



U.S. Citizenship
and Immigration
Services

(b)(6)



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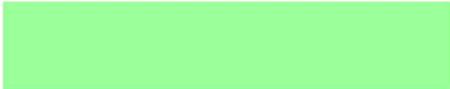
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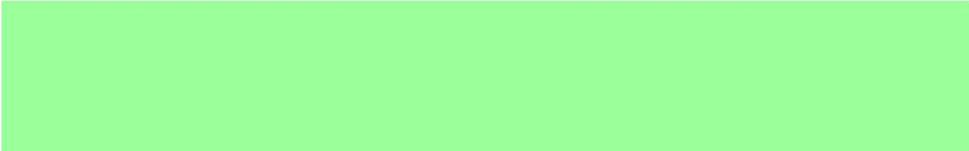
Petitioner:

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. We will dismiss the appeal.

The petitioner is a church. 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 children's pastor. 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.

On appeal, the petitioner submits a brief and 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 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 April 4, 2013. Therefore, the

petitioner must establish that the beneficiary was continuously performing qualifying religious work throughout the two-year period immediately preceding that date. The regulation at 8 C.F.R. § 204.5(m)(4) also sets forth the requirements for an acceptable break in the continuity of an alien's religious 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...

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.

Accompanying the Form I-360 petition, the petitioner submitted a copy of the beneficiary's résumé, which stated that the beneficiary is "Currently the CCO (Chief Creative Officer) for one of Southern Africa's leading [REDACTED] in reaching children with God's Word."

On May 1, 2013, the director issued a Request For Evidence (RFE) asking, in part, that the petitioner provide evidence of the beneficiary's employment during the two years immediately preceding the filing of the petition. The notice specifically instructed the petitioner to submit experience letters from previous and current employers 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 by the beneficiary.

In an undated letter responding to the director's RFE, the petitioner stated that the beneficiary is presently employed by [REDACTED] organization, and has been employed by that organization since October 2009. The petitioner also submitted a May 1, 2013, letter from [REDACTED] Executive Director, [REDACTED] South Africa, stating:

The past 3 years, since October 2009, [the beneficiary] has served in different capacities of Religious Work within the ministry for children. For the past 2 years, [the beneficiary] has served as the Creative Director in Material Design at [REDACTED] and reported to myself. [The beneficiary's] work hours are 45 hours per week with a compensation package of US\$3500 per month.

On September 17, 2013, the director denied the petition finding the evidence insufficient to establish that the beneficiary was continuously performing qualifying religious work during the two-year period immediately preceding the filing of the petition. The director stated that the petitioner failed to submit any evidence of compensation during the qualifying period from either [REDACTED] or [REDACTED]. The director also found that the petitioner failed to account for "breaks in the beneficiary's continued employment," noting various trips made by the beneficiary to the United States, including one trip during the qualifying period.

In a brief accompanying the I-290B, Notice of Appeal or Motion, the petitioner stated that the beneficiary "was employed outside the United States in [REDACTED] South Africa by [REDACTED] during the relevant period of April 4, 2011 through February 2013." The petitioner asserted that [REDACTED] are in a ministry partnership and that the beneficiary "worked closely with [REDACTED] as an employee of [REDACTED]" but "was solely employed by [REDACTED]" as a creative director during that time. The petitioner also submitted a letter from [REDACTED] dated October 7, 2013, which stated:

[The beneficiary] has worked with [REDACTED] since 2010 in the area of Program Design as part of these collaborative efforts with [REDACTED]. He worked extensively on our mutual projects and alongside our U.S.-based project management staff during this time.

Regarding the beneficiary's trip to the United States during the qualifying period, the petitioner asserted that the beneficiary was representing [REDACTED] annual conference in Florida. The petitioner submitted letters from both organizations and additional evidence in support of that assertion.

As evidence of compensation during the qualifying period, the petitioner submitted South African tax documentation showing the beneficiary's earnings from [REDACTED] during 2011 and 2012, along with copies of monthly earnings statements from April 2011 through December 2012. The petitioner indicated that the beneficiary's pay stubs "from [REDACTED] for the months of January 2013 and February 2013 will be supplemented." The petitioner also indicated that it would provide supplemental evidence showing that "[f]rom March 2013 through present, [the beneficiary] has performed consulting and freelance religious work all while remaining a member of the petitioner's denomination."

On November 25, 2013, the petitioner submitted a supplemental brief and additional evidence. In the supplemental brief, the petitioner stated:

[The beneficiary's] employment with [REDACTED] ended on December 31, 2013. His employment as an independent contractor with [REDACTED] began on February 1, 2013 and ended [on] April 1, 2013. During January 1, 2013 through February 1, 2013 and from April 1, 2013 through April 4, 2013, [the beneficiary] took a sabbatical. During this time, he was not in the United States. Obviously, this break was for only one month; therefore, the break did not exceed two years. During this time, [the beneficiary] was still a religious worker as he was authorized by his recognized denomination to conduct religious worship and perform clergy duties.

