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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

Date: **MAY 21 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:

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, initially approved the employment-based immigrant visa petition. On further review, the director determined that the beneficiary was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) approval of the petition and her reasons for doing so. The director subsequently exercised her discretion to revoke approval of the petition on October 5, 2012. The director reopened the decision on service motion and again revoked her approval of the petition on December 4, 2012. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 an assistant pastor. The director determined that the petitioner had not established that the beneficiary had been lawfully employed as a religious worker and thus worked continuously in a qualifying religious occupation or vocation for the two years immediately preceding the filing of the visa petition.

Counsel asserts on appeal that the director “fail[ed] to consider all of the evidence establishing [the beneficiary’s] work history” and “incorrectly stated that [the petitioner] did not provide evidence of how [the beneficiary] maintained his and his family’s support during the same period.” Counsel submits a brief and copies of previously submitted documentation in support of the appeal.

Section 205 of the Act, 8 U.S.C. § 1155, states that the Secretary of the Department of Homeland Security “may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.”

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for “good and sufficient cause” where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner’s failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

*Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director’s realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Id.*

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 is whether the petitioner has established that the beneficiary worked continuously in a qualifying religious occupation or vocation for the two years immediately preceding the filing of the petition.

The regulation at U.S. Citizenship and Immigration Services (USCIS) 8 C.F.R. § 204.5(m) provides that to be eligible for classification as a special immigrant religious worker, the alien must:

(4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed. A break in the continuity of the work during the preceding two years will not affect eligibility so long as:

- (i) The alien was still employed as a religious worker;
- (ii) The break did not exceed two years; and
- (iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

Therefore, the petitioner must show that the beneficiary worked 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 petition was filed on July 10, 2009. Accordingly, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

The 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 [Internal Revenue Service] documentation that the alien received a salary, such as an IRS Form W-2 [Wage and Tax Statement] 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.

The petitioner submitted no documentation with the petition to establish the beneficiary's qualifying work experience. In response to the director's October 20, 2009 request for evidence (RFE), the petitioner, through its president and executive director, submitted a copy of a December 30, 2005 letter from [REDACTED] India attesting to the beneficiary's work with that organization through the end of October 2005. However, the petitioner submitted no documentation of the beneficiary's work experience during the two-year qualifying period. The petitioner also outlined the scheduled duties of the proposed position but stated that the schedule "will be implemented upon approval" of the petition. Nonetheless, the director approved the petition on February 25, 2010.

In her August 9, 2012 NOIR, the director advised the petitioner:

A review of the evidence initially submitted with the petition on July 10, 2009 shows that the beneficiary was employed initially as an H1B from May, 2003 to August, 2004 as a Business Development Manager with [REDACTED] and from August, 2004 to August, 2007 with [REDACTED] as a Manager. However, the evidence does not reveal that the beneficiary was employed full-time with the petitioning

organization . . . as required by 8 C.F.R. 204.5(m)(4). The petitioning organization has not submitted evidence of the beneficiary's salaried compensation; non-salaried compensation; or that the beneficiary provided for his own support for the qualifying period in question.

In response, counsel asserted that the "evidence of record indicates that [the beneficiary] volunteered as an Assistant Pastor beginning in 2003 after he became a member of the church in June of that year" and that he "became a full time Assistant pastor in September 2007." Counsel includes a copy of a May 17, 2007 letter that the petitioner submitted with its Form I-129, Petition for a Nonimmigrant Worker, in which the petitioner stated: "As volunteer Assistant pastor of The Church, from 2003 to present, the beneficiary has essentially performed the above mentioned religious duties." The petitioner submitted a September 5, 2012 letter in which it states that the petitioner has employed the beneficiary as a full-time assistant pastor since September 2007. The petitioner further stated:

[The petitioner] has not compensated [the beneficiary], as he did not have work authorization due to unforeseen complications with his immigration matters. However, [he] receives donations from church members who donate money to him for groceries and gas, and who also donate clothing. It is therefore up to individual donors whether they choose to claim such donations on their income tax returns, and [the petitioner] does not keep financial records of the donations offered for [the beneficiary's] support.

