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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: **JUL 17 2015**

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]
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:



INSTRUCTIONS:

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

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center (“director”), denied the employment-based immigrant visa petition and we dismissed a subsequent appeal. The matter is now before us on a motion to reopen and reconsider. The motion to reconsider will be denied, the motion to reopen will be granted, and the petition remains denied.

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), to perform services as a music minister for a church. The director denied the petition because the petitioner did not establish the church’s ability or intent to compensate him, that he had the required two years of qualifying religious work experience, and that he meets the qualifications as a minister. On appeal, we found that the petitioner had established his qualifications as a minister, but affirmed the director’s decision on the other grounds for denial. The petitioner now files a motion to reopen and reconsider, along with additional evidence in support of the motion.

RELEVANT LAW AND REGULATIONS

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

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.

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 [U.S. Citizenship and Immigration Services]. If IRS [Internal Revenue Service] documentation, such as IRS Form W-2 [Wage and Tax Statement] 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.

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 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.

If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

PERTINENT FACTS AND PROCEDURAL HISTORY

The petitioner filed the Petition for Special Immigrant (Form I-360) on December 31, 2012. On September 3, 2013, the director denied the petition, concluding that there was insufficient evidence to show how the prospective employer would support him with food, clothing, room, and board. The director also found that the evidence addressing the petitioner's previous employment in Nigeria was

vague. Therefore, the director found that the petitioner did not establish how his prospective employer will compensate him or that he had the requisite two-year work experience immediately preceding the filing of the petition. Furthermore, the director found that the petitioner did not submit specific information regarding the church's ordination requirement or how the petitioner was qualified for the proffered position.

In our decision dated September 19, 2014, we found that the petitioner had submitted sufficient evidence to establish that he is qualified for the proffered position and withdrew the director's finding on that issue. Nonetheless, we dismissed the appeal, finding that the additional documents submitted on appeal did not establish how the prospective employer will compensate the petitioner or that the petitioner had the requisite two years of qualifying work experience.

The petitioner now files a motion to reconsider and to reopen our decision, and submits two new bank statements and other documents. He also resubmits several documents that were already in the record.

ANALYSIS

I. Motions to Reopen and Reconsider

The petitioner, through counsel, submits a letter with the Notice of Appeal or Motion (Form I-290B) stating that the petitioner has been a minister for the church throughout the two years preceding the filing of the application. The petitioner also states that the enclosed financial documents are evidence of the church's ability to pay him. In support of these contentions, the petitioner submits a letter, two bank account statements dated November 17, 2014, a letter from Pastor [REDACTED] dated November 5, 2014, and a monthly budget.

The petitioner's submission does not meet the requirements of a motion to reconsider. He does not cite any statutes, regulations, precedent decisions, or other pertinent sources or authority to establish that our decision was based on an incorrect application of law or USCIS policy pursuant to 8 C.F.R. § 103.5(a)(3). Therefore, the motion to reconsider is denied.

The petitioner's submission does, however, meet the requirements of a motion to reopen at 8 C.F.R. § 103.5(a)(2). The petitioner challenges our finding that the prospective employer did not establish its ability to compensate him and submits additional documentation in support of this contention. Counsel also asserts that the petitioner met the two-year religious work experience requirement and the petitioner submits a letter in support of this contention. Accordingly, the motion to reopen is granted.

II. Ability to Compensate

In our last decision, among other things, we upheld the director's finding that the prospective employer's two bank account statements showing an average balance of \$897 and \$1,743 over the last twelve months were insufficient to establish that the church had the necessary funds to provide food, clothing, transportation, or medical expenses to the petitioner. We also found that the budget that was submitted on appeal, which showed \$300 in monthly income from church members for the petitioner, was inconsistent with the evidence initially submitted with the Form I-360. We stated that the petitioner had not initially indicated any monthly income and that there was no explanation as to why this monthly income had not previously been mentioned. We noted that there was no evidence that the petitioner actually received such income or how the church could reasonably rely on \$300 per month from church members. We also found that the church did not provide any IRS documentation as required by 8 C.F.R. § 204.5(m)(10).

In support of the instant motion to reopen, the petitioner submits a letter stating that the church provides for his daily needs, including room and board, food, clothing, medical expenses, transportation, utilities, and "in-kind gifts." He also submits two of the church's updated bank statements for the same bank accounts previously submitted, now showing an average balance of \$712 and \$636 over the previous twelve months. In addition, the petitioner submits the same letter from Pastor [REDACTED] that was previously submitted on appeal, but is now dated November 5, 2014. The petitioner also submits a new monthly income and expenditure report for the petition that shows an increase in income of \$100, an increase of \$50 in the amount provided for clothing, an increase of \$50 in the amount designated as basic necessities, a \$10 increase in transportation, and that now shows \$100 for "medical."

The evidence submitted with the motion does not sufficiently address the deficiencies outlined in our last decision. The updated bank statements show account balances that are less than had previously been stated and do not establish that the prospective employer has sufficient funds to support the petitioner in any way. The petitioner does not address why his purported income from church members was not previously mentioned with the initial filing of the Form I-360 or in response to the RFE, and no evidence that he has received either \$300 per month or \$400 per month from the congregation or that the church has ever received these funds on his behalf. The petitioner has also not addressed the issue that part of his compensation (e.g., lodging) will be provided by a church member rather than by the prospective employer as required by 8 C.F.R. § 204.5(m)(7)(xi). There also remains no IRS documentation or an explanation for its absence as required by 8 C.F.R. § 204.5(m)(10). Therefore, the petitioner has not established the prospective employer's ability or intent to compensate him.

III. Two-Year Prior Work Experience

In our previous decision, we concluded, among other things, that there was insufficient evidence to support the petitioner's contention that he worked for the prospective employer as well as for a church in Nigeria for the two-year period immediately preceding the date the Form I-360 was filed.

We specifically found that the petitioner's previous employment in Nigeria did not include dates or job duties. We also noted that there was no IRS documentation or other evidence relating to the petitioner's prior employment pursuant to C.F.R. § 204.5(m)(11).

The petitioner does not address these deficiencies in his motion to reopen and, therefore, has abandoned the issue. *See, e.g., Sepulveda v. U.S. Atty. Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005). Accordingly, the petitioner has not established that he has the requisite two years of qualifying religious work experience.

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 motion to reconsider is denied, the motion to reopen is granted, and the petition remains denied.