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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:

APR 08 2015

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,

A handwritten signature in black ink, appearing to read "Mark Rosenberg".

Mark Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center (“director”), 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 church that 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 denied the petition, finding that the petitioner had not established that the beneficiary had the required two years of continuous, full-time work experience immediately preceding the date the petition was filed. On appeal, the petitioner submits a brief.

RELEVANT LAW AND REGULATIONS

Section 203(b)(4) of the Act, 8 U.S.C. § 1153(b)(4), 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]) 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 regulation at 8 C.F.R. § 204.5(m) states that in order to be eligible for classification as a special immigrant religious worker, the beneficiary must:

(1) For at least the two years immediately preceding the filing of the petition have been a member of a religious denomination that has a bona fide non-profit religious organization in the United States.

(2) Be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position in one of the following occupations as they are defined in paragraph (m)(5) of this section:

- (i) Solely in the vocation of a minister of that religious denomination;
- (ii) A religious vocation either in a professional or nonprofessional capacity; or
- (iii) A religious occupation either in a professional or nonprofessional capacity.

(3) 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.

(4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed. 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. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

PERTINENT FACTS AND PROCEDURAL HISTORY

The beneficiary last entered the United States on March 10, 2005, as an R-1 temporary, nonimmigrant religious worker. On June 28, 2011, the beneficiary's application to change his status to an F-1 nonimmigrant student was approved. The petitioner filed the instant Petition for Special Immigrant (Form I-360) on February 27, 2014, seeking to employ the beneficiary as a pastor. The director subsequently issued a Notice of Intent to Deny (NOID) the petition, requesting, among other things, evidence that the beneficiary was lawfully employed full time as a religious worker during the two years immediately preceding the filing of the petition. In response to the NOID, the petitioner submitted a brief and additional evidence, including, but not limited to, an "hourly breakdown" of the beneficiary's job duties. The director found that the evidence was insufficient to establish the petitioner's eligibility, concluding that the beneficiary was not employed full time as a religious worker for the two-year period immediately preceding the filing of the petition. On appeal, the petitioner submits a brief conceding that the beneficiary did not work full time, as USCIS defines "full-time," as a religious worker during the two years preceding the date the petition was filed. *Brief in Support of*

I-360 Appeal at 2. Rather, the petitioner sets forth two arguments. First, the petitioner contends that, on average, the beneficiary worked more than part time and USCIS failed to properly consider the beneficiary's employment experience. Alternatively, the petitioner contends that the beneficiary's part-time employment during the two years preceding the date of the petition qualifies as a break in the continuity of work requirement as permitted by 8 C.F.R. § 204.5(m)(4).

ANALYSIS

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 (3^d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n.9 (2^d Cir. 1989). After a careful review of all of the evidence, we find no error with the director's ground for denial. The petition will remain denied for the following reasons.

I. Full-Time Employment

Section 203(b)(4)(iii) of the Act requires that the petitioner establish that the beneficiary has worked as a religious worker "continuously for at least the 2-year period" immediately preceding the filing of the petition. The regulation at 8 C.F.R. § 204.5(m)(4) states that the beneficiary must have been working in one of the positions described in paragraph (m)(2) continuously for at least the two-year period immediately preceding the filing of the petition (in this case, February 27, 2012, until February 27, 2014). As the director stated in the NOID and in the decision, in order to meet the qualifying prior experience, the employment must have been full time (*i.e.*, at least 35 hours per week).

In this case, the record shows, and the petitioner concedes, that the beneficiary did not work an average of at least 35 hours per week during the relevant two-year time period. Specifically, the record shows that the beneficiary was a nonimmigrant student during the relevant time period and that he worked part-time during the school year. See, *e.g.*, *Letters from* [redacted] dated February 20, 2014 (stating that the beneficiary "is currently in the United States on an F-1 visa [and] has been working for us on a part-time basis as the Pastor of Hispanic Ministry") and January 27, 2014 (stating that the beneficiary "has been working part time with us as the Pastor of the Hispanic Ministry for more than two years"); *Certificate of Eligibility for Nonimmigrant (F-1) Student (Form I-20)*, dated August 29, 2013 (stating the beneficiary will work part-time from August 26, 2013, to May 15, 2014, "carrying out the duties of a pastor"). Referring to Tab 10 of the evidence originally submitted with the petitioner, the petitioner contends that the beneficiary engaged in full-time religious work during the summers of 2012 and 2013.

