U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE [redacted] Office: CALIFORNIA SERVICE CENTER Date: NOV 19 2009
WAC 08 198 51570

IN RE: Petitioner:
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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
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. The AAO will dismiss the appeal.

Part 1 of the Form I-360 petition identified [redacted] of Covington Diversity Programs as the petitioner. Review of the petition form, however, indicates that the alien beneficiary is the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 9 of the Form I-360, "Signature," has been signed not by [redacted] but by the alien beneficiary himself. Thus, the alien, and not [redacted] has taken responsibility for the content of the petition. While [redacted] signed Part 10 of the form, indicating that she prepared the petition form, the alien himself is the only party we can justifiably consider to be the petitioner. This will not affect the adjudication of the appeal, because the beneficiary also signed Form I-290B, Notice of Appeal. (It is irrelevant that [redacted] also signed the appeal form.) Thus, the appeal has been properly filed. We note that the director correctly addressed the denial notice to the alien beneficiary, thereby recognizing his standing as the petitioner.

The petitioner seeks classification 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). The director determined that the petitioner lacked the required two years of continuous, lawful work experience as a religious worker immediately preceding the filing date of the petition.

On appeal, [redacted] asserts that the petitioner received non-monetary compensation during his prior employment in the United States.

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, 2012, 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, 2012, 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).

The sole stated basis for denial concerns the petitioner's prior employment in the United States. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(4) requires that the alien must have been working in a qualifying position continuously for at least the two-year period immediately preceding the filing of the petition, and requires that, if the alien worked in the United States during that qualifying period, the alien must have been in lawful immigration status. The USCIS regulation at 8 C.F.R. § 204.5(m)(11) states:

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 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 Form I-360 petition, filed July 7, 2008, identified the petitioner's "Current Nonimmigrant Status" as "Student," *i.e.*, F-1 nonimmigrant, a status that allows employment only under limited circumstances, and only with advance authorization. A Student Transcript from Covington Diversity Programs indicated that the petitioner completed the Creation Therapy Counseling Program in April 2008.

The initial submission included a "form" letter signed by [redacted], with the petitioner's information added by hand. The letter reads as follows, with the handwritten portions reproduced in *italics*:

Subject: *[the petitioner's name]*

In reference to the Special Immigrant Religious Worker process, I was instructed by your Baltimore, Maryland office to forward all applications to Vermont. I am filing the attached application for *[the petitioner]*. *[The petitioner]* has been in the United States for *6 years*. He/She has been actively working as a counseling Minister in Covington Diversity Programs which is affiliated with the National Christian Counselors Associations under the Christian Church denomination. He/She is also employed as *student (no pay)* while currently complet[ing] his/her Pastoral Membership with the Sarasota Academy of Christian Counseling. Upon completion of his/her training, *[the petitioner]* will receive a certificate and a wallet minister's card.

Please process the attached application and enclosed fee for the petition of Special Immigrant Religious Worker and contact my office should you have any questions with the above mentioned person.

Sincerely,
[signed]
[redacted]

The use of a pre-printed "form" letter implies that [redacted] prepared letters for several aliens, although the record does not reveal their number.

The director denied the petition on February 2, 2009, stating that the petitioner lacked legal authorization to work in the United States during the two-year qualifying period. Therefore, the director concluded that the petitioner is not eligible for the classification sought.

On appeal, [redacted] states:

> [The petitioner] has been employed and recognized by our religious organization for the past 2 years . . . in a volunteer/student capacity. Compensation is not traditional as volunteers and students are lawfully employed but are compensated differently through reduced education, tuition, books, assistance with state and federal offices/ services that support immigrants to find a path to citizenship.

[redacted] submits an excerpt from *Green Card as a Special Immigrant: Information and Application Manual*, an electronic publication from U.S. Publishers, Inc. A relevant portion of that publication reads: "To qualify as a special immigrant using religion as a cause, you must have been a member of a recognized religion in the U.S. for a minimum of two years and have remained

employed by the same religious group for the duration." [redacted] states that the publication also "states full time paid employee but it does not specify how or details of money or wage payment." The petitioner did not submit that portion of the publication, so we have only [redacted] description of it. The quoted document is a privately prepared guide, not an official government publication. Therefore, it is not binding on USCIS employees.

