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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

AUG 19 2003

File: 
LIN 01 087 50727

Office: NEBRASKA SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:

Petition: 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:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska Service Center. An appeal was dismissed by the Administrative Appeals Office (AAO). A subsequent motion to reopen had been rejected by the AAO. A motion to reconsider is now before the AAO. The motion will be granted. The previous decision by the director of the AAO will be affirmed.

The petitioner is a church. It seeks classification of 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 and pastor of its Arabic fellowship. The director determined that the petitioner had failed to establish that the beneficiary had been continuously performing the duties of a qualifying religious vocation or occupation throughout the two-year period immediately preceding the filing date of the petition. The director also found that the petitioner had not established that the beneficiary was qualified to perform the duties of a religious worker.

Relevant History

Because of the numerous special immigrant religious worker petitions, appeals, and motions filed on behalf of the beneficiary, a brief summary shall be provided.

On June 15, 1998, the [REDACTED], of Missouri, withdrew the petition that had been filed on behalf of the beneficiary at the Vermont Service Center in January 1998. The petitioner stated that the beneficiary had relocated to the "West Coast" from Pennsylvania and that the organization where he was currently situated would be better suited to file the petition on his behalf.

The petition filed at the California Service Center [WAC98-213-52065], was dismissed on appeal to the AAO on October 17, 2001. The decision governing the petition filed at the California Service Center indicated that the beneficiary had not been of the same denomination as the petitioner, and did not join the petitioner's denomination until March 2, 1998, having been affiliated with the [REDACTED] from 1995 to 1998, and having had a previous petition filed on his behalf by that organization. In this decision, the director of the AAO also found that the petitioner had failed to demonstrate that the beneficiary qualified as a minister; that the beneficiary had been performing the duties of the position for the two years immediately preceding the filing of the petition; that the petitioner had the ability to pay the beneficiary the proffered wage; and that the petitioner had extended a valid job offer to the beneficiary.

A Form I-213, Record of Deportable/Inadmissible Alien, issued on March 23, 2003, states, in pertinent part:

The subject last entered the United States at New York City, NY, as a nonimmigrant student on January 13, 1995; he was admitted D/S (Duration of Status). The subject graduated from Multnomah Biblical Seminary on December 19, 2001, thus ending the duration of his status as an F-1. According to CLAIMS, the INS denied an I-539 he filed on June 25, 2002. The subject filed an I-360 as a special immigrant religious worker on January 22, 1998, but withdrew said petition on July 15, 1998. The subject subsequently filed another I-360 with the California Service Center, but it was denied on September 15, 2000. He filed an appeal that was dismissed on October 17, 2001. He filed another I-360 with the Nebraska Service Center, but it too was denied on July 25, 2001. The appeal of that denial was dismissed on June 28, 2002. He filed a Motion to Reopen and Reconsider I-360 Petition for Special Immigrant Religious Worker with the Administrative Appeals Office that is currently pending (as of 03/21/03). BCIS also indicated that he has been working in the US without INS/BCIS authorization since 1998.... Before his last entry, the subject was admitted as a J-1 nonimmigrant at New York City, NY until September 22, 1992.

The record indicates that the beneficiary now has filed, or had filed on his behalf, petitions at three out of the four of the Bureau's Service Centers.

Current Petition before the AAO

On July 25, 2001, the director of the Nebraska Service Center denied the Form I-360, Petition for Amerasian, Widow, or Special Immigrant, filed on January 22, 2001. An appeal was filed with the AAO, and on June 28, 2002, the director of the AAO upheld the decision of the director of the Nebraska Service Center. Counsel subsequently filed a motion to reopen based on the decision dated June 28, 2002. The director of the AAO found the motion to be untimely filed, and rejected the motion on March 31, 2003.

In his decision dated June 28, 2002, the director of the AAO found that the petitioner had failed to establish that the beneficiary had been solely engaged in the religious vocation for at least the two years preceding the filing of the petition. The director also found that the petitioner had not established that it had extended a valid job offer to the beneficiary or established its ability to pay the beneficiary the proffered wage.