Upon a full review of the evidence, we find that the petitioner has not established that the beneficiary actually worked full time at any point during the relevant two-year time period, including during the summers of 2012 and 2013. Tab 10 of the evidence originally submitted lists "I-20, SEVIS information sheet, I-797, Approval Notice for form I-539 F-1, Copy of Passport." These documents, even when considered cumulatively, do not establish by a preponderance of the evidence that the beneficiary worked full time during the summers of 2012 and 2013. For instance, the Form I-20 explicitly identifies the beneficiary's "Employment Status" as "Part Time," not full time. *Certificate*

of *Eligibility for Nonimmigrant (F-1) Student (Form I-20)*, dated August 29, 2013. In addition, although the SEVIS information sheet indicates that the beneficiary was authorized to work full time from June through August of 2012 and from May 16, 2013, until August 25, 2013, the information sheet does not indicate how many hours the beneficiary actually worked during those time periods. Similarly, the two Permission Request Forms from the beneficiary's university authorized him to work full time as part of Curricular Practical Training (CPT). See *Permission Request Forms For Curricular Practical Training (CPT) For International Students*, dated May 31, 2012 (authorizing full-time CPT from June 1, 2012, until August 31, 2012) and May 15, 2013 (authorizing full-time CPT from May 16, 2013, until August 25, 2013). However, these Permission Request Forms show only that the beneficiary was approved to work full time during the summers in 2012 and 2013, but do not verify whether or not the beneficiary actually worked full time. The Approval Notice for the beneficiary's request to change status to an F-1 nonimmigrant student and the copy of the beneficiary's passport do not address the beneficiary's full-time employment. The letters from [REDACTED] the Chair Deacon of the church, indicate only that the beneficiary has worked part time and make no mention of any full-time employment. The only other relevant evidence in the record consists of the petitioner's breakdown of hours, which alleges that when the beneficiary worked full time, he worked between 46-50 hours per week, including six hours that were devoted to "music preparation" and "giving basic music lessons."

The petitioner's part-time employment during the relevant two-year time period does not establish that he meets the qualifying prior work experience required for a special immigrant religious worker. We have consistently interpreted the statute and implementing regulations to require that the beneficiary's religious work experience during the two-year period immediately preceding the filing of the petition must have been full time. Federal courts that have addressed this issue and the Board of Immigration Appeals (BIA) have agreed with our interpretation, also consistently holding that full-time employment is required to establish eligibility. For instance, the U.S. District Court for the Eastern District of Michigan held that the petitioner must establish that the beneficiary worked as a religious worker on "an exclusive, full-time, compensated basis throughout the two-year qualifying period. . . ." See *Ukrainian Autocephalous Orthodox Church v. Chertoff*, 630 F. Supp. 2d 779, 789 (E.D. Mich. 2009). As the Court explained, "[t]he AAO's adoption of a full-time employment requirement accords with *Matter of Faith Assembly Church*, 19 I&N Dec. 391 (BIA 1986), in which the BIA held that 'part-time ministerial employment' did not qualify a minister for special immigrant classification under a prior version of § 1101(a)(27)(C) [because] the statute 'requires the minister to have been and intend to be engaged solely as a minister of a religious denomination.'" *Id.* (quoting *Hawaii Saeronam Presbyterian Church v. Ziglar*, 243 Fed.Appx. 224, 226 (9th Cir. 2007) (unpublished)); see also *Love Korean Church v. Chertoff*, 549 F.3d 749, 759 n.8 (9th Cir. 2008) (also citing *Hawaii Saeronam Presbyterian Church v. Ziglar*, 243 Fed. Appx 224, 226 (9th Cir. 2007) (unpublished)). Similarly, the Fourth Circuit Court of Appeals held that two years of full-time religious work experience is required to establish that a beneficiary is qualified as a special immigrant religious worker. See *Ogundipe v. Mukasey*, 541 F.3d 257, 261 (4th Cir. 2008) ("the record does not contain evidence establishing that Ogundipe had the required two years' denominational membership or experience in full-time religious work prior to the filing of the [religious worker] Petition"). In *Matter of Varughese*, 17 I&N Dec. 399, 402 (1980), the BIA concluded that the beneficiary, who was a full-time student, did not establish that "while carrying a

full-time school schedule[, the beneficiary] continuously carr[ied] on the vocation of minister so as to satisfy the requirements of the Act.” The petitioner has not cited any case law to support its proposition that the beneficiary does not need to establish full-time employment for the two-year period preceding the petition.

