



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

DATE: FEB 05 2014 OFFICE: CALIFORNIA SERVICE CENTER [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:

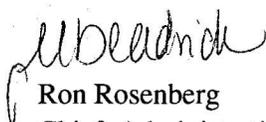
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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 AAO will dismiss the appeal.

The petitioner is a church and school. 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 music minister and teacher. The director determined that the petitioner failed to establish that it qualifies as a bona fide non-profit religious organization and failed to establish 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 a brief from counsel, a letter from the Internal Revenue Service (IRS) to the U [REDACTED] a letter from the [REDACTED] and copies of documents already in the record.

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 first issue to be discussed is whether the petitioner has established that it qualifies as a bona fide non-profit religious organization in the United States.

The U.S. Citizenship and Immigration Services (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:

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 for Amerasian, Widow(er), or Special Immigrant, on September 14, 2012. The prospective employer was identified as [REDACTED] with federal employer identification number [REDACTED]

Accompanying the petition, the petitioner submitted a letter from the IRS to the United States [REDACTED], dated June 28, 2011, confirming that organization's tax-exempt status under section 501(c)(3). The letter indicated that the organization held a group exemption which would apply to all subordinate institutions listed in "[REDACTED]". The petitioner also submitted an unsigned letter, dated April 30, 2002, from [REDACTED]. The letter asserted that the I [REDACTED] is covered under the group exemption granted to the United States Catholic Conference, and that [REDACTED] Church & School, [REDACTED] is listed on page 1266 of the 1999 Official United States Catholic Directory and is covered by the above provisions." Additionally, the petitioner submitted evidence of its exemption from New Jersey sales and use tax.

On May 14, 2013, the director denied the petition, in part finding that the petitioner failed to establish its status as a bona fide non-profit religious organization. The director stated that, although the petitioner had submitted a determination letter demonstrating the group tax-exemption of the United States [REDACTED] the petitioner "did not submit any [REDACTED] showing the petitioner's organization is included in this determination."

On appeal, counsel states:

[REDACTED] is a church and parish located in New Jersey, recognized by the [REDACTED] as an official house of worship in the Roman Catholic Church. It is listed as a subordinate organization of the Catholic Church on page 1431

of the 2012 [redacted] [sic]; an annual publication by the United States [redacted] has been a recognized subordinate of the Catholic Church and has held uncontested §501(c)(3) status since March of 1946, and continues to hold §501(c)(3) status today. [redacted] in a letter dated May 22, 2013, certifies that [redacted] Church is recognized by the [redacted] and holds tax exempt status as an affiliate of the Catholic Church. It should thus be uncontested, as a matter of law, that [the beneficiary] worked for a bona fide religious employer during his period of employment at [redacted]

The petitioner submits an unsigned letter, dated May 22, 2013, from [redacted] [redacted] is covered under the group exemption granted to the [redacted] [redacted] is listed on page 1431 of [redacted] Directory for 2012, and is covered by the above provisions.”

Although the letter from counsel asserts that the petitioner is included in the Official Catholic Directory as a subordinate institution of the [redacted], the petitioner has not submitted documentary evidence in support of this assertion. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). The petitioner submits a letter from the [redacted] attesting to its own inclusion in the group tax-exemption as well as the petitioner’s inclusion. However, 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)). Accordingly, the petitioner has not established that it qualifies under the regulations as a bona fide non-profit religious organization.

The second issue to be discussed is whether the petitioner established that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition.

The 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. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work in lawful immigration status throughout the two-year period immediately preceding September 14, 2012. The regulation at 8 C.F.R. § 204.5(m)(4) also sets forth the requirements for an acceptable break in the qualifying work as follows:

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.

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.

In a letter accompanying the Form I-360 petition, the petitioner stated that it had employed the beneficiary as a music minister and teacher since June, 2011, and that, “[f]rom September of 2008 to May 2011, [the beneficiary] was employed with [REDACTED] PA USA as Music Director.” The petitioner submitted a copy of a 2011 Form W-2, Wage and Tax Statement, indicating that the petitioner paid the beneficiary \$20,686.59 during that year. The petitioner also submitted an uncertified copy of the beneficiary’s Form 1040EZ, Income Tax Return for Single and Joint Filers With No Dependents, which listed \$20,687 as the beneficiary’s total income for the year.

The petitioner also submitted a letter, dated August 15, 2012, from [REDACTED] of [REDACTED]. The letter stated, in part:

This is to certify that [the beneficiary] has worked for me ([REDACTED]) as our music choir director at [REDACTED] Church and National Shrine of [REDACTED]. I first meet [the beneficiary] in [REDACTED], during the Filipino Celebration and Mass. I felt that he was outstanding in music and choir directing so I ask him if he would consider coming to [REDACTED] to be our choir director. [the beneficiary] agreed to come I offered him a place to live, meals and care for his essentials. [The beneficiary] agreed and started to work on September 4, 2008 and for two and a half years worked with us.

The petitioner submitted promotional materials identifying the beneficiary as director of "The [REDACTED]" as well as documents relating to travel arrangements for the beneficiary to go to Rome and the Vatican as part of a choir "Pilgrimage."

