



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: FEB 21 2014

OFFICE: CALIFORNIA SERVICE CENTER

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)

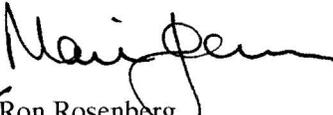
ON BEHALF OF PETITIONER:

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 AAO on appeal. The AAO will dismiss the appeal.

The petitioner is an Orthodox Jewish congregation. 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 religious teacher. 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 a statement from counsel and various supporting exhibits.

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)(i) states that, if the beneficiary was employed in the United States during the two years immediately preceding the filing of the application and received salaried compensation,

the petitioner must submit Internal Revenue Service (IRS) documentation that the beneficiary received a salary, such as an IRS Form W-2 or certified copies of income tax returns.

The petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on September 25, 2012. The initial filing included a letter from [REDACTED] president of the petitioning organization, who stated:

[The beneficiary has been] working with our congregation since June of 2010.

From June to September 2010 he was assisting our Rabbi to teach young adults and elderly Jewish Holly [sic] Text, rituals, Law and Ethics.

. . . From September 2010 till present [the beneficiary] is performing the above duties independently. For his services [the beneficiary] is paid \$1,500.00 per month.

The petitioner's initial submission did not include IRS documentation of past salary payments as required by the regulation at 8 C.F.R. § 204.5(m)(11)(i).

The director issued a request for evidence on March 13, 2013, instructing the petitioner to submit the required IRS documentation of the beneficiary's past compensation. The petitioner's response included an undated letter from [REDACTED], stating that the beneficiary "has been remunerated for his services since June 2010. His salary has been consistently \$1,500 since July 2012." [REDACTED] did not specify the beneficiary's compensation before July 2012.

The petitioner submitted copies of an IRS Form W-2 Wage and Tax Statement indicating that the petitioner paid the beneficiary \$9,000 in 2012. This amount is consistent with the claim that the petitioner paid the beneficiary \$1,500 per month from July through December 2012, but it does not show any compensation for the remainder of the two-year qualifying period (September 2010 through June 2012).

In a subsequent letter, [REDACTED] stated:

[The beneficiary] has been remunerated for his services since June 2010. His salary has consistently been \$1,500 since January 2012, and will continue at that rate (please see the attached W2 for the second half of 2012), prior to which he was compensated \$6000 for the second part of 2010; \$12,000 for 2011; and \$9,000 for the first half of 2012, before we were informed of his Social Security Number.

The petitioner submitted copies of IRS Form 1040, Schedule C, Profit or Loss From Business, indicating that the beneficiary earned \$6,000 in 2010, \$12,100 in 2011, and \$9,110 in 2012.

The director denied the petition on June 18, 2013, stating that the petitioner had not submitted sufficient evidence to show two years of continuous employment by the beneficiary during the two years immediately preceding the petition's filing date. The director noted that the petitioner had not

submitted any IRS Forms W-2 to show the beneficiary's employment in 2010 or 2011, and that the Form W-2 for 2012 reflected only six months' employment at the stated rate.

The director acknowledged the beneficiary's Schedules C and the petitioner's supplementary statement, but stated that this material "is not convincing, is unclear, and is unsupported." The director noted the absence of required IRS documentation, such as an IRS Form 1099-MISC Miscellaneous Income statement, to confirm that the petitioner paid the beneficiary prior to July 2012.

The director acknowledged the petitioner's submission of copies of bank statements and the beneficiary's employment authorization documents. The director stated, however, that these materials did not demonstrate that the petitioner employed and compensated the beneficiary during the two-year qualifying period.

On appeal, counsel asserts the statute and regulations require only that the beneficiary "engaged" in qualifying religious work, which need not have taken the form of employment. Counsel asserts that the term "employment" entails "the "Master-Servant relationship (for which Form W-2 can be issued," whereas the beneficiary could previously have worked as an independent contractor. Counsel asserts: "the inconsistencies in the manner of payment . . . should not affect the favorable adjudication of an I-360 Petition, provided that the Beneficiary was performing qualifying work which was remunerated." The issue, however, is not the exact nature (contractor vs. employee) of the beneficiary's past work for the petitioner. The issue is the lack of required evidence of past compensation.

The regulation at 8 C.F.R. § 204.5(m)(11)(i) states that, if the beneficiary was employed in the United States during the two years immediately preceding the filing of the application and received salaried compensation, the petitioner must submit IRS documentation that the beneficiary received a salary, such as an IRS Form W-2 or certified copies of income tax returns.

The petitioner submitted an IRS Form W-2 documenting only six months' salary, and more than half of the covered period fell after the petition's September 25, 2012 filing date. The IRS Form W-2 establishes less than three months of qualifying employment.

The Schedules C for 2010-2012, submitted previously and resubmitted on appeal, are uncertified copies. Because the IRS did not certify the copies, they are not evidence that the beneficiary filed those schedules with his income tax returns. Without IRS Forms 1099-MISC, there is no evidence that the petitioner reported the beneficiary's claimed pre-July 2012 compensation to the IRS.

Furthermore, the record does not show when the beneficiary completed the Schedules C. Mr. [REDACTED] claimed that the petitioner did not report the beneficiary's income on IRS Form W-2 prior to July 2012 because they had not been "informed of his Social Security Number," but all three Schedules C show the beneficiary's Social Security number. A timely prepared 2010 Schedule C would have existed before the April 15, 2011 filing deadline for 2010 personal income tax returns.

The USCIS regulation at 8 C.F.R. § 103.2(b)(2)(i) states:

The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

In this proceeding, the required evidence includes IRS documentation of past compensation. The petitioner has not submitted satisfactory IRS documentation of the beneficiary's claimed compensation from September 2010 through June 2012, or evidence that the documentation does not exist or cannot be obtained. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the benefit request. 8 C.F.R. § 103.2(b)(14).

Secondary evidence would consist of documentation from a source other than the IRS, but which nevertheless verifiably establishes compensation for services rendered. Processed paychecks would typically constitute secondary evidence in this fashion, in which case the petitioner would still need to demonstrate that the primary evidence (IRS documentation) is not obtainable. The petitioner has not submitted secondary evidence or overcome the unavailability of primary evidence.

The petitioner submits a statement to "confirm the religious teaching duties of [the beneficiary] . . . since June 2010," followed by the signatures of 51 individuals identified as members of the petitioner's congregation. The statement does not constitute two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Apart from the unsworn nature of the statement, the statement does not attest to the beneficiary's compensation or to the extent of the work the beneficiary performed during the relevant period of time. The submitted statement does not overcome the unavailability of both primary and secondary evidence by explaining the absence of IRS documentation or other verifiable evidence of past compensation.

The record shows that the petitioner did not submit the required IRS documentation of the beneficiary's claimed prior compensation. The petitioner has not overcome the grounds for denial on appeal. The AAO will therefore dismiss the appeal. 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.