The petitioner submits what counsel states are "church bulletins which provide program outlines for nineteen (19) different worship services for [the petitioner's] congregants from November 2007 through December 2009" in which the beneficiary "served as Deacon (also referred to as Assistant Pastor) in which he led the service, led prayers, conducted Holy Communion, gave an offertory dedication, provided a scripture lesson or gave the sermon." Counsel also stated that the petitioner's 50<sup>th</sup> Anniversary Commemorative Booklet identifies the beneficiary as a deacon.

Counsel stated that the petitioner did not compensate the beneficiary for his services as a full-time deacon with the church; rather, he provided for his own support by selling merchandise through e-Bay and received support from church members who donated money for gas and groceries and donated clothing. Counsel asserts that because the petitioner did not compensate the beneficiary, he was not engaged in unauthorized employment but that he also did not volunteer his services. Counsel also asserts that as the beneficiary's qualifying work experience began in 2007, the current regulation that requires the work experience to be in a lawful immigration status should not be applied "retroactively" to the beneficiary. Counsel argues that but for USCIS's failure to follow its own regulations and denying the beneficiary's R-1 nonimmigrant religious worker petition, the beneficiary "would have maintained lawful status from 2007 until the present."

On December 4, 2012, the director revoked approval of the petition, stating:

The petitioner submitted 19 copies of the petitioner's church bulletins showing that the beneficiary presided as an Assistant Pastor in some form for that day's service as evidence of the beneficiary's two years experience. The two year period of qualifying experience would be from July 11, 2007 to July 10, 2009. Of the 19 church bulletins provided only 9 took place during the qualifying period. One church bulletin was submitted for 2007; 8

church bulletins for 2008 and none for 2009. This would be 9 times out of the 104 weeks of experience which cannot be considered as continuous performance of religious work.

The director stated that being named as a deacon in the commemorative booklet “is not sufficient evidence that one is employed by the church nor is it sufficient evidence to show that religious work was performed continuously.” The director further stated:

The petitioner also submitted a letter from the president of the petitioning church dated September 5, 2012 stating that the beneficiary has been employed [from] September 2007 and has worked at least 40 hours per week. The letter also shows the duties and responsibilities that the beneficiary has performed. However, there is no supporting documentation to substantiate the statement made by the signatory that the beneficiary actually performed these duties or that he did it continuously.

On appeal, counsel disputes the director’s findings and states that of the 19 bulletins submitted, 11 were within the qualifying period including 2 for 2009. Counsel asserts: “While the Service contends that the letter is meaningless without documentation to substantiate it, the Service ignored the bulletins and Commemorative Booklet, which serve as ample evidence to support [the petitioner’s] employment letter.”

The petitioner alleges that the beneficiary became a full-time assistant pastor in 2007. Yet the evidence submitted consists solely of bulletins indicating that he participated in various church services approximately one day of the week for apparently 11 weeks out of the required two-year qualifying period. While the petitioner alleges that the beneficiary worked in excess of 40 hours per week, it provided no documentation to support this allegation. 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’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

Counsel alleges that the beneficiary did not perform unauthorized work in the United States but also asserts that the beneficiary did not serve as a volunteer and was self-supporting pursuant to 8 C.F.R. § 214.2(r)(11)(ii). Counsel’s assertions are contradictory. The provisions of C.F.R. § 214.2(r)(11)(ii) apply to individuals who are approved for nonimmigrant religious worker status pursuant to section 101(a)(15)(R) of the Act. The record does not reflect that the beneficiary was approved for R-1 status and therefore, if he was employed by the petitioner, he worked in an unauthorized status. If he worked without an employer-employee relationship with the petitioner, then he served as a volunteer with the petitioner.