To the extent the petitioner contends in a footnote that the definition of part-time employment used by USCIS conflicts with the definition used by other federal agencies, such as the Department of Labor’s definition with respect to the Worker Adjustment and Retraining Notification (WARN) Act of 1988,¹ *Brief in Support of I-360 Appeal* at 2 n.1, USCIS is not required to follow another agency’s definitions. *See, e.g., Avena v. INS*, 989 F. Supp. 1, 7-8 (D.D.C. 1997) (holding that the former INS was not required to follow the Department of State’s definition of “religious occupation”).² Similarly, to the extent the petitioner asserts that 8 C.F.R. § 214.2(f)(9)-(10) defines any employment over twenty hours as full time, the regulation states only that an F-1 nonimmigrant student may work part time off campus no more than twenty hours per week when school is in session and may work “full-time during holidays or school vacation.” However, it does not define or quantify full-time employment, contrary to the petitioner’s assertion. Even assuming the beneficiary may have worked an average of more than 20 hours per week during the relevant two-year time period, the petitioner concedes the beneficiary has worked less than an average of 35 hours per week and has, therefore, not established that he meets the statutory and regulatory requirements for eligibility. Accordingly, the petitioner has not established that the beneficiary was lawfully employed full time as a religious worker during the two years immediately preceding the filing of the petition as required by section 203(b)(4)(iii) of the Act and 8 C.F.R. § 204.5(m)(4).

II. Break in the Continuity of Work

The petitioner’s alternative argument that the beneficiary’s part-time employment qualifies as a break in the continuity of the work requirement is unpersuasive under the facts in this case. As discussed above, section 203(b)(4)(iii) of the Act and 8 C.F.R. § 204.5(m)(4) require a beneficiary to work as a religious worker continuously (*i.e.*, full time) for at least the two-year period immediately preceding the filing of the petition. Although 8 C.F.R. § 204.5(m)(4) allows for a “break in the continuity of the work during the preceding two years” under certain conditions, a beneficiary must have actually engaged in qualifying employment (worked full time in a religious occupation) in order to qualify for a break in that continuity. In this case, as explained above, the record does not show that the beneficiary ever worked at least an average of 35 hours per week, even during the summers of 2012 and 2013, as claimed. Therefore, because the beneficiary did not work continuously as a religious worker during the two-year time period, he does not qualify for a break in

¹ Under the WARN Act, “part-time employee” means an employee who is employed for an average of fewer than 20 hours per week or who has been employed for fewer than 6 of the 12 months preceding the date on which notice is required. *See* 29 U.S.C.A. § 2101(a)(8).

² The Department of Labor makes clear that the Fair Labor Standards Act does not define full-time employment or part-time employment, but rather, relies on an individual employer’s definitions of full-time and part-time employment. *See generally* U.S. Department of Labor, Office of the Assistant Secretary for Policy, *Fair Labor Standards Act*, available at www.dol.gov/elaws/faq/esa/flsa/014.htm.

the continuity of such work. In other words, even though the record shows that the beneficiary worked part time during the two years prior to the filing of the petition, the preponderance of the relevant evidence does not establish that the beneficiary ever worked full time at any point during the two-year period immediately preceding the filing of the petition such that he was eligible for a break in the continuity of such work as required by section 203(b)(4)(ii)(I) of the Act and as defined in 8 C.F.R. § 204.5(m)(2) and (4).

CONCLUSION

On appeal, the petitioner has not established by a preponderance of the relevant evidence that the beneficiary had the required two years of continuous, full-time work experience immediately preceding the date the petition was filed.

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.