

(b)(6)

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



U.S. Citizenship
and Immigration
Services

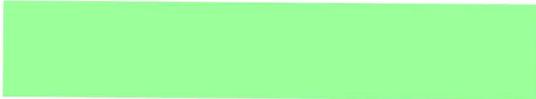


Date: **JAN 27 2014**

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 is a non-denominational Christian ministry. 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 Minister of Evangelism. The director determined that the petitioner failed to establish that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition. The director also found that the petitioner failed to establish how it intends to compensate the beneficiary and that it intends to employ the beneficiary as a special immigrant religious worker.

The petitioner submits no additional evidence on appeal.

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 established that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition.

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 Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, was filed on August 10, 2009. 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 that date.

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 petition, the petitioner stated that it had employed the beneficiary throughout the two-year qualifying period immediately preceding the filing of the petition. The petitioner further stated:

[The beneficiary] has participated in the Evangelism/Outreach ministry of our sister church in Nigeria [REDACTED] for over seven years. [The beneficiary] is an ordained Minister of our Church, he has been an invaluable asset in the area of evangelism and outreaching of all cultures but in

particular the West African culture. He has proven himself to be an articulate and creative individual, who has consistently demonstrated superior knowledge in the area of Evangelism and outreach.

[The beneficiary] has been engaged in the type of religious work described above for the past decade.

The petitioner submitted a copy of the beneficiary's ordination certificate, issued by the petitioning church on October 5, 2003. The petitioner also submitted a copy of an approval notice for a Form I-129, Petition for a Nonimmigrant Worker, Receipt number [REDACTED] indicating that the beneficiary was granted R-1 nonimmigrant status authorizing his employment with the petitioner from August 16, 2007, to August 15, 2009. In a letter accompanying that Form I-129 petition, the petitioner indicated that it would pay the beneficiary an annual salary of \$30,000.

On June 5, 2012, USCIS issued a Notice of Intent to Deny (NOID) the petition. The notice, in part, instructed the petitioner to submit additional evidence regarding the beneficiary's work history during the qualifying period. The notice specifically instructed the petitioner to submit experience letters providing detailed information about the beneficiary's schedule and the work performed during the qualifying period. The petitioner was also instructed to submit evidence of compensation received, including copies of the beneficiary's Forms W-2, Wage and Tax Statements, and Internal Revenue Service (IRS) "certified Federal tax return printouts" for 2007, 2008, and 2009.

In a letter submitted in response to the NOID, the petitioner stated the following regarding the beneficiary's work history:

In July 2003, [the beneficiary] started serving in serving in [sic] [REDACTED] as Director of Media, African Outreach, Staff Minister, and Dr. [REDACTED] Africa liaison and coordinator of African activities. He previously served in [REDACTED] as the Director of Media from 1994-2003.

The petitioner submitted a copy of the beneficiary's IRS Tax Return Transcript for 2007. The transcript listed total income of \$20,700.00 for the year. The petitioner also submitted an uncertified copy of the beneficiary's Form 1040, U.S. Individual Income Tax Return, for 2009. The return indicated that the beneficiary received \$6,000 in wages and \$30,000 in self-employment income. Although counsel for the petitioner indicated in a letter responding to the NOID that the petitioner was submitting Forms W-2 for 2007, 2008, and 2009, a review of the record indicates that no Forms W-2 were submitted. 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). The petitioner's documentation did not identify the

source of the beneficiary's income for either 2007 or 2009, and no documentation was submitted regarding the beneficiary's compensation during 2008.

On May 6, 2013, the director denied the petition, in part finding that the petitioner failed to establish that the petitioner had the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition. The director stated that the petitioner had not submitted the requested experience letters and had submitted insufficient evidence of compensation.

On appeal, counsel for the petitioner argues that the petitioner submitted sufficient evidence to establish eligibility.

The regulation at 8 C.F.R. § 204.5(m)(11) requires that, if the beneficiary was employed in the United States during the qualifying period and received salaried compensation, the petitioner must submit IRS documentation of that compensation "such as an IRS Form W-2 or certified copies of income tax returns." As discussed previously, the petitioner did not submit sufficient IRS documentation to establish that the beneficiary was continuously employed in a compensated position throughout the two years immediately preceding the filing of the petition. Further, the petitioner did not provide sufficient information about the beneficiary's duties and schedule during the qualifying period to establish that he was performing qualifying religious work. Therefore, the petitioner failed to establish that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition.

The second issue to be discussed is whether the petitioner established how it intends to compensate the beneficiary. The USCIS regulation at 8 C.F.R. § 204.5(m)(10) states:

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.

In addition, the regulation at 8 C.F.R. § 204.5(m)(7) requires the petitioner to attest to the following additional aspects of the past and proposed compensation:

- (vi) The title of the position offered to the alien, the complete package of salaried or non-salaried compensation being offered, and a detailed description of the alien's proposed daily duties; ...

(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.

On the Form I-360 petition and in an accompanying letter, the petitioner stated that it intends to pay the beneficiary a salary of \$30,000 per year. The signed employer attestation affirmed the petitioner's intent and ability to pay the proffered wage.

The petitioner submitted copies of "Balance Sheet Summaries" for 2005, 2006, and 2007, listing assets of \$916,419.22, \$629,948.70, and \$307,403.86 for those years, respectively. The petitioner did not submit evidence to indicate that the financial reports had been audited, and the petitioner submitted no documentary evidence in support of the figures asserted in the reports. 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)).

In the June 5, 2012, NOID, the petitioner was instructed to submit additional evidence of how it intends to compensate the beneficiary, including IRS documentation if available, or an explanation for its absence along with comparable, verifiable documentation. The petitioner was also specifically instructed to submit copies of the petitioner's 2011 IRS Form W-3, Transmittal of Wage and Tax Statement, and "the petitioner's Quarterly Wage Reports for all employees for the last four quarters that were accepted by the State of Texas."

In response to the NOID, the petitioner submitted an August 23, 2012, "Letter of Transfer," addressed to the beneficiary, which stated:

Consequent on [sic] the on-going restructuring in the ministry and a review of your performance as a Special Immigrant Minister in the Ministry over the last 8 years since your ordination, this is to inform you of your transfer to a new branch, [REDACTED] with effect from August 01, 2012.

Based on the training received here, you will be expected to impact the other branch and ensure that it is built according to pattern. You will resume the same duties you performed in [REDACTED] at the other branch. You are to report directly to the Pastor in charge of the branch, Pastor [REDACTED] on all matters concerning the branch.

You will be entitled to an annual allowance of \$30,000[.]

Regarding the requested Forms W-3 and Quarterly Wage Reports, counsel for the petitioner stated that the petitioner “has no other employees apart from the beneficiary.” Counsel further stated: “Enclosed please find petitioner’s bank statements to show ability to pay.” The petitioner submitted a copy of a bank statement, dated August 21, 2012, for a Bank of America account held by [REDACTED] with a balance of \$364.60. The petitioner also submitted website printouts listing transactions relating to an unidentified Bank of America account. Additionally, as discussed previously, the petitioner submitted a copy of the beneficiary’s 2007 IRS Tax Return Transcript and an uncertified copy of the beneficiary’s 2009 tax return.

The director found that the petitioner failed to establish its ability or intent to provide the proffered compensation.

The 2007 IRS tax return transcript and 2009 tax return do not demonstrate that the petitioner paid the beneficiary an annual salary of \$30,000 during those years. Accordingly, they do not establish the petitioner’s ability to pay the proffered wage. Further, the evidence submitted in response to the NOID indicates that the beneficiary’s salary will not be paid by the petitioner, but by [REDACTED]

The USCIS regulations at 8 C.F.R. §§ 204.5(m)(7) and (10) require the petitioner to attest that “any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer” and to “submit verifiable evidence explaining how the petitioner will compensate the alien.” The cited regulations twice specify the petitioner, *i.e.*, the employer, as the entity that will compensate the alien. The regulation does not state that the petitioner can discharge this responsibility by arranging for third parties to compensate the alien. Even if third party compensation was allowed in this instance, the regulation at 8 C.F.R. § 204.5(m)(10) also indicates that if the petitioner intends to provide salaried or non-salaried compensation, IRS documentation “such as IRS Form W-2 or certified tax returns,” or an explanation for its absence along with comparable, verifiable documentation, is required. The petitioner has not submitted IRS documentation or comparable, verifiable documentation of [REDACTED] ability to pay the proffered wage of \$30,000 per year.

