

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: JAN 16 2015 OFFICE: CALIFORNIA SERVICE CENTER

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:

SELF-REPRESENTED

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 minister of religion. 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. The 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 November 20, 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)(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.

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

Accompanying the Form I-360 petition, the petitioner submitted evidence that the beneficiary was ordained as a "Minister of the Word" by [REDACTED] on September [REDACTED]. As evidence of the beneficiary's religious work experience during the two-year qualifying period, the petitioner submitted an October 14, 2013 letter from [REDACTED] Pastor of

Florida. Mr. [REDACTED] stated:

This letter serves to confirm that [the beneficiary], an Ordained Minister of the Pentecostal Denomination has been employed to [sic] [REDACTED] since April 2009 to present.

This has been a voluntary capacity as a Lay Preacher and Music Teacher/Director. This position carries no financial compensation.

The church in general, and the Choir and Youth department in particular, have been greatly impacted and benefited considerably from [the beneficiary's] involvement and ministry as a Preacher and music teacher.

In addition, the petitioner submitted uncertified copies of undated and unsigned Forms 1040, U.S. Individual Income Tax Returns, for the beneficiary and his wife for the years 2012 and 2011. On both tax returns, the beneficiary indicated that his home address was in [REDACTED] Georgia.¹ The 2011 tax return indicated that the beneficiary and his wife reported taxable business income of \$351 for the year, consisting of income from a "lawncare services" business operated by the beneficiary, and from a child care service operated by his wife. On the 2012 return, the beneficiary indicated his filing status as single, and the only listed income was that of an early distribution from a pension or annuity of \$13,080.

The director denied the petition on March 20, 2014. The director found that the submitted letter from Mr. [REDACTED] was insufficient to establish the beneficiary's qualifying experience. Further, the director found the submitted tax returns, which indicated that the beneficiary was engaged in secular employment and that he resided "682 miles" from the church where he purportedly worked, to be inconsistent with the assertion that the beneficiary was continuously performing religious work for [REDACTED] during the qualifying period. In addition, the director found that the beneficiary was without lawful immigration status during the qualifying period.

On appeal, the petitioner asserts that the beneficiary and his wife did not reside in [REDACTED] Georgia, during the qualifying period, but that they filed taxes using that address "in order to maintain their homestead status." The petitioner submits a new letter from Mr. [REDACTED] dated March 15, 2014, stating that the beneficiary works 35 hours weekly and "receives room and board as basic allowance" for his work at [REDACTED]. In the letter, Mr. [REDACTED] also describes the beneficiary's purported duties:

Regular Schedule:

Research historic truth/facts, prepare and deliver sermon.

¹ On the Form I-360 petition, the petitioner indicated that the beneficiary lives in [REDACTED], Florida.

Schedule and develop materials with objective showing religious relevance intermixing with today's social needs and conduct seminars encouraging/inviting youth and parent to attend and participate. Research, develop and edit Sunday School Materials for teaching adult, youth and children. Organize door-to-door evangelistic visit within the community.

Music Teaching:

Teaching youths to adopt biblical principles and behavior through religious music. Teach Music in theory and hands on instrument, training choir leaders and musicians. Conduct Choir practice, praise and worship. Prepare for Special events, weddings, funerals, dedication, and baptism and holiday specials.

The petitioner also submits copies of audited financial statements for [REDACTED] for the years 2011, 2012 and 2013, each of which includes "Minister of religion allowance" of \$6,500 in its list of functional expenses.

No documentary evidence was submitted in support of Mr. [REDACTED] assertions that the beneficiary was in fact performing religious duties during the period in question. Although Mr. [REDACTED] asserts that the financial statements are evidence of the beneficiary's purported housing allowance, the statements do not identify the recipient of the "Minister of religion allowance." No other evidence was submitted to demonstrate that the beneficiary received funds from [REDACTED] or to support the petitioner's assertions regarding the beneficiary's residence during the qualifying period. 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)). Accordingly, the submitted evidence is insufficient to establish that the beneficiary was continuously engaged in qualifying work. See 8 C.F.R. § 204.5(m)(4).

