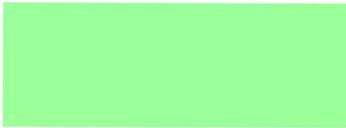


(b)(6)

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



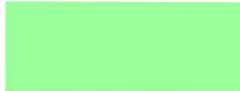
DATE: DEC 05 2014

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:



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 the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification 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 minister. The director determined that the petitioner's prospective employer, [REDACTED] failed to successfully complete a compliance review site visit.

On appeal, the petitioner submits additional evidence.

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 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 [U.S. Citizenship and Immigration Services] 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 issue to be considered is whether the petitioner overcame the negative findings of a preadjudicative site visit conducted on October 5, 2012.

The Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, was filed on June 24, 2013. On August 13, 2013, the director issued a Request for Evidence (RFE) asking that the petitioner submit verifiable evidence of how he would be compensated, evidence about the services of the petitioner's prospective employer [REDACTED], the nature and purpose of the employer, the employer's hours of operation, a detailed description of the duties of the proffered position, and evidence of the petitioner's work history during the two year period immediately preceding the filing of the petition. In response to the RFE, the petitioner provided the following evidence:

- A November 1, 2013 letter from the petitioner's prospective employer which stated that the petitioner had been employed as its full-time pastor since March 2010.
- Duties of the petitioner, detailed as follows:

Conducts regular church services every Sunday morning and evening, and is available to congregants every Sunday from 9 a.m. until 10 p.m.; Conducts a fasting service each Tuesday from 10 a.m. to 1 p.m.; Provides counseling services each Tuesday from 2 p.m. until 6 p.m.; Maintains office hours each Wednesday from 10 a.m. until 4 p.m. and conducts the women's ministry on Wednesday from 7 p.m. until 9 p.m.; Maintains office hours each Thursday from 9 a.m. until 2 p.m. and conducts Bible study on that day from 7 p.m. until 9:30 p.m.; Each Friday provides pastoral care from 10 a.m. until 3 p.m. and conducts a youth ministry from 5 p.m. until 8 p.m.; and conducts the men's ministry from 6 p.m. until 9 p.m. on Saturday.

- Copies of the petitioner's tax transcripts for 2011 and 2012;
- Copies of salary checks in the amount of \$2,000 made payable to the petitioner by [REDACTED] for the months of December 2012, and January through April of 2013.
- The church membership list of [REDACTED] showing 130 members;

- An Internal Revenue Service (IRS) letter dated December 10, 2010 granting [REDACTED] tax exempt status under section 501(c)(3) of the Internal Revenue Code;
- A copy of the Certificate of Incorporation of [REDACTED] dated May 12, 2010;
- A copy of the Beliefs and Declaration of Faith of the [REDACTED] to which the petitioner's prospective employer claims to adhere;
- A copy of a lease agreement between the [REDACTED] lessor, and [REDACTED] lessee, wherein the lessee rents space from the lessor for the purpose of conducting religious services on Thursday from 7:00 p.m. until 9 p.m., and on Sunday from 10:30 a.m. until 2:30 p.m. and 7:00 p.m. until 9:00 p.m.; and
- A residential lease agreement between [REDACTED] for a dwelling located at [REDACTED], CT;

On January 15, 2014, the director issued a Notice of Intent to Deny (NOID) the petition wherein the director referenced information contained in the preadjudication compliance review report. The site inspector concluded that the petitioner's prospective employer was not functioning as claimed in the petition. Specifically, the director noted the following from the site inspection report:

- The site inspection performed at [REDACTED] revealed that the address was the petitioner's personal residence and that the petitioner was not engaged in ongoing religious activity at the time of the visit.
- Although the petitioner provided the IRS determination letter of federal tax exemption and used check books for 2009 and 2012, the only other work documentation at the petitioner's residence was "a spiral ring notebook and two books written in French."
- When asked for additional information on the ongoing activities of the petitioner's prospective employer, the petitioner had difficulty relating the programs of his employer and his duties.
- The inspector's visit to [REDACTED] CT revealed that the location was that of the [REDACTED]
- [REDACTED] program director was contacted by telephone and confirmed that the petitioner's prospective employer had "been leasing space from the Church for years." The program director, however, was unable to describe the type of religion the petitioner's employer engaged in. The inspector observed no defined business space for the employer at the church.