The rejection of the motion issued by the AAO is dated March 31, 2003, and is to the Gresham Methodist Church, Gresham, Oregon. In counsel's brief in support of that motion (dated July 15, 2002), he stated that the beneficiary was recently ordained as a minister, and that this was the "new fact" to be presented to

warrant a reopening of the case. As the petition was filed on January 22, 2001, this cannot be considered as evidence. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

In the current motion to reconsider, filed on June 16, 2003, counsel asserts that the motion to reopen was timely filed, and presents a United States Postal Service receipt and letter indicating delivery of a postal item to the appropriate address of the Bureau on July 29, 2002. Counsel asks that the motion to reconsider be reviewed on its merits, and submits two new briefs, dated April 24 and June 11, 2003.

It is noted that although counsel requests that the motion rejected on March 31, 2003, be reconsidered, counsel submits a new motion dated June 11, 2003. This motion is on behalf of the Arabic Christian Church, for which there exists no previous Form I-360, appeal, or motion. Counsel also presents a photocopy of a Form I-360 petition, indicating [REDACTED] of [REDACTED] as the petitioner. This does not correspond to the previous filings relevant to this petitioner, as the petition and all subsequent appeal and motion filings correspond to the [REDACTED]. The Form I-360 dated June 11, 2003 has not been properly filed by the petitioner. Therefore, the only recognized petitioner in this motion shall continue to be the [REDACTED].

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The first issue raised by the director is whether the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing date of the petition.

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 October 1, 2003, 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 October 1, 2003, 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 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).

8 C.F.R. § 204.5(m)(1) states, in pertinent part:

Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or 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. All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

The petition was filed on January 22, 2001, by the [REDACTED]. Therefore, the petitioner must establish that the beneficiary was working continuously as a religious worker from January 22, 1999 until January 22, 2001. The petitioner indicated that the beneficiary last entered the United States on January 29, 1995, as an F-1 student, authorized to pursue a Master of Theology degree program through December 15, 1999. The record reflects that the beneficiary remained beyond his authorized stay and has resided in the United States in unlawful status since that time.

The petitioner also indicated that the beneficiary had been employed without authorization, but failed to explain the nature of the employment, as required. In a previous submission dated July 3, 2000, the beneficiary stated that he had worked during "the summer of 1997 off campus" to pay his school tuition. It is noted that the only Form I-20 A-B, Certificate of Eligibility for Nonimmigrant (F-1) Student Status, contained in the record, dated January 1, 1994, from Nyack College, Nyack, New York, fails to indicate that any employment authorization was granted to the beneficiary by the designated school official. Further, the Form I-20A/B also indicates a transfer from "Zion Bible Institute."

On motion, counsel states that the beneficiary has been a fully authorized minister since June 1998. Counsel then states that the AAO is incorrect in its decision, and that a minister need not be solely a minister, nor must the employment be full-time during the two-year requisite period. Counsel refers to two previously issued decisions in his analysis. These cases have no direct relevance to the petitioner's particular case. Counsel also states that the AAO has imposed a requirement that is not authorized by law or relevant legal precedent decision. Counsel asserts that the beneficiary was not only a full-time minister, but a seminary student as well. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1990).

In an undated document, the "Job Offer" of an unidentified religious organization is indicated as being for a "Pastor of Arabic Fellowship" with the position's mission identified as "To carry out the purpose of the church by preaching the Word, equipping the saints, and shepherding the flock." This job offer indicates that the holder of the position is slated to report to the Arabic Fellowship Board, and will require 40 hours of work a week. Specific religious training required to fulfill the duties of the position is listed as:

- A. Bachelor's degree;
- B. College degree or coursework in biblical studies (Biblical Studies, 6 credits, Theology, 6 credits, Pastoral and Practical Studies, 6 credits);
- C. Fluency in Arabic (spoken and written).

In a letter dated May 21, 2001, the superintendent of the Oregon Conference of the Free Methodist Church stated that the beneficiary had served as the pastor of the Arabic Fellowship from March 2, 1998 to the present, and that he has been a member of that religious denomination since June 29, 1998. This points to the discrepancy that the petitioner is indicating that the beneficiary served as a pastor for the petitioner prior to even becoming a member of the denomination.

