because he was not authorized to work in the United States for the full year. A copy of an August 19, 2008 Form I-797C, Notice of Action, notified the beneficiary of approval for employment authorization valid from August 19, 2008 to December 2, 2009. The petitioner also submitted a copy of its 2010 statement of revenue and expenses and December 31, 2010 balance sheet, accompanied by an accountant's compilation report. The documents reflect that the petitioner had a net profit of \$10,456, which included the pastor's salary of \$27,000. The petitioner submitted copies of its monthly bank statements for January 2011 and March through May 2011 reflecting ending balances of \$2,372.45, 2,715.81, \$962.49, and \$549.92, respectively, and copies of processed checks indicating that it paid the beneficiary \$2,250 in each month of April, May, June and July of 2011. The petitioner also provided an attestation in a letter dated July 15, 2011, in which it stated that the beneficiary's salary would be \$27,000 plus reimbursement for personal expenses incurred in connection with church activities.

In a July 19, 2012 RFE issued following the AAO's remand, the director instructed the petitioner to submit verifiable documentation in accordance with the regulation at 8 C.F.R. § 204.5(m)(10) to show how the petitioner intends to compensate the beneficiary. In response, the petitioner again stated that the beneficiary would receive an annual salary of \$27,000 and, in addition to the IRS Forms W-2 previously submitted, the petitioner submitted a copy of the IRS Form W-2 that it issued to the beneficiary in 2011, reflecting that it paid the beneficiary \$27,008 in wages. The petitioner also submitted copies of processed checks indicating that it paid the beneficiary \$2,250 per month from January 2012 to September 2012. The petitioner also submitted a copy of its statement of revenue and expenses and balance sheet for 2011 accompanied by an accountant's compilation report, copies of its monthly bank statements for two separate accounts for January through July for one account and January through August for the other. The petitioner provided a current membership list of 45 names.

The director again denied the petition on the same basis and using the same language that she used in the previous denial. The director also stated, "In addition personal checks from [the petitioner] dated January to September 2012 was issued to the beneficiary . . . and the check[s] were signed by unknown individual." On appeal, counsel disputes that the checks were "personal checks" and stated that they were signed by an authorized official of the church.

The AAO will withdraw the director's decision. The petitioner has submitted a variety of evidence that, when considered in the aggregate, sufficiently establishes the petitioner's intent and ability to compensate the beneficiary. In its early submissions, the petitioner did not identify any specific salary that it would provide to the beneficiary. However, it submitted copies of IRS Forms W-2, processed checks, budgets, financial statements, and bank statements that confirm it has paid the beneficiary, and has the funds to continue to pay the beneficiary, approximately \$2,000 per month. More current documentation indicates that the petitioner offers to compensate the beneficiary in the amount of \$27,000 per year, and the documentation submitted supports its ability to do so.

The director found that the beneficiary is the petitioner; however, there is no evidence in the record to support this finding. The petition was signed by an individual other than the beneficiary, and the record explains that that individual is no longer associated with the petitioner. Furthermore, another individual has been appointed to the position previously held by that individual. The director's statement that the record does not establish who is paying the beneficiary's salary is also without a factual basis in the record. The petitioner's financial statements indicate the source of the petitioner's revenue, bank statements and processed checks reflect that the petitioner pays the beneficiary's salary, and the record indicates no other source of income for the beneficiary.

Accordingly, the AAO finds that the petitioner has submitted sufficient documentation to establish how it intends to compensate the beneficiary.

Nonetheless, the petition may not be approved as the record now stands. The petitioner has not established that the beneficiary is qualified for the proffered position.

The regulation at 8 C.F.R. § 204.5(m)(5) defines minister as an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct such religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and

- (D) Works solely as a minister in the United States, which may include administrative duties incidental to the duties of a minister.

Additionally, the regulation at 8 C.F.R. § 204.5(m)(9) provides:

Evidence relating to the qualifications of a minister. If the alien is a minister, the petitioner must submit the following:

- (i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and
- (ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological institution is accredited by the denomination, or
- (iii) For denominations that do not require a prescribed theological education, evidence of:
 - (A) The denomination's requirements for ordination to minister;
 - (B) The duties allowed to be performed by virtue of ordination;
 - (C) The denomination's levels of ordination, if any; and
 - (D) The alien's completion of the denomination's requirements for ordination.

In his October 9, 2012 letter accompanying the petitioner's response to the RFE, counsel stated that the minimum education, training and experience requirements for the proffered position include:

- Ordained minister
- Preacher certification authorized by General Assembly of Presbyterian Churches
- Master of Divinity (M.Div.)
- 3-5 years of pastoral experience at a Presbyterian church(es)

Counsel also outlined the requirements for becoming an ordained minister within the Presbyterian denomination as:

- Education: M.Div or Th.M degree in Theological Seminary or equivalent.
- Experience/Training: At least 2 years of field training at a Presbyterian church(es)
- Presbyterian Christian: Must be a member of a Presbyterian church(es) for 3 years.
- Exams: Bible content exams; oral exams; and interviews.

However, the record contains no documentary evidence such as handbooks or bylaws to establish either the petitioner's or the denomination's requirements. 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 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Furthermore, the petitioner has failed to submit a copy of the beneficiary's ordination certificate as required by the above-cited regulation. While the petitioner submits a document entitled, "Certificate of Ordination," dated April 2, 2001, the document is not a copy of the beneficiary's actual ordination certificate. Rather, it is a letter signed by the moderator general of the [REDACTED] in the United States of America, verifying the beneficiary's ordination as a pastor in 1998. The document does not state when and where the beneficiary was purportedly ordained or the source of the information used by the moderator general in verifying the beneficiary's ordination date. The petitioner failed to submit primary evidence of the beneficiary's ordination certificate or similar documentation as required by the regulation and which was issued contemporaneously with the beneficiary's ordination.

The record is remanded to the director to inquire into whether the beneficiary qualifies for the proffered position.

Additionally, the regulation at 8 C.F.R. § 204.5(m)(12) provides:

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.

(b)(6)

The record does not establish that the petitioner has satisfactorily completed an onsite review or other inspection, verification or compliance review. On remand, the director should determine whether another onsite review is appropriate in the instant case.

The matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. 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 AAO for review.