We note that the guide, published in 2006, relied on regulations that were no longer in effect at the time the director denied the petition. On November 26, 2008, while this petition was pending, USCIS significantly revised the regulations at 8 C.F.R. § 204.5(m) relating to special immigrant religious worker petitions. Supplementary information published at the time specified that the new regulations applied to all petitions pending on the publication date. 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

The petitioner submits a printout from http://www.merriam-webster.com, showing variant definitions of the verb "employ," including "to use or engage the services of." The definition of "employ" is not at issue in this proceeding. With respect to [redacted] argument that the beneficiary received non-monetary compensation, the regulations quoted earlier in this decision clearly take such compensation into account.

The Board of Immigration Appeals has ruled that an alien who "receives compensation in return for his efforts on behalf of the Church" is "employed" for immigration purposes, even if that compensation takes the form of material support rather than a cash wage. *See Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982). An alien cannot avoid the consequences of unauthorized employment merely by receiving compensation in a non-monetary form.

The situation described in the petition indicates that the petitioner engaged in unauthorized employment during the two-year qualifying period. We acknowledge that the record does not contain definitive evidence of that employment, but even if we were to ignore the petitioner's claims entirely, this would not mean that the petitioner engaged in qualifying, authorized employment during the required period.

The petitioner is known to have been in the United States throughout the two-year qualifying period, and the record contains no evidence that the petitioner continuously engaged in lawful, authorized employment (whether salaried or unsalaried) during that time. On appeal, the petitioner has effectively conceded the stated ground for denial. We will dismiss the appeal, based on the director's uncontested finding that the beneficiary engaged in unauthorized (and therefore disqualifying) employment.

Beyond the stated basis for denial, review of the record reveals several other issues of concern. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority

has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Supplementary information published with the revised regulations at 8 C.F.R. § 204.5(m) specified: "If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). In this instance, the director did not base the denial on the petitioner's failure to submit newly required evidence. Rather, the denial rested on the admission that the petitioner worked in the United States under a classification that did not authorize qualifying employment. Because this is a self-evident basis for denial, it would have served no constructive purpose for the director to request the newly required evidence; the petition would still have been denied based on the petitioner's unauthorized employment. If the record evidence establishes ineligibility, the application or petition will be denied on that basis. 8 C.F.R. § 103.2(b)(8)(i).

The ground cited in the director's decision is, by itself, sufficient basis for denial of the petition. In the interest of thoroughness, we note, here, a critical deficiency in the petition.

The revised 2008 regulations introduced several new evidentiary requirements, including an employer's attestation (8 C.F.R. § 204.5(m)(7)), evidence relating to the alien's intended future compensation (8 C.F.R. § 204.5(m)(10)) and documentation of the alien's prior qualifying employment (8 C.F.R. § 204.5(m)(11)). Much of this information is missing from the record.

Most of the missing information relates to the same critical deficiency in the petition. Before and after their revision in 2008, the regulations have always required a specific job offer. *See, e.g.*, former 8 C.F.R. § 204.5(m)(4) and current 8 C.F.R. §§ 204.5(m)(7). Here, the record contains no information about such a job offer. The initial filing indicated that the petitioner was in training to become a minister, but it did not indicate that Covington Diversity Programs, or any other entity, intends to employ the petitioner. The petitioner has not provided any description of his intended duties or compensation, or even identified his religious denomination. It cannot suffice for the petitioner to enter the United States for the vague, general purpose of performing religious work.

The record does not present a clear picture of Covington Diversity Programs. The petitioner has not shown, or even claimed, that Covington Diversity Programs is (or is affiliated with) a tax-exempt religious organization under section 501(c)(3) of the Internal Revenue Code as required by 8 C.F.R. § 204.5(m)(8). [redacted] letterhead and one of her business cards list the following areas of claimed expertise:

- Dean-Certified Academic Insts.
- Dir.-Mental Health Services
- Dir.-Family Law/Corp. Law Mediation
- Temperament/Diversity Expert
- Substance Abuse (DUI/DWI)

- Anger Management/Violence
- Domestic Violence
- Rape/Incest

The letterhead and a second business card list several of the above items in Spanish, along with two additional items: "Immigracion Ayuda" and "Hispanic Counselor."

[redacted] also submitted copies of her membership cards from the National Christian Counselors Association, the National Board of Christian Clinical Therapists and the Sarasota Academy of Christian Counselors. The information presented does not show that Covington Diversity Programs is an exclusively or even predominantly religious organization. It appears, instead, to be a multi-purpose entity, operated by [redacted] for a wide variety of secular and religious purposes.

With no clear indication of the petitioner's intended activities in the United States, and no evidence of a qualifying job offer, the petition cannot be approved.

The AAO will dismiss the appeal for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.