(b)(6)

**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: AUG 0 6 2015

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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

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 sustain the appeal.

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 priest. The director denied the petition, concluding that the petitioner did not establish that the beneficiary had the requisite two years of qualifying religious work experience while in lawful immigration status. On appeal, the petitioner submits a brief and additional evidence.

## 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 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. . . .

However, on April 7, 2015, the Court of Appeals for the Third Circuit held that the lawful immigration status requirement in 8 C.F.R. 204.5(m)(4) and (11) is *ultra vires* and impermissibly conflicts with section 245(k) of the Act with respect to adjustment of status. *See Shalom Pentecostal Church v. U.S. Dep't of Homeland Sec.*, 783 F.3d 156, 165-67 (3d Cir. 2015). In accordance with this decision, U.S. Citizenship and Immigration Services (USCIS) will no longer deny special immigrant religious worker petitions based on the lawful status requirements at 8 C.F.R. 204.5(m)(4) and (11) in the Third Circuit. As a result of this decision and other district court cases,[1] USCIS implemented a policy to apply the *Shalom Pentecostal Church* decision nationally, pending the issuance of amended regulations that will remove the lawful status requirements in 8 C.F.R. 204.5(m)(4) and (11). *See* USCIS Policy Memorandum PM-602-0119, *Qualifying U.S. Work Experience for Special Immigrant Religious Workers* (July 5, 2015), http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2015/2015-0705_Lawful_Status_PM_Effective.pdf [hereinafter July 15 Policy Memorandum]. Accordingly, USCIS no longer requires that the qualifying religious work experience for the two-year period

[1] *See Congregation of the Passion v. Johnson*, 2015 WL 518284 (N.D. Ill. Feb. 6, 2015); *Shia Ass'n of Bay Area v. United States*, 849 F.Supp.2d 916 (N.D. Cal. 2012).

preceding the submission of a Petition for Special Immigrant (Form I-360) be in lawful immigration status.

## PERTINENT FACTS AND PROCEDURAL HISTORY

On May 23, 2013, the petitioner filed a Form I-360 seeking to classify the beneficiary as a special immigrant religious worker. The director issued a Request for Evidence (RFE), requesting, among other things, additional documentation addressing the beneficiary's work history and evidence that the beneficiary was employed while in lawful immigration status. In response to the RFE, the beneficiary submitted additional evidence including, but not limited to: copies of tax documents; evidence he was granted deferred action; letters from the church; and copies of church bulletins.

The director found that although the beneficiary had three work authorization cards issued to him, there were two time periods during which he worked without authorization. In addition, the director found that the beneficiary worked in violation of his deferred action status. Therefore, the director concluded that the beneficiary did not have the requisite two years of continuous religious work experience in lawful immigration status as required under 8 C.F.R. § 204.5(m). The director denied the petition accordingly.

On appeal, the petitioner contends that the beneficiary's work experience was performed in lawful immigration status because he was granted deferred action which does not mandate that he obtain an employment authorization card. The petitioner also states that the gap in time between employment authorizations was caused by a delayed response on behalf of USCIS which was out of its normal processing time.

## 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 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989). As explained below, we find that the petitioner has established the requisite two years of religious work experience. We withdraw the director's decision and approve the petition.

### Lawful Immigration Status

In this case, the record shows the beneficiary was employed by the petitioner as a priest for at least the two-year period immediately preceding the date the petitioner filed the Form I-360. The record includes, but is not limited to, tax records, a payroll document, letters from co-workers and other church members, a weekly schedule, and church bulletins and announcements, all showing that the beneficiary worked for, and was paid by, the petitioner as a priest from at least May 23, 2011, until the date the Form I-360 was filed on May 23, 2013.

Although the issue of whether the beneficiary worked in unlawful status may be reviewed at a later date if the beneficiary files for adjustment of status, it is no longer a bar to eligibility for the instant petition. *See* July 15 Policy Memorandum; *see also Shalom Pentecostal Church*, 783 F.3d at 160 (describing the two-step process of first obtaining a visa, and then applying for permanent adjustment of status); *Matter of O*, 8 I&N Dec. 295 (BIA 1959) (the visa petition procedure is not the forum for

determining substantive questions of admissibility under the immigration laws). Therefore, notwithstanding the regulation at 8 C.F.R. 204.5(m)(4) and (11) as currently written, in accordance with the Policy Memorandum, we find that the petitioner has established that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition. The petitioner has established eligibility to classify the beneficiary as a special immigrant religious worker pursuant to section 101(a)(27)(C) of the Act. The director's decision to the contrary is withdrawn.

## CONCLUSION

The petitioner has established by a preponderance of the evidence that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition.

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 been met.

**ORDER**: The appeal is sustained.