In a letter dated December 21, 2000, the secretary of the Oregon

Conference of the Free Methodist Church stated that the beneficiary "has been serving under pastoral appointment" in the Free Methodist Church of North America, Oregon Conference, since June 29, 1998.

Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Although the record does list some of the duties of the beneficiary, it does not provide a comprehensive description of the beneficiary's activities during the two-year period immediately preceding the filing date of the petition. The record, however, does indicate that the beneficiary attended school subsequently to the filing of the petition. An ordained priest engaged in advanced religious studies, who continues to function as a minister during the period of study, would meet the experience requirement. See *Matter of Z-*, 5 I&N Dec. 700 (Comm. 1954). A student of theology cannot be considered as having been continuously working in a religious vocation or occupation, notwithstanding the fact that the beneficiary actively participated, and continues to participate, in the activities of the church. The unsupported assertions contained in the record do not adequately establish that the beneficiary was continuously performing the duties of a qualifying religious vocation or occupation throughout the two-year period immediately preceding the filing date of the petition. Therefore, the previous decision of the director of the AAO is affirmed and the petition must be denied.

Another issue raised by the directors is that 8 C.F.R. § 204.5(m)(3)(ii) requires a petitioner for a special immigrant religious worker to show that the alien is qualified in the religious occupation. A petitioner must establish that the beneficiary is qualified as defined in these proceedings. 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

- A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.
- B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by

authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

- C) That, if the alien is a religious professional, he or she has at least a United States baccalaureate or its foreign equivalent required for entry into the religious profession. In all professional cases, an official academic record showing that the alien has the required degree must be submitted; or
- D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

In addressing this requirement, the petitioner stated in an undated letter that the beneficiary "was authorized as a minister" on June 29, 1998, and that "about one year later" was recognized as a "conference ministerial candidate." The petitioner further stated that the beneficiary would be ordained after being granted permanent resident status. Counsel argues that this is sufficient to satisfy the regulation pertaining to the qualifications of a minister.

In the decision dated June 28, 2002, the director of the AAO found that the petitioner had not adequately identified the standards required to be recognized as a minister in the denomination or demonstrated that the beneficiary satisfied such standards. The director also found that the petitioner had failed to explain who had authorized the beneficiary to be recognized as a minister or the authority of the individual to do so. Finally, the director found that the petitioner had not provided a letter from an authorized official of the denomination verifying the denomination's recognition of the beneficiary's credentials as a minister. To establish that an individual is qualified in a religious position and has been carrying on such a position, acceptable evidence includes a letter from a Superior or Principal of the denomination in the United States. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). Accordingly, the director found that the petitioner had failed to establish if and when the beneficiary became a duly authorized minister of the Free Methodist denomination.

On motion, counsel argues that on June 29, 1999, the Oregon Annual Conference of the Methodist Church promoted the beneficiary to be

a "conference ministerial candidate" and claims that this is a higher step in the hierarchy of authorized ministers for the petitioner. Counsel also states that the beneficiary "has been engaged solely and continuously as an authorized minister with the Free Methodist denomination since June 28, 1998."

In a letter dated July 19, 2002, the Superintendent of the Oregon Conference of the Free Methodist Church stated that the beneficiary was given the title of "conference ministerial candidate" on June 29, 1999, and was previously recognized as a "licensed local ministerial candidate" as of June 28, 1998, in that he met the "preliminary educational requirements (a minimum of 30 semester credits in liberal arts courses, and three courses on Christian Doctrine, Bible study and Church History and Polity.)" The superintendent stated that within its denomination, a "conference ministerial candidate" is "an authorized minister," and that titles such as "local ministerial candidate," "conference ministerial candidate," "deacon," and "elder" are used to "describe where a person stands in the hierarchy of "authorized minister." The superintendent then asserted that the beneficiary is "a duly and fully authorized minister in our denomination." The writer also stated:

As the Superintendent of the Oregon Conference in the Free Methodist Church of North America, I hereby verify the denomination's recognition of Mr. [REDACTED] credentials. Moreover, Mr. [REDACTED] has been engaged "solely and continuously" as an authorized minister within the Free Methodist denomination since June 28, 1998.