The AAO notes that the petitioner provided uncertified copies of the beneficiary’s unsigned and undated IRS 1040, U.S. Individual Income Tax Return, for 2007 and 2009, both of which indicate they were prepared by a paid tax preparer in July 2010. There is no indication that they were ever filed with the IRS. Documentation with the 2008 return indicates that it was timely e-filed in April 2009. The beneficiary’s 2007 return indicates he earned \$143,517 selling saddles and deducted expenses for e-Bay and PayPal. The documentation for 2008 and 2009 include IRS Form 1120S, U.S. Income for an S Corporation, and indicate that the beneficiary formed a small business corporation in which he was the sole shareholder. In 2009, he reported sales in excess of \$1 million dollars. The returns do not indicate any payroll expenses. The beneficiary’s tax documentation thus indicates that not only was he self-

employed, he ran a successful business in which he was the only employee. The AAO rejects counsel's assertion that this self-employment does not constitute "employment" because e-Bay does not employ the beneficiary and his selling does not require employment authorization. The regulation at 8 C.F.R. § 214.1(e) provides:

*Employment.* A nonimmigrant in the United States in a class defined in section 101(a)(15)(B) of the Act as a temporary visitor for pleasure, or section 101(a)(15)(C) of the Act as an alien in transit through this country, may not engage in any employment. Any other nonimmigrant in the United States may not engage in any employment unless he has been accorded a nonimmigrant classification which authorizes employment or he has been granted permission to engage in employment in accordance with the provisions of this chapter. A nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act.

The regulation does not distinguish between employment by a company or another individual and employment by one's self. Furthermore, the beneficiary's income returns indicate his e-Bay sales are more than just a sideline. He is fully engaged in his business and is its sole employee. Thus, any work in the corporation requires the beneficiary to receive employment authorization from USCIS to work in the United States.

On appeal, counsel also asserts that the proffered position qualifies as that of a religious vocation as that term is defined by the regulation and that "one who serves in a lifetime religious vocation does not need to establish the full-time nature of their work, as there is no such thing as a part-time minister." Counsel asserts:

In [the beneficiary's] case, he has made a formal lifetime commitment to his religion as an ordained minister and Deacon for [the petitioner], having been ordained in 2000. [The petitioner's] denomination, as part of the community of churches within the [redacted] has a class of individuals whose lives are dedicated to religious practice, e.g. bishops, presbyters and deacons, who are distinct and separate from the secular members of the religion.

Counsel's assertion is not persuasive. The regulation at 8 C.F.R. § 204.5(m)(5) provides that a:

*Religious vocation* means a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life. The religious denomination must have a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. Examples of individuals practicing religious vocations include nuns, monks, and religious brothers and sisters.

The petitioner has submitted no evidence that ordination in its organization involves "a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life." The record does not indicate that pastors within the petitioning organization are similar to nuns, monks, or

religious brothers or sisters. Furthermore, counsel's assertion that "there is no such thing as a part-time minister" is unsupported by any facts, documentation, or empirical evidence. 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).

Counsel asserts that the current regulation requiring that qualifying employment must be in a lawful immigration status should not apply to the beneficiary as the two-year qualifying period began prior to the implementation of the current regulation in 2008 and that the petitioner and the beneficiary "were advised on the law under the regulations prior to November 26, 2008." Counsel does not state who advised the petitioner as to the governing regulations or why the petitioner, who filed the instant petition more than seven months after the effective date of the regulation, should be excepted from meeting the regulatory requirements.

Finally, counsel asserts that the beneficiary "would have maintained lawful status from 2007 until the present had USCIS followed its own regulations with regard to the R-1 visa" because USCIS "erroneously believed that [the petitioner] did not have the ability to pay [the beneficiary] for the proffered position, a finding which is patently incorrect as evidenced by [the petitioner's] later approved Form I-360 filed on [the beneficiary's] behalf for the same position."