The director also stated in the NOID that no verifiable documents were submitted to support the employer's 2012 working budget and that the evidence of record was insufficient to establish that the petitioner had been engaged in qualifying religious work during the two-year period immediately preceding the filing of the petition.

In response to the NOID, counsel stated that the petitioner was not fluent in English, which accounted for the incomplete responses to the inspector's questions during the site visit. The petitioner provided photographs of what he says were religious services at the rented church location and at his residence, along with a picture of a temporary sign hanging on a fence announcing the times of Sunday services for [REDACTED]. The petitioner also provided copies of 2011, 2012 and 2013 Forms W-2, Wage and Tax Statements, showing wages paid to him by [REDACTED] in the following amounts: 2011 - \$20,800; 2012 - \$27,639.85; and 2013 - \$29,874.20.

The director found that the petitioner "failed to effectively rebut the observations reported on the site check," noting that the photographs submitted did not show a church actively engaged with its congregation and that the petitioner had produced no occupational permits to indicate that his residence was a site for frequent religious gatherings. The director further noted that the site visit to the [REDACTED] did not show any evidence of the existence or activities of the [REDACTED].

On appeal, the petitioner, through counsel, states that the site visit was flawed in that the petitioner was not given an opportunity to speak to site visit officers through an interpreter, and had he been given an opportunity to do so, could have "clearly elucidated all of the points brought up on the site inspection." The petitioner submitted a sworn statement stating that his employer had rented from the [REDACTED] "for years" and that it conducts its Sunday worship services there. The petitioner also stated that much of the church work is conducted from his personal residence, and that financial records are with the individual who prepares the taxes. He stated that on the morning of the site visit, a fasting prayer was being held at his residence. Notarized statements were submitted by five individuals who state that they were present for a prayer meeting at the petitioner's residence on October 5, 2012 when immigration inspectors arrived for a site visit. One of the affiants, [REDACTED], stated that the site visit was conducted on a Tuesday, which is when the group holds their prayer meeting.

The petitioner has failed to submit sufficient evidence to overcome the director's concerns about the failed site visit. While the evidence of record contains some evidence that the petitioner's employer exists (for example, a letter from the IRS granting [REDACTED] 501(c)(3) tax exempt status, a lease signed by [REDACTED] renting space from the [REDACTED] copies of W-2 Forms showing wages paid to the self-petitioner by [REDACTED] and Articles of Incorporation), the evidence does not establish that [REDACTED] is operating as stated in the petition. The pictures submitted by the petitioner in response to the director's NOID are not annotated or otherwise identified as to when and where they were taken. The five affidavits submitted on appeal attest that each of the affiants was present for a prayer meeting on October 5, 2012 when an immigration officer visited the petitioner's residence for a site visit. As previously noted, one of the affiants, [REDACTED] stated that the site visit was conducted on a Tuesday,

which is, when the group holds their prayer meeting. The description of the petitioner's duties submitted in response to the RFE states that fasting (prayer) services are held each Tuesday from 10:00 a.m. until 1:00 p.m. The site visit was conducted on October 5, 2012. That date was on a Friday, not a Tuesday.<sup>1</sup> The description of the petitioner's duties states that on Fridays, the petitioner provides pastoral care from 10 a.m. until 3 p.m. and conducts a youth ministry from 5 p.m. until 8 p.m. There is no mention of prayer service conducted on Friday. The director noted in the NOID that the immigration inspector saw no evidence of religious activity being conducted when he arrived for the site visit. These inconsistencies bring into question the credibility of the affidavits submitted on appeal. Doubt cast on any aspect of the petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

The petitioner did not submit any church literature advertising or describing the activities of the church, or records that would normally be kept by an operating church such as baptismal records, church attendance records or lists of volunteers carrying out church related business. While the record contains a 2012 operating budget for the church, the petitioner submitted no documentation in support of the budget such as offering or tithe records showing the receipts of the church, or bank records showing those receipts were deposited into church accounts. Under these circumstances, the petitioner has failed to overcome the negative findings of the preadjudication site review and the petition may not be approved.

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, that burden has not been met.

**ORDER:** The appeal is dismissed.

---

<sup>1</sup> <http://www.timeanddate.com/calendar/?year=2012&country=1>; Accessed on December 4, 2014 and incorporated into the record.