On January 22, 2013, USCIS issued a Request for Evidence (RFE), in part requesting "IRS documentation of the alien's compensation during the period of employment by [REDACTED] from September 2010 to June 2011." The notice also requested evidence regarding the beneficiary's lawful immigration status and employment authorization during the two-year qualifying period immediately preceding the filing date of the petition.

In a letter responding to the RFE, counsel for the petitioner stated that the beneficiary "received non-salaried compensation from [REDACTED]. Counsel also stated that the beneficiary had worked for the petitioner as a volunteer from June 11, 2011, until September 12, 2011, following the expiration of his nonimmigrant status authorizing employment for [REDACTED] the [REDACTED]. Counsel asserted that former counsel for the petitioner failed to file the petitioner's Form I-129, Petition for a Nonimmigrant Worker, on time, but that the petition "was subsequently approved under a nunc pro tunc grant." Counsel argued that, if considered a break in employment, the period in question "must be considered immaterial in light of the fact that the inability to be lawfully employed was beyond the control of the beneficiary and petitioner."

The petitioner submitted a March 11, 2013, letter from [REDACTED], stating:

I with the help of some generous leaders of the Filipino-American community, provided [the beneficiary] with financial and other supports to meet his needs and his family as well such as; free board and room for Him and Family, free transportation, free meals and groceries, allowances, free fare and accommodations for some religious trips and pilgrimages both in local and International, and other personal and family needs while working at [REDACTED] and Community.

Therefore in response to your query regarding how support was being provided to [the beneficiary] and his family as Choir Director of the Filipino-American Choir at [redacted] from September 2010 to May 2011 then the answer is the name nature of supports and benefits as being mentioned above.

Attached are support documents to show that [redacted] and the Filipino-American Community provided [the beneficiary] with the substantial supports and proper care in return to the services He has rendered at [redacted] Church.

The petitioner submitted notarized affidavits from two individuals. In the first, [redacted] attested to the following:

That [the beneficiary] was properly provided with all the necessary living expenses and other supports he needed and his family by [redacted] and the Filipino-American Community while extending his extra ordinary serves as Church Choir Director, Pianist and Spiritual formation Facilitator;

That he and his family have received free board and room, free supply of foods and groceries, transportation, allowances, medical needs, free travel and allowances in some Religious trips and pilgrimages of the community and all other expenses.

That my husband [redacted], myself and other members of the Filipino-American Community helped the Church through [redacted] [sic] sustain the support by giving monthly pledges and weekly cash donation and gift solely intended for [the beneficiary].

The second affidavit, from [redacted] identified as "Coordinator" for The Filipino-American Community at [redacted] stated:

Upon [the beneficiary's] arrival in [redacted] in September 2008, my family became close to him not only as a friend but also as a close family member. Our concern for [the beneficiary's] family became very supportive for their well-being. [redacted] provided [the beneficiary] and his family their basic necessities such as free housing, free foods and groceries, allowances, free car and other needs as his non-salaried compensation for the job and services that he renders as the choir director at [redacted]. My family also assisted [the beneficiary] by donating some amount to the church c/o [redacted] to sustain and support them with other concerns such as; helping their daughter acquire her school needs like uniforms, school bag, shoes and other school supplies every school opening. I also give their daughter her lunch

allowance for the whole school year. During Christmas, their birthdays and other special occasions my family gives them monetary gift.

In the decision denying the petition, the director found that the petitioner had not submitted sufficient evidence to establish that the beneficiary “was employed from September 14, 2010 to May 31, 2011” by [REDACTED]. The director also found that the beneficiary lacked lawful immigration status and employment authorization between June 1, 2011, and September 13, 2011, and that, although the petitioner indicated that it had not paid the beneficiary for his services during that time, the evidence was inconsistent with that assertion.

On appeal, counsel for the petitioner states that “[t]he USCIS office incorrectly determined that the beneficiary failed to establish the requisite 2 years of continuous full-time work as a music minister and teacher.” Counsel also argues that the beneficiary’s lack of work authorization “has since been retroactively corrected by court order,” and that “[t]he general prohibition against volunteerism counting towards religious work should not apply” because “[the beneficiary’s] unsalaried volunteerism in 2011 would have been salaried employment but for the lack of authorization to be employed arising from this professional negligence” by former counsel. Counsel does not provide a copy of the court order to support her claim. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, at 188-89 n.6; *Matter of Ramirez-Sanchez*, at 503.

The regulation at 8 C.F.R. § 204.5(m)(11) specifically requires that the alien’s prior experience have been compensated either by salaried or non-salaried compensation (such as room and board), or can include self-support under limited conditions. The regulation requires IRS documentation of any non-salaried compensation, if available. The petitioner has asserted that the beneficiary received non-salaried compensation from [REDACTED]. However, the petitioner has not provided an explanation for the lack of IRS documentation of such non-salaried compensation.

As the petitioner failed to establish that the beneficiary was engaged in qualifying, compensated employment from September, 2010 to May, 2011, the petitioner failed to establish that the beneficiary has the requisite two years of continuous, qualifying work experience for at least the two years immediately preceding the filing date of the petition. Accordingly, the AAO need not address the additional issues of the beneficiary’s lawful status, employment authorization, and volunteerism during the two-year qualifying period.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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.