U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

C1

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: SEP 23 2005
EAC 01 230 60473

IN RE: Petitioner: [redacted]
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:

[redacted]

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identity may be deleted to prevent clearly unwarranted invasion of personal privacy

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the employment-based immigrant visa petition, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The AAO subsequently reopened the proceeding on the petitioner's motion, and affirmed the prior denial. The AAO has since reopened the matter on its own motion. The AAO's previous decision will be affirmed and the petition will be denied.

The essential fact to be proven by the petitioner in this proceeding is whether Father the beneficiary of the petition, carried on the vocation of a priest in the Romanian Orthodox Church continuously for the 2-year period prior to filing this petition. The petitioner is a church and the beneficiary is an ordained priest. The petitioner 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 assistant pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as an assistant pastor immediately preceding the filing date of the petition.[1] The AAO affirmed the director's decision and dismissed the appeal.

On June 17, 2005, the AAO moved to reopen the proceeding, and issued a request for evidence (RFE) to inform the petitioner of deficiencies and discrepancies in the materials submitted previously. The AAO received the petitioner's response to the RFE on September 12, 2005.

In an introductory passage, counsel states: "The overall tone of the RFE is anti-religious and fails to recognize the Romanian Orthodox Church as a well-recognized and legitimate religious entity. Rather, the letter casts aspersions on the sincerity of a Priest and a Diocese of a church which has its roots in original Christian practices." Whether the Romanian Orthodox Church is a legitimate and authentic religious denomination is not in question in this proceeding. The AAO takes administrative notice that the Romanian Orthodox Church is one of the autocephalous or autonomous Eastern Orthodox churches, second only to the Russian Orthodox Church in size. The petitioner is a bona fide nonprofit, religious organization in the United States.

Instead, this proceeding requires the AAO to evaluate the credibility of the petitioner's evidence. As for any alleged "aspersions," the AAO notes that section 291 of the Act, 8 U.S.C. § 1361, places the burden of proof solely on the party seeking benefits. Section 204(b) of the Act, 8 U.S.C. § 1154(b), allows the approval of immigrant visa petitions only upon a determination that "the facts stated in the petition are true." Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the

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[1] The beneficiary originally entered the United States on November 9, 1998 as a B-2 nonimmigrant tourist, overstayed his assigned departure date, and has remained in the United States since that date with no lawful immigration status. The petitioner filed the present petition on April 30, 2001, and therefore, pursuant to 8 C.F.R. § 204.1(c), that date would be the priority date if the petition were approved. An April 30, 2001 priority date is the latest possible date that would qualify the beneficiary for benefits under section 245(i) of the Act, 8 U.S.C. § 1255(i), allowing the beneficiary to pay an additional sum of $1,000 to excuse his lengthy unlawful presence. While a newly-filed petition may possibly have a better chance of being approved, such a petition would have a later filing date that would leave the beneficiary ineligible for the provisions of section 245(i) of the Act. This appears to explain the petitioner's desire to retain an April 2001 filing date rather than begin anew with another petition. At the same time, to retain the April 2001 filing date, the petitioner must provide crucial evidence regarding the beneficiary's whereabouts and duties during the two-year period immediately preceding April 30, 2001. *See* section 101(a)(27)(C)(i) of the Act, 8 U.S.C. § 1101(a)(27)(C)(i), and 8 C.F.R. §§ 204.5(m)(1) and (3)(ii)(A). More recent evidence of the beneficiary's activity as a priest, no matter how thorough or unambiguous, cannot meet the statutory or regulatory requirements regarding the two years prior to the filing date.

remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988). False, contradictory, or unverifiable claims inherently prevent a finding that the petitioner's claims are true. In this instance, the petitioner has presented inconsistent and even contradictory claims, and documents that contradict other documents. These discrepancies necessarily color the credibility of the petitioner's claims.

Counsel protests that the RFE raised "factors and issues not raised in prior decisions." However, a petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis). If an RFE is not the proper forum to raise these issues, counsel does not explain where these issues *should* be raised. The reason that the AAO did not raise these issues previously is because the issues arose from evidence that was not previously considered in any detail. Thus, the RFE marks the AAO's first opportunity to comment on that evidence. Furthermore, this objection does not overcome the disