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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: **MAY 09 2014**

OFFICE: CALIFORNIA SERVICE CENTER FILE: [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:

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*

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. We will dismiss the appeal.

The petitioner seeks classification of 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 senior pastor of [REDACTED] Inc. in Kissimmee, Florida. 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.

The petitioner submits additional documentation 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 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 January 14, 2013. 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 the beneficiary was "commissioned to open a church" in 2006, which initially operated under the name [REDACTED] and was later incorporated as [REDACTED] Inc. The petitioner submitted a copy of the beneficiary's ordination certificate, dated November 26, 2006. The petitioner also submitted a letter from an accountant, [REDACTED] stating that the beneficiary and his wife received \$15,281 for their work as pastors in 2011, and anticipated receiving a total of \$31,764 in 2012.

The petitioner also submitted uncertified copies of the beneficiary's personal tax returns (joint tax returns with the beneficiary's spouse) for 2011 and 2012. The 2011 tax return showed total income of \$2,475. According to Part II of the tax return, Income or Loss From Partnerships and S Corporations, that income was earned while employed by an S Corporation [REDACTED] Employer Identification Number [REDACTED]. The beneficiary listed his occupation on the 2011 tax

return as "Customer Service" and his spouse's occupation as "Secretary." The 2012 tax return showed total income of \$5,348. According to Part II of the tax return, Income or Loss From Partnerships and S Corporations, that income was earned while employed by two S Corporations [REDACTED] Employer Identification Number [REDACTED] and [REDACTED] LLC – Employer Identification Number [REDACTED]. The beneficiary listed his occupation on the 2012 tax return as "Customer Service" and his spouse's occupation as "Secretary."

The director denied the petition on June 5, 2013, finding that the petitioner failed to establish that the beneficiary was engaged in continuous, compensated, and authorized employment during the qualifying period. The director noted that, according to the submitted tax returns, the beneficiary was employed in a customer service position during the period in question.

As stated above, the regulations at 8 C.F.R. §§ 204.5(m)(4) and (11) require qualifying work experience during the two years immediately preceding the filing of the Form I-360, if obtained in the United States, to have been continuous and authorized under United States immigration law. The regulation further states that, if the beneficiary was employed in the United States during the two years immediately preceding the filing of the petition and received salaried or non-salaried compensation, the petitioner must submit Internal Revenue Service (IRS) documentation showing that the beneficiary received the salary, such as an IRS Form W-2 or certified copies of income tax returns.

In this instance, the petitioner did not submit IRS evidence of any compensation that it paid to the beneficiary for qualifying religious work during the two years immediately preceding the filing of the petition. On appeal, the petitioner submits amended tax returns in an effort to establish that it provided compensation to the beneficiary during the applicable period, stating that the beneficiary had erred when completing the initial returns and had not reported pastoral compensation because he did not have a social security number. The petitioner states that the beneficiary prepared the amended returns to properly report his pastoral income. However, the petitioner does not explain why the lack of a valid social security number would prevent the beneficiary from properly reporting pastoral income when the beneficiary in fact filed personal tax returns without a valid social security number. The justification offered by the petitioner for the beneficiary's failure to properly report pastoral income (not having a valid social security number) is inconsistent with the beneficiary's actions in purportedly filing 2011 and 2012 tax returns and reporting other income without a valid social security number. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Further, like a delayed birth certificate, the amended tax returns created after the fact raise serious questions regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991) (discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings). The petitioner has not provided sufficient evidence required by regulation to establish the beneficiary's prior continuous, qualifying employment during the mandated period. This finding is further supported by the

beneficiary stating on his original 2011 and 2012 tax returns that the only compensation he earned during the applicable period was from work done in an occupation entitled "Customer Service."

The petitioner additionally submits copies of bank statements as "proof of the [beneficiary's] continued Housing Allowance support from our ministry," including [redacted] Inc.'s checking account statements for December, 2012, to May, 2013, and the beneficiary's checking account statements covering the period from February 16, 2013, to June 18, 2013. As highlighted by the petitioner, the statements include transactions labeled "WF Direct Payment-Housing Allowance" on the following dates within the relevant two-year qualifying period preceding January 14, 2013: December 10, 2012, December 17, 2012, December 21, 2012, January 3, 2013, and January 7, 2013. The statements do not identify the account to which the payments were made, nor does the petitioner submit the beneficiary's checking account statements covering those relevant dates to show corresponding deposits. Accordingly, the statements do not constitute verifiable evidence of compensation to the beneficiary during the qualifying period.

