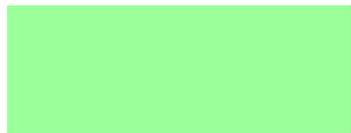




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE FEB 06 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,

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 on appeal. We will dismiss the appeal.

The petitioner is an independent non-denominational Christian 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 an unpaid volunteer minister. 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. In addition, the director determined that the petitioner had not established its intention to compensate the beneficiary.

On appeal, the petitioner states that the beneficiary has worked continuously as a minister, and that the director erred by concluding otherwise. On Form I-290B, Notice of Appeal or Motion, the petitioner indicates that a brief and/or additional evidence will be forthcoming within 30 days. The requested period has elapsed, and the record contains no further submission from the petitioner. We therefore consider the record to be complete as it now stands.

### I. Law

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).

## II. Facts and Analysis

### a. Procedural History

The petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on June 17, 2013. The director issued a request for evidence (RFE) on July 16, 2013. The record includes the petitioner's timely response to the RFE. The director denied the petition on November 19, 2013. The petitioner has appealed that decision.

### b. Intended Compensation

The regulation at 8 C.F.R. § 204.5(m)(2) requires that the beneficiary's intended religious work must be in a compensated position. The regulation at 8 C.F.R. § 204.5(m)(7)(xii) requires the prospective employer to attest that it has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges. Because the petition, as originally filed, indicated that the beneficiary intends to perform the duties of a minister, the petitioner must also show that the beneficiary will work solely in the vocation of a minister. Section 101(a)(27)(C)(ii)(I) of the Act; 8 U.S.C. § 1101(a)(27)(C)(ii)(I); 8 C.F.R. § 204.5(m)(2)(i).

On the employer attestation (Part 8 of Form I-360), the petitioner identified the beneficiary's title as "Minister – voluntary/none [*sic*] paid" (line 5a). Asked on line 5d to describe the beneficiary's proposed compensation, the petitioner stated: "The position at [the petitioning church] is strictly voluntary and receives no salary or any other compensation in this role as a minister." The petitioner checked "Yes" on line 7 of the employer attestation, thereby attesting that it has the ability and intention to compensate the beneficiary at a level at which he and accompanying family members will not become public charges. This statement conflicts with the petitioner's statements elsewhere on the attestation indicating that the position "is strictly voluntary," paying "no salary or other compensation."

In an accompanying letter, Rev. [REDACTED] senior pastor of the petitioning church, stated that the beneficiary's "function as a minister with [the petitioner] is voluntary and as such, he receives no salary or any other compensation in this role. He maintains his financial upkeep through other gainful employment."

In the July 2013 RFE, the director requested evidence of the beneficiary's employment and compensation. In response, the petitioner submitted copies of Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statements, for 2012, identifying the beneficiary's employer as the [REDACTED]. A job offer letter dated March 5, 2013 informed the petitioner of his pending "appointment as a Higher Education Associate in the functional title of Finance Manager in the Division of Administration and Finance at [REDACTED]"

In the November 2013 denial notice, the director quoted the petitioner's employer attestation and Rev. [REDACTED] letter, and stated: "it is apparent that the beneficiary will be working on a voluntary basis and will not receive any salaried or non-salaried compensation from the petitioning organization." The director concluded: "the evidence of record does not establish that the beneficiary is coming to the United States to work in a . . . compensated position solely in the vocation of a minister."

The petitioner's statement on appeal does not address this finding. The petitioner, therefore, has not contested the director's finding that the petitioner will not compensate the beneficiary. Therefore, this issue is abandoned. See *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885, at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal). The petitioner's stated intention not to compensate the beneficiary is inherently disqualifying, and therefore USCIS cannot properly approve the petition.

### c. Past Experience

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 regulation at 8 C.F.R. § 204.5(m)(11) reads, in part:

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.

The petition was filed on June 17, 2013. Therefore, the petitioner must establish that the beneficiary worked continuously in a qualifying religious occupation for the two years immediately preceding that date.

In her May 2013 letter, Rev. [REDACTED] stated that in “November, 2009 [the beneficiary] was appointed to be a licensed minister” with the petitioning church “with the responsibilities and authority to exhort, preach and teach the gospel of Jesus Christ.” The petitioner submitted a copy of the beneficiary’s “Certificate of License,” dated November 8, 2009 and stated that his duties have “included, mentoring and counseling others.”

The petitioner’s initial submission did not include the evidence of continuous experience required by the regulation at 8 C.F.R. § 204.5(m)(11). The director requested that evidence in the July 2013 RFE.