The petitioner argued that "any break in continuity should not affect his eligibility" under 8 C.F.R. § 204.5(m)(4). The petitioner also submitted an undated "Independent Contractor Services Agreement" between [REDACTED] and the beneficiary, indicating that compensation would be made in two installments of \$1,500 each, the first upon signature of the contract, and the second "upon delivery of complete data set." The petitioner submitted two pay stubs for \$1,500 each, dated February 1, 2013, and April 1, 2013. The submitted contract described the beneficiary's duties as follows:

SCOPE OF SERVICES. The scope of work will entail the following and implementing the research on reading levels in South Africa, as stated in the research manual. Specifically, the Contractor will be responsible to ensure that the following aspects of the project are completed successfully and in a timely manner:

- Project planning (testing site identification, coordination of logistics)
- Conducting (or overseeing) data collection
- Conducting (or overseeing) data entry

- Ability to answer and provide feedback during the analysis and report writing stage (note: the actual analysis and report writing will not be the responsibility of the Contractor)

On June 2, 2014, we sent a letter to the petitioner regarding inconsistencies in the submitted evidence relating to the beneficiary's employment history. Specifically, we noted that the petitioner had asserted in its supplemental brief that the beneficiary's employment with [REDACTED] ended on December 31, 2012, and that he subsequently worked for [REDACTED] as a contractor from February 1, 2013 to April 1, 2013. We found that this assertion directly contradicted the statements made at filing as well as in the submitted evidence, including the beneficiary's résumé, a letter from the Executive Director of [REDACTED] dated May 1, 2013, and a letter from [REDACTED] dated October 7, 2013, all of which indicated that the beneficiary's employment with [REDACTED] was currently ongoing, and none of which mentioned the beneficiary's purported contract with [REDACTED]. Additionally, we noted that, according to a review of the beneficiary's Form DS-160, Online Nonimmigrant Visa Application, filed with the U.S. Department of State on January 24, 2014, the beneficiary asserted at that time that he was still employed by [REDACTED] and had been from October 1, 2009 to January 23, 2014. Pursuant to 8 C.F.R. § 103.2(b)(16)(i), we notified the petitioner of our intent to deny the petition based in part on this derogatory information, and we provided the petitioner an opportunity to respond.

In response to our letter, the petitioner submitted a brief and additional evidence on July 7, 2014. In the brief, the petitioner asserts that the beneficiary was continuously employed by [REDACTED] from the start of the qualifying period until December 31, 2012, and that this employment involved collaborative work with [REDACTED] beginning February 1, 2010. The petitioner states that the beneficiary was subsequently employed by [REDACTED] as an independent contractor from February 1, 2013, to April 1, 2013, and that he was later re-hired by [REDACTED] under a new contract to perform work from November 1, 2013 through November 1, 2014. Regarding the assertions of current and continuous employment by [REDACTED] found in the beneficiary's résumé, the May 1, 2013 letter from [REDACTED] the October 7, 2013 letter from [REDACTED] and the beneficiary's visa application, the petitioner asserts that each of these documents was written "generally and without specificity." The petitioner states that its assertion in its initial brief on appeal that the beneficiary was employed by [REDACTED] until February 2013 "was simply an error." The petitioner acknowledges that there was "an intervening period . . . that [the beneficiary] was not working for [REDACTED] specifically, January 1, 2013 through October 31, 2013."

The petitioner submits a June 19, 2014 letter from [REDACTED] stating that the October 7, 2013 letter "was written generally," and that the beneficiary worked in collaboration with [REDACTED] and [REDACTED] from February 1, 2010 to December 31, 2012, and subsequently worked as an independent contractor for [REDACTED] "in the area of Program Design and Research" from February 1, 2013 until April 1, 2013. The petitioner also submits an updated copy of the beneficiary's résumé reiterating this timeline of employment, copies of the beneficiary's timesheets

for the months of November 2013 through June 2014, and copies of previously submitted evidence regarding his compensation by [REDACTED] and his contract with [REDACTED]

The petitioner states that it intends to additionally provide a letter from [REDACTED] Executive Director of [REDACTED] and additional evidence of past compensation from [REDACTED] when Mr. [REDACTED] returns from a trip to [REDACTED] on July 14, 2014. The petitioner submits a copy of an email from [REDACTED] regarding Mr. [REDACTED] travels. To date, the AAO has received no further communication from the petitioner.

The petitioner has not established that the beneficiary was engaged in qualifying religious work, or a qualifying break in religious work, from December 31, 2012 through the filing of the petition on April 4, 2013.

The petitioner has not submitted sufficient documentary evidence to support the assertion that the periods from January 1 through January 31, 2013 and from April 1 through April 3, 2013, are qualifying breaks under 8 C.F.R. § 204.5(m)(4). Although the petitioner characterized those breaks as a “sabbatical” in the supplemental brief submitted on appeal, it submits no documentary evidence to support that claim. 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)). Regardless, the regulation requires that the alien remain employed as a religious worker throughout the break. Although the petitioner asserts that the beneficiary remained “authorized by his recognized denomination to conduct religious worship and perform clergy duties,” the petitioner has not shown that he was employed during his purported sabbatical.

Further, beyond the decision of the director, the record does not establish that the beneficiary’s work for [REDACTED] from February 1, 2013 to April 1, 2013, consisted of qualifying religious work. As stated previously, 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 throughout the qualifying period. The regulation at 8 C.F.R. § 204.5(m)(5) defines “religious occupation” as follows:

- (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.
- (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.
- (C) The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible.

(D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

The submitted contract indicated that the beneficiary's duties included "research on reading levels in South Africa," "project planning," "conducting (or overseeing) data collection," and "conducting (or overseeing) data entry." The petitioner has not established that these duties meet the above definition. For this additional reason, the petitioner has failed to establish the beneficiary's continuous, qualifying work experience. The AAO conducts 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).

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.