Further, on appeal, the petitioner states that the beneficiary "helps [his wife] in the customer service department of her company." The 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 during the qualifying period, and the regulation at 8 C.F.R. § 204.5(m)(5) defines "minister" as one who "[w]orks solely as a minister in the United States." In addition to the lack of evidence of compensation, the beneficiary's purported work as a minister cannot be considered qualifying experience as he was not working "solely as a minister" during the qualifying period as required by the regulations. See *Matter of Faith Assembly Church*, 19 I&N 391, 393 (Comm'r. 1986). The Ninth Circuit Court of Appeals, whose jurisdiction includes the California Service Center, has upheld the AAO's interpretation of the two-year experience requirement. See *Hawaii Saeronam Presbyterian Church v. Ziglar*, 243 Fed. Appx. 224, 226 (9<sup>th</sup> Cir. 2007).

The petitioner's evidence also fails to establish that the beneficiary was in lawful immigration status and had employment authorization during the two years immediately preceding the filing of the petition as required by the regulations at 8 C.F.R. §§ 204.5(m)(4) and (11), respectively. In Part 3, Section 13 of the Form I-360, the petitioner was asked to provide the beneficiary's current nonimmigrant status. The petitioner left this question blank while noting that the beneficiary arrived in the United States on January 20, 1997. Evidence accompanying the petition indicated that the beneficiary held B-2 nonimmigrant visitor status that expired on January 18, 1998. The regulation at 8 C.F.R. § 214.1(e) states that aliens in such status may not be engaged in any employment. Thus, the petitioner failed to establish that any work performed by the beneficiary in the two years immediately preceding the filing of the Form I-360 petition was authorized under United States immigration law.

As an additional matter, a review of the record shows further obstacles to approval of the petition. We conduct appellate review on a *de novo* basis. See *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petitioner failed to establish that the beneficiary will work for a bona fide non-profit religious organization in the United States. The 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) provides the following definitions:

*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) requires the following initial evidence:

*Evidence relating to the petitioning organization.* A petition shall include the following initial evidence relating to the petitioning organization:

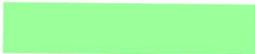
- (i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS 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.

In a letter dated May 22, 2013, the petitioner's Senior Pastor stated that the beneficiary was ordained as a pastor by the "petitioner's ministry" on November 26, 2006 and sent to open a new church in Kissimmee, Florida, and that the beneficiary had been a pastor at that church ( [REDACTED] ) since that time. According to the letter, the beneficiary reports to the petitioner's senior pastor. However, in a letter dated October 5, 2012, the petitioner indicated that the beneficiary will be compensated directly by [REDACTED]

The record of proceeding contains a copy of a certificate of incorporation from the Florida Department of State which states that [REDACTED] "is a corporation organized under the laws of the State of Florida, filed on November 10, 2010, effective November 10, 2010." A copy of [REDACTED] Articles of Incorporation was also submitted. [REDACTED] is, therefore, a separate legal entity from the petitioner. The petitioner has not, however, provided a current valid determination letter from the IRS, as required by the above cited regulation, establishing that [REDACTED] is a tax-exempt organization. Nor has the petitioner submitted documentation which establishes that [REDACTED] is tax-exempt under a group tax-exemption from an associated organization. Although the petitioner claims that [REDACTED] is closely associated with and governed by the petitioner, it has not established that [REDACTED] is tax exempt by virtue of that claimed association. The petitioner submitted a determination letter from the IRS which states that the petitioner is a tax-exempt organization with said exemption having been granted on September 4, 2007 with an effective date of July 27, 2004. The letter does not, however, provide a group tax exemption number or provide any other indication that [REDACTED] (or any other affiliated group or organization) is covered by the petitioner's tax exemption.

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.