The petitioner’s response did not include the required evidence. The petitioner did not submit IRS documentation to show past salaried or non-salaried compensation from the petitioner, and the petitioner did not claim to have provided any past compensation to the beneficiary. The petitioner also did not provide alternative evidence showing how the beneficiary maintained support throughout the two years immediately preceding the petition’s filing date. The IRS Forms W-2 from [REDACTED] only document the beneficiary’s income in 2012. The job offer letter from [REDACTED] was not effective until July 1, 2013, two weeks after the June 17, 2013 filing date. Also, evidence of the beneficiary’s employment at [REDACTED] is not evidence of continuous, qualifying religious work.

The petitioner submitted copies of programs from worship services. Programs dated November 13, 2011, December 18, 2011, and July 15, 2012 identified the beneficiary as “Minister of Families.” A program from September 2013, showing no specific date, identified the beneficiary as “Minister of Families / Administration.”

The director, in the denial notice, stated that the petitioner’s RFE response did not include the required documentation, and that the petitioner had not submitted sufficient evidence to establish that the beneficiary worked continuously in qualifying religious work during the two years immediately preceding the filing date.

On appeal, the petitioner states: “The minister has continuously worked as the assistant minister while maintaining outside employment for sustenance. He has performed satisfactorily all required functions of a minister and continues to do so through the current time.” The assertion that the beneficiary worked continuously is not sufficient to establish eligibility. 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)).

### III. Qualifying Occupation

Because we review the record on a *de novo* basis, we may identify additional grounds for denial beyond what the service center identified in the initial decision. 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 regulation at 8 C.F.R. § 204.5(m)(2) provides that the beneficiary must seek to enter the United States in order to work in one of the following occupations:

- (i) Solely in the vocation of a minister of [the petitioner's] 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.

These terms derive from section 101(a)(27)(C)(ii) of the Act. The regulation at 8 C.F.R. § 204.5(m)(5) provides definitions of the relevant terms:

*Minister* means an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct such religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and
- (D) Works solely as a minister in the United States, which may include administrative duties incidental to the duties of a minister.

*Religious occupation* means an occupation that meets all of the following requirements:

- (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.

*Religious vocation* means a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life. The religious denomination must have a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. Examples of individuals practicing religious vocations include nuns, monks, and religious brothers and sisters.

The petitioner has not claimed that the beneficiary works in a religious vocation, bound by a formal lifetime commitment to a religious way of life. The issue at hand is whether the beneficiary's intended duties are those of a minister or of a religious occupation.

On line 5b of the employer attestation, the petitioner listed the beneficiary's proposed daily duties: "Preach, teach and defend the g[o]spel, conduct baptism, communion, and adminis[t]ration of holy sacraments, visit the sick, grieving and lonely. Conduct weddings and funerals as permit[t]ed under law." In her accompanying letter, Rev. [REDACTED] stated:

[The beneficiary] was appointed to be a licensed minister with the responsibilities and authority to exhort, preach and teach the gospel of Jesus Christ. His role as a minister of [the petitioning church] has included, mentoring and counseling others. . . . Further, his duties encompass performing all sacerdotal duties such as, baptisms, observing communions, weddings, funerals, and other ceremonial functions.

The petitioner's RFE response included an "Administrative Minister's Job Description," which reads, in part:

[The beneficiary] has served as minister of families and men's ministry. He is now moving into the role [of] the Administrative Minister. As such, [the beneficiary] is responsible for the non-ministry aspects of running [the petitioning church]. Although a preacher his focus will be on the day-to-day tasks of running the church.

[The beneficiary] is responsible for keeping a calendar of church events, making sure that all departments are in order and running smoothly. He is responsible for outreach to attract and retrain [sic] new church members.

#### **Church Staff/Volunteers**

The Administrative minister oversees administrative support; facilities and maintenance and volunteer management. . . . He is responsible for recruiting and training all volunteers. . . .

**Community**

He is responsible for knowing the needs and providing solutions to help the community. This may mean running food drives, collecting donations of household items, sponsoring mission trips and providing meals to those in need among other things. He is responsible for recruiting congregation members to participate in community events and must have a passion for serving the needs of the community and reaching out to those who need it most.

**Finance**

The Administrative minister is responsible for managing the operating costs of the church. He is responsible for creating a budget and getting it approved by the church's board of directors. Should the church fail to meet [its] budgetary constraints he must pursue financing options. He must have a solid understanding of finance, accounting and bookkeeping skills.

The revised list of duties appears to be entirely different from the original duties previously described on Form I-360 and in Rev. [REDACTED] letter. The newly described duties appear to be primarily administrative, and therefore they do not qualify as the duties of a minister or of a worker in a religious occupation. The petitioner has not established that the beneficiary's intended duties conform to the regulatory definitions of a minister or of a religious occupation. This circumstance presents an additional, independent basis for denial of the petition.

**IV. Conclusion**

We will dismiss the appeal 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, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.