The petitioner, however, also has submitted portions of its Free Methodist Church of North America, Book of Discipline, 1995, Ministers and Annual Conference, which states, in pertinent part:

A local ministerial candidate is a member of the Free Methodist Church who is seriously considering a call to full-time Christian ministry.... After four renewals, if the local ministerial candidate has not become a conference ministerial candidate or is not in college or seminary with that objective in mind, the license will be discontinued. The person shall then be advised to serve in another relationship, e.g., as a licensed lay minister.

As defined in the petitioner's publication, a "conference ministerial candidate" is then allowed a maximum of four years to complete the course of study required for admission into the conference in "full membership." The requirements for full membership specifically state:

A minister may be received into full membership and be reported as having a seat in the conference after

having been employed in pastoral work two successive years subsequent to reception as a conference ministerial candidate and after satisfactorily completing the required course of study (Par. B/477.3) and giving satisfactory answers to the following questions[.]

In the section under the denomination's "Commission of Education," the steps to ordination as a minister are indicated to include first being called as a local ministerial candidate, then a conference ministerial candidate, and then a deacon (through the taking of one of three tracks--seminary, college, or correspondence courses). The requirements for full ministry appear to have been omitted from the petitioner's submissions.

Included in the record is a "Conference Ministerial Candidate" certificate issued on June 13, 1999 to the beneficiary by the Oregon Annual Conference of the Free Methodist Church.

Counsel states that the AAO acted inappropriately in its application of the statute to the facts of the instant petition. Counsel argues that a "conference ministerial candidate" is a certification of the denomination's authorization of the beneficiary as a minister, and that ministerial candidates are "ministers" and, at the same time, also in "the ordination process." *Webster's II New College Dictionary*, 2001 edition, defines "candidate" as "2. One apt to gain a certain position, or come to a certain fate." Counsel's statement that a candidate for the ministry and a full minister are equivalent positions is not supported by the evidence submitted or by the common definition of candidacy.

The petitioner also submitted the following documentation regarding the beneficiary's qualifications:

- (1) A certificate issued by the Free Methodist Church, Salem, Oregon, on June 28, 2002, recognizing the beneficiary as a deacon of the Free Methodist Church, with the authority to officiate at marriages, burials, and baptisms;
- (2) Evidence of the beneficiary's receipt of a degree from the Multnomah Biblical Seminary, Portland, Oregon, indicating the beneficiary's completion of a Master of Divinity program with that seminary on December 19, 2001. The affiliation and denomination of the seminary have not been further identified;
- (3) A "ministerial credentialing service" continuing education certificate issued to the beneficiary for his completion of a course entitled "Wesleyan Theology" on May 7, 2001;
- (4) A statement from the "Ain Shams University, Faculty of Arts, indicating that the beneficiary completed a "B.A. Honours (Department of English language and Literature)" degree in 1988;
- (5) A letter dated December 18, 1997 from the Director of Student

Services of the Moravian Theological Seminary, at an unspecified location, stating that the beneficiary was a "full-time student in the Master of Divinity degree at the seminary, having registered during the fall 1997 and spring 1998 semesters;

- (6) Another letter, dated December 18, 1997 from the Alliance Theological Seminary, Nyack, New York, stating that the beneficiary was enrolled at that seminary from January 23, 1995, having withdrawn from the school on August 29, 1996; and,
- (7) A Certificate of Ordination dated October 15, 1992, stating that the beneficiary was ordained as a "Minister of Christ" by the General Council of Apostolic Churches, in Cairo, Egypt.

The petition was filed on January 22, 2001. Therefore, items (1), (2), and (3) above, cannot be considered for purposes of this petition. *Matter of Katigbak, supra.*

Based upon the evidence submitted, the petitioner has not established that the beneficiary is qualified to engage in a religious vocation or occupation. For this additional reason, the petition may not be approved.