Counsel's argument is without merit. Whether or not USCIS erred in denying the petitioner's Form I-129 filed on behalf of the beneficiary did not authorize the beneficiary to nonetheless engage in employment in the United States without authority or to remain in the United States without lawful status.

The petitioner has failed to establish that the beneficiary was in a lawful immigration status and engaged in continuous religious work during the two years immediately preceding the filing of the visa petition. For this reason, this petition cannot be approved.

Beyond the decision of the director, the petitioner has failed to establish that it is a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 204.5(m)(5) provides, in pertinent part:

*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 IRC of 1986 or subsequent amendments or equivalent sections of prior enactments of the IRC.

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

*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 [IRC] of 1986, or subsequent amendment or equivalent sections of prior enactments of the [IRC], 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.

With the petition, the petitioner submitted a copy of an August 14, 1998 advance ruling letter from the IRS advising the petitioner that the IRS had granted it tax exempt status under section 501(c)(3) of the IRC as an organization described under sections 509(a)(1) and 170(b)(1)(A)(vi). The letter indicated that the advance ruling period ended on December 31, 2001. The petitioner submitted no additional documentation or determination letter from the IRS to establish that its tax-exempt status continued beyond December 31, 2001. As the petitioner has failed to provide a currently valid determination letter from the IRS, it has failed to establish that it is a bona fide nonprofit religious organization as that term is defined by the above-cited regulation. For this additional reason, this petition cannot be approved.

Additionally, the petitioner has failed to establish how it will compensate the beneficiary. The regulation at 8 C.F.R. § 204.5(m)(10) provides that the petitioner must submit:

*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.

Additionally, the regulation at 8 C.F.R. § 204.5(m)(7) provides that the petitioner must attest, *inter alia*:

- (xi) That the alien will not be engaged in secular employment, and any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer; and
- (xii) That the prospective employer has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges, and that funds to pay the alien's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization.

The petitioner stated on the Form I-360 that the beneficiary would receive a salary of \$2,500 to be paid by the [REDACTED]. The petitioner submitted a copy of a June 20, 2008 letter from the [REDACTED] signed by its deputy treasurer confirming that the [REDACTED] would "assist" the beneficiary "with a salary of \$3,000.00 monthly through our member church [the petitioner] upon approval of his petition." The petitioner submitted no other documentation with the petition to establish how it intended to compensate the beneficiary and submitted no evidence of its ability to do so.

In response to the RFE, the petitioner submitted a letter dated November 18, 2009 from the [REDACTED] again confirming that that organization would pay the beneficiary's salary of \$3,000 monthly. The petitioner provided a copy of an unaudited June 30, 2009 balance sheet from the [REDACTED] but submitted no other documentation regarding the financial status of the petitioning organization or the [REDACTED].

The regulation specifies that the petitioner is the entity responsible for compensating the alien. The regulation does not allow the petitioner to discharge this responsibility by arranging for third parties to compensate the beneficiary through non-binding promises to contribute a particular sum to support the beneficiary. The documentation submitted by the petitioner indicates that it is a member of the [REDACTED] but does not indicate that the [REDACTED] is its parent organization. The petitioner has provided no evidence that it, or any organization with which it has a subordinate or superior relationship, has the financial ability to compensate the beneficiary.

Even if the regulation would permit compensation to be paid by the [REDACTED] the petitioner has not submitted sufficient documentation to establish the [REDACTED] ability to do so. The only documentation provided by the petitioner of the financial status of [REDACTED] is an unaudited balance sheet. The balance sheet is based primarily on the representations of management and there is nothing in

the record to indicate that it fairly presents the financial position of the [REDACTED]. In light of this, limited reliance can be placed on the validity of the facts presented in the balance sheet. The petitioner submitted no other supporting documentation to reflect that the assertions contained within the unaudited financial statements are accurate. In view of the foregoing, the petitioner has failed to establish how it will compensate the beneficiary. For this additional reason, this petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial 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 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.