In addition, to the extent that the beneficiary worked as a volunteer during the qualifying period, the petitioner failed to submit sufficient documentary evidence to show how the beneficiary's support was maintained, as required under 8 C.F.R. § 204.5(m)(11)(iii). As discussed above, the beneficiary's 2011 tax return indicated income of \$351 for the year and his 2012 return indicated that he took an early distribution from an annuity or pension. The petitioner has not submitted verifiable evidence of the support that the beneficiary purportedly received from [REDACTED]

Furthermore, the petitioner has not provided any evidence that the beneficiary was actually engaged in qualifying religious work, such as documentation of students he taught, sermons he gave, materials he developed, or evangelistic outreach that he had been engaged in.

For the reasons discussed above, the petitioner has not established that the beneficiary has the requisite two years of continuous, qualifying religious work immediately preceding the filing of the petition.²

II. LACK OF NOTICE OF INTENT TO DENY THE PETITION

In a May 19, 2014 letter submitted on appeal, the petitioner contends that the director erred by denying the petition without first issuing a Notice of Intent to Deny the petition.

A. The Law

The regulation at 8 C.F.R. § 103.2(b)(8) provides in pertinent part:

(ii) Initial evidence. If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.

(iii) Other evidence. If all required initial evidence has been submitted but the evidence submitted does not establish eligibility, USCIS may: deny the application or petition for ineligibility; request more information or evidence from the applicant or petitioner, to be submitted within a specified period of time as determined by USCIS; or notify the applicant or petitioner of its intent to deny the application or petition and the basis for the proposed denial, and require that the applicant or petitioner submit a response within a specified period of time as determined by USCIS.

B. Analysis

A review of the record reflects that the director adjudicated the petition based on the evidence submitted at the time the petition was filed. In denying the petition, the director complied with 8 C.F.R. §§ 103.2(b)(8)(ii) and (iii), which gives her discretionary authority to request additional evidence, provide notice of her intent to deny the application or petition, or deny the petition or application. In this case, the director exercised her discretionary authority and denied the petition because the evidence submitted by the petitioner did not establish eligibility for the benefit. The petitioner presented no evidence that the director abused her discretion in her decision regarding this matter.

III. COMPENSATION

² As the petitioner failed to establish the continuity of the beneficiary's qualifying experience, we do not need to reach the issue of the lawfulness of the beneficiary's experience under 8 C.F.R. § 204.5(m)(4) and (11). In any subsequent proceeding, this issue may require further discussion as the petitioner provides no evidence that the beneficiary was authorized to work for [REDACTED] during the qualifying period.

As an additional matter, the petitioner has not established how it intends to compensate the beneficiary. 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).

A. The 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 indicated on the Form I-360 petition that the proffered compensation will include a salary of \$21,000 per year, as well as “living accommodation of a two bedroom apartment and travelling out of pocket expenses paid.” The petitioner indicated that, at the time of filing, it had 435 members and five employees working at the same location where the beneficiary will work.

The petitioner submitted a copy of its 2013 budget, which included \$50,000.00 in “Salaries, Wages and Benefits,” \$42,000.00 in “Immigrant Ministers Wages,” \$10,000.00 in “Housing Allowance,” and \$5,000.00 in “Travelling expenses.” As evidence of “Salary for present salary worker” and “Salary for previous salaried immigrant Minister,” the petitioner submitted two Forms W-2, Wage and Tax Statements, for an individual, [REDACTED]. The Forms W-2 indicated that the petitioner compensated Mr. [REDACTED] in the amount of \$10,395 in 2009 and \$14,630 in 2010. In addition, the petitioner submitted a November 15, 2013 letter asserting its intent “to lease living accommodation” for the beneficiary upon approval of the petition, and stating that the prospective landlord was contacted and “has agreed to lease the premises.”

As the submitted Forms W-2 indicate wages less than the proffered salary, they are insufficient, on their own, to establish how the petitioner intends to provide the proffered salary. Although the submitted budget ostensibly includes funds for the beneficiary’s salaried and non-salaried compensation, the petitioner did not submit any verifiable documentary evidence to support the figures asserted in the submitted budget. 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. Further, the petitioner did not submit any evidence beyond its own assertions

regarding the provision of housing to the beneficiary. *Id.* For these reasons, the submitted evidence is insufficient to establish how it intends to compensate the beneficiary. *See* 8 C.F.R. § 204.5(m)(10).

IV. CONCLUSION

For the reasons discussed above, the petitioner failed to establish the beneficiary's qualifying experience and failed to establish 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.