



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **APR 03 2015** 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:
[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. 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 pastor. 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 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).

I. QUALIFYING EXPERIENCE

The issue to be discussed is whether the petitioner submitted sufficient evidence to establish that the beneficiary was engaged in continuous, qualifying religious work during the two years immediately preceding the filing of the petition.

A. Law

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, 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 7, 2014. 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 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 [Internal Revenue Service] documentation that the alien received a salary, such as an IRS Form W-2 [Wage and Tax Statement] 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 [U.S. Citizenship and Immigration Services].

If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

B. Analysis

The petitioner indicated on the Form I-360 petition that the beneficiary entered the United States on November 21, 2012. The petitioner stated in a December 27, 2013, letter that the beneficiary has been employed as an assistant pastor by the [REDACTED] since November 22, 2010, and that she is "currently on a sabbatical leave of absence while visiting the United States." The petitioner submitted a March 5, 2013 letter from [REDACTED] which is located in the United Kingdom, stating in part:

[The beneficiary] has been an unpaid employee of [REDACTED] since November 22nd 2010 till date. She works thirty six hours weekly as an Assistant Pastor advancing the Christian faith, ministering to the spiritual needs of members, preaching, teaching the gospel of Jesus Christ and conducting Services. She performs her pastoral duties within the Church in the United Kingdom and abroad.

The director issued a Request for Evidence (RFE) on February 27, 2014, in part requesting additional evidence of the beneficiary's work history during the two-year qualifying period immediately preceding the filing of the petition. The director instructed the petitioner to submit experience letters providing detailed information about the beneficiary's schedule and the work performed during the qualifying period. The director also instructed the petitioner to submit evidence of any salaried or non-salaried compensation received by the beneficiary, or evidence of self-support.

In a May 15, 2014, letter responding to the RFE, the petitioner again stated that the beneficiary came to the United States while on sabbatical leave from [REDACTED], and further stated, "Soon after arriving here, the beneficiary began offering her services as an ordained minister to our church on a full time, voluntary basis." The petitioner submitted a May 1, 2014, letter from [REDACTED] which again stated that the beneficiary "has been employed at [REDACTED] since November 22 2010 till date."

The director denied the petition on July 23, 2014. The director found that the beneficiary's time in the United States during the qualifying period constituted a qualifying break in her religious work, but found that the petitioner failed to establish that the beneficiary was engaged in qualifying employment prior to her sabbatical. Specifically, the director found that the petitioner failed to submit evidence of compensation during the beneficiary's purported employment with [REDACTED]

On appeal, the petitioner submits an August 10, 2014, letter from [REDACTED] stating that the beneficiary "is a non-salaried employee of the church and not a mere volunteer," and asserting that [REDACTED] provided housing, food and transportation as compensation for her work as assistant pastor. In support of these assertions, the petitioner submits copies of two residential lease agreements, dated December 1, 2010, and December 1, 2011, respectively, between [REDACTED] and [REDACTED] "(on

behalf of Pastor [REDACTED].” The petitioner also submits copies of handwritten receipts for rent payments of £500 each, signed by Mr. [REDACTED] indicating payment by [REDACTED] for the months of January 2012 to November 2012.

As cited above, the regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to establish that the beneficiary was continuously engaged in qualifying religious work during the two years immediately preceding the filing of the petition, allowing for a break in the continuity of the work under specified circumstances. Further, the regulation at 8 C.F.R. § 204.5(m)(11) requires the petitioner to submit IRS documentation for any salaried compensation in the United States, IRS documentation of non-salaried compensation if available, or evidence of self-support if the alien provided for his or her own support. Comparable evidence is required for work abroad. The petitioner’s evidence on appeal establishes that she was engaged in qualifying religious work abroad for a portion of the qualifying period.

However, we disagree with the director’s finding that the beneficiary’s “sabbatical” in the U.S. constituted a qualifying break under 8 C.F.R. § 204.5(m)(4). The petitioner indicated that the beneficiary was performing full time volunteer work for the petitioning church while in the U.S. As the beneficiary continued working full time, this period does not constitute a “break in the continuity” of her religious work as described in that regulation, but rather constitutes uncompensated religious work as described in 8 C.F.R. § 204.5(m)(11)(iii). We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). While the petitioner described the beneficiary’s prospective duties and schedule, it has not submitted sufficient evidence of her past duties to establish the qualifying nature of her work. Further, the petitioner has not submitted verifiable evidence of how the beneficiary supported herself during her religious work in the U.S. as required under 8 C.F.R. § 204.5(m)(11)(iii). Accordingly, the record does not establish that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition.

II. COMPENSATION

As an additional matter, review of the record indicates that the petitioner has not established how it intends to compensate the beneficiary.

A. Law

The 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.

B. Analysis

The petitioner stated on the petition and in the accompanying letter that it will provide salaried compensation of \$500 per week, or \$26,000 per year. The petitioner indicated on the petition that it had five employees at the time of filing, all of whom were “volunteers.” As evidence of how the petitioner intends to provide the proffered compensation, the petitioner submitted an uncertified Form 990, Return of Organization Exempt from Income Tax, for the year July 1, 2012, to June 30, 2013, and a projected budget for the year July 1, 2013, to June 30, 2014.

As cited above, the regulation at 8 C.F.R. § 204.5(m)(10) requires “IRS documentation, such as IRS Form W-2 or certified tax returns,” or an explanation for its absence, along with comparable, verifiable documentation. As the petitioner submitted only an uncertified tax return, it cannot be determined that the return was in fact filed with the IRS. Further, the petitioner did not submit any documentary evidence to support the figures asserted in its budget and to establish that they are based on realistic expectations. 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. For these reasons, the petitioner has not submitted sufficient documentation to establish how it intends to provide the proffered compensation.

III. CONCLUSION

As discussed above, the petitioner has not established that the beneficiary has the required two years of qualifying work experience or how it intends to compensate the beneficiary.

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.