Another issue discussed by the director of the AAO was that the petitioner had not established that the beneficiary has received a valid job offer. 8 C.F.R. § 204.5(m)(4) requires that each petition for a religious worker must be accompanied by a qualifying job offer from an authorized official of the religious organization at which the alien will be employed in the United States. The official must state the terms of payment for services or other remuneration. In addition, 8 C.F.R. § 204.5(g)(2) requires that the employing religious organization submit documentation to establish that it has had the ability to pay the alien the proffered wage since the filing date of the petition. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

On motion, counsel asserts that the beneficiary was offered a salary by the petitioner of \$1,600 a month "in order to be solely carrying out the vocation of a minister" and that the beneficiary "[s]ince taking the job on March 2, 1998," has not been dependent on supplemental employment or the solicitation of funds for support. Counsel indicates that copies of church financial reports and the beneficiary's tax forms are enclosed.

Counsel has submitted the annual, unaudited financial report for the Arabic Christian Church for the years of 2001-2002, indicating that approximately half of the total income of the church was paid to the beneficiary in salary for each of those years. Again, this evidence cannot be considered as it was generated after the filing date of the petition. *Matter of Katigbak, supra.* The unaudited financial statement of the Arabic Christian Church indicates its

total income for 1998 as \$22,538.77, with expenditures totaling \$19,555.41. The expenses include a listing for a "donation" to the beneficiary in the amount of \$15,200. The statement for 1999 indicates an income of \$26,242.66, with payment to the beneficiary in the amount of \$20,800. These financial statements cannot be accepted as evidence as these are not audited financial statements. Furthermore, these are not the financial statements of the petitioner, but of the Arabic Christian Church, and therefore bear no weight in this proceeding.

Counsel argues that the petitioner has submitted the correct documentation to establish its ability to pay the beneficiary the proffered wage. Counsel states that the petitioner also submitted bank account statements and that the petitioner has met and exceeded the regulatory requirements to demonstrate its ability to pay the proffered wage.

Also included in the record are Internal Revenue Service (IRS) Forms 1099-Misc from the petitioner for 1998 indicating payment made to the beneficiary for \$15,200.00 as "non-employee compensation," in 1999 in the amount of \$20,800, and in 2000, in the amount of \$21,600.

In letters dated June 7 and December 20, 2000, however, the Secretary/Bookkeeper of the petitioner stated that the beneficiary has been financially supported by "donations from his friends." She stated that this money is deposited into an account and paid to the beneficiary in "equal monthly installments."

The petitioner also has submitted some of its bank statements for 1999 and 2000, indicating average monthly balances of between \$1,870 and \$39,003.

The record contains insufficient evidence to establish either that the beneficiary was paid wages by the petitioning organization throughout the two years immediately preceding the filing date of the petition, or that the work performed was on other than a volunteer basis. The petitioner has not submitted the required annual reports, federal tax returns, or audited financial statements. The petitioner has not adequately established that the needs of the petitioning entity will provide permanent, full-time religious work for the beneficiary in the future. The petitioner has not demonstrated that it has extended a valid job offer to the beneficiary, or established its ability to pay the beneficiary the proffered wage. For these additional reasons, the petition may not be approved.

Beyond the decision of the director, it also is noted that the petitioner did not establish that the position offered to the beneficiary qualifies as that of a religious worker. Evidence submitted by the petitioner and previously discussed indicates that the beneficiary worked for the petitioner as a religious worker even before he became a member of the petitioner's

denomination. This leads to the conclusion that the petitioner is indicating that members of its denomination are considered to be religious workers from (and even prior to) the date of entry into the denomination, thus creating no distinction between regular members of the congregation and those identified as religious workers. As the appeal will be dismissed on the grounds discussed, this issue need not be examined further.

The discrepancies in the petitioner's submissions have not been explained satisfactorily. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988).

In reviewing an immigrant visa petition, the Bureau must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

Finally, under 8 C.F.R. § 103.5(a)(1)(iv), it is noted for the record that, unless the Bureau directs otherwise, **the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date** [emphasis supplied].

ORDER: The previous decision of the director of the AAO is affirmed.