The final issue to be discussed is whether the beneficiary will be employed by the petitioner.

The regulation at 8 C.F.R. § 204.5(m)(6) states that “[a] petition must be filed as provided in the petition form instructions either by the alien or by his or her prospective United States employer.” Further, the regulation at 8 C.F.R. § 204.5(m)(7) requires an authorized official of the prospective employer to complete, sign and date an attestation providing specific information about the employer, the alien, and the terms of proposed employment. The prospective employer must specifically attest to all of the following:

- (i) That the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation;
- (ii) The number of members of the prospective employer's organization;
- (iii) The number of employees who work at the same location where the beneficiary will be employed and a summary of the type of responsibilities of those employees. USCIS may request a list of all employees, their titles, and a brief description of their duties at its discretion;
- (iv) The number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past five years by the prospective employer's organization;
- (v) The number of special immigrant religious worker and nonimmigrant religious worker petitions and applications filed by or on behalf of any aliens for employment by the prospective employer in the past five years;
- (vi) The title of the position offered to the alien, the complete package of salaried or non-salaried compensation being offered, and a detailed description of the alien's proposed daily duties;
- (vii) That the alien will be employed at least 35 hours per week;
- (viii) The specific location(s) of the proposed employment;
- (ix) That the alien has worked as a religious worker for the two years immediately preceding the filing of the application and is otherwise qualified for the position offered;
- (x) That the alien has been a member of the denomination for at least two years immediately preceding the filing of the application;
- (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 Form I-360 petition was filed by [REDACTED] with an IRS Tax Number of [REDACTED] and the employer attestation was signed by the petitioner's senior pastor, Dr. [REDACTED]

At the time of filing, the petitioner indicated that it sought to employ the beneficiary in a full-time position as [REDACTED]

In response to the June 5, 2012, NOID, the petitioner provided a "Letter of Transfer" stating that the beneficiary was being transferred "to a new branch, [REDACTED]" with an effective date of August 1, 2012. The letter stated that the beneficiary would resume the same duties performed for the petitioner at the new branch. The beneficiary was instructed to report directly to the Pastor in charge of the branch on all matters concerning the branch.

In a statement dated August 23, 2012, Dr. [REDACTED] stated that [REDACTED] was a sister ministry of the petitioning organization, with the Dr. [REDACTED] serving on the Board of Directors of both organizations. The petitioner submitted a promotional flyer for [REDACTED] in [REDACTED] Texas, which identified "[REDACTED]" as "Host," and "Dr. [REDACTED]" as a "Speaker." No further evidence was provided in support of Dr. [REDACTED]'s asserted position at the beneficiary's new church. The petitioner provided a copy of an IRS tax determination letter showing that [REDACTED] was granted tax exempt status under section 501(c)(3) of the Internal Revenue Code on December 2, 2010, with an employer identification number of [REDACTED]. Thus, the record establishes that the petitioner and [REDACTED] are two separate and independent organizations for tax purposes. The petitioner further submitted a copy of a lease agreement between [REDACTED] and [REDACTED] (lessee) for a property at [REDACTED] indicating a change in the location where the beneficiary would be employed. The unsupported statement of the petitioner's senior pastor is insufficient to establish that the petitioner and the beneficiary's prospective employer are branches of the same organization or otherwise affiliated. 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. at 165.

The evidence indicates that the petitioner no longer intends to employ the beneficiary. The beneficiary's new proposed employment is not supported by a valid Form I-360 petition and an employer attestation signed by an authorized official of the prospective employer as required by regulation.

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.