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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: AUG 0 1 2014 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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before us at the Administrative Appeals Office on appeal. We will dismiss the appeal.

The petitioner is a community of a Roman Catholic religious order. 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 supportive sister. The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits statements and copies of immigration documents.

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 for Amerasian, Widow(er), or Special Immigrant, on August 21, 2013. On Part 3, lines 13g and 13h of the petition form, the petitioner identified the beneficiary's current nonimmigrant status as "R" (corresponding to an R-1 nonimmigrant religious worker), with that status due to expire on July 5, 2017. Part 4, line 2f of the petition form asked whether the beneficiary had ever worked in the United States without authorization. The petitioner answered "No."

Sister superior of the petitioning community, stated that the beneficiary "was transferred from the Mexico . . . to the [petitioning] Community . . . in August of 2008." In a separate letter, Sister General Secretary of the petitioner's religious order, likewise stated that the beneficiary began working in the United States in August 2008.

The petitioner submitted documentation showing that the beneficiary was admitted into the United States on July 7, 2008, as an R-1 nonimmigrant religious worker, and that her status was valid until July 6, 2009.

The director issued a notice of intent to deny the petition on September 10, 2013. In that notice, the director quoted the USCIS regulations at 8 C.F.R. § 204.5(m)(4) and (11), and stated: "there is insufficient evidence to establish the beneficiary has been maintaining [R-1 nonimmigrant] status and has been lawfully employed as a religious worker for at least the two year period immediately preceding the filing of the petition." The director also raised issues concerning the petitioner's tax-exempt status and how the petitioner intends to compensate the beneficiary.

In response, the petitioner submitted documentation showing that the beneficiary received a B-1/B-2 nonimmigrant visa on July 9, 2007, with an expiration date of July 5, 2017. The visa's expiration date matches the date that the petitioner had claimed, on Form I-360, for the expiration of the beneficiary's R-1 nonimmigrant status. When the beneficiary entered the United States in 2008, she did so as an R-1 nonimmigrant, not as a B-1/B-2 nonimmigrant; the petitioner documented no subsequent change of status by the beneficiary. Furthermore, B-1/B-2 status does not confer employment authorization. The regulation at 8 C.F.R. § 214.1(e) specifically precludes employment by B-2 nonimmigrants, and the regulations at 8 C.F.R. § 274a.12(a) and (b) do not include B-1 nonimmigrants among the nonimmigrant classifications authorized to work for United States employers. Also, the expiration date of a nonimmigrant visa is not the same as the expiration date of nonimmigrant status arising from that visa. A page on the Department of State web site explains the difference:

> The visa expiration date is shown on the visa along with the visa issuance date. The time between visa issuance and expiration date is called your visa validity. The visa validity is the length of time you are permitted to travel to a port-of-entry in the United States. . . .
>
> [T]he visa expiration date shown on your visa does not reflect how long you are authorized to stay within the United States. Entry and the length of authorized stay

> within the United States are determined by the Customs and Border Protection (CBP) Officer at the port-of-entry each time you travel. . . .
>
> Upon arriving at a port of entry, the CBP official will determine the length of your visit.
>
> On the admission stamp or paper Form I-94, the U.S. immigration inspector records either an admitted-until date or "D/S" (duration of status). If your admission stamp or paper Form I-94 contains a specific date, then that is the date by which you must leave the United State[s]. . . . The admitted-until date . . . shown on your admission stamp or paper Form I-94 is the official record of your authorized length of stay in the United States. You cannot use the visa expiration date in determining or referring to your permitted length of stay in the United States.[1]

The director denied the petition on October 21, 2013, stating: "The record contains no evidence to show the beneficiary maintained her R-1 status beyond the expiration date shown on the Form I-94." The director acknowledged the beneficiary's older B-1/B-2 nonimmigrant visa, but noted: "this classification does not allow for employment."

On appeal, the petitioner submits copies of previously submitted documentation relating to the beneficiary's R-1 status. These documents do not show R-1 status or employment authorization after July 6, 2009. The petitioner also submits copies of two Form I-766 Employment Authorization Cards. One card shows validity dates from October 15, 2009 through October 14, 2011. The other card was valid from October 15, 2011 through October 14, 2012. These cards establish employment authorization for the first 14 months of the two-year qualifying period, but they do not show employment authorization or lawful presence between October 15, 2012 and August 21, 2013.

The petitioner also submits two letters (one from Sr. , the other unsigned) discussing the chronology of the present petition and an earlier, denied petition. Neither of these letters claims or establishes that the beneficiary held employment authorization, or any nonimmigrant status that would confer employment authorization, after October 14, 2012. Therefore, the materials submitted on appeal do not address or overcome the stated basis for denial of the petition.

We will dismiss the appeal for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.

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[1] Source: http://travel.state.gov/content/visas/english/general/visa-expiration-date.html (printout added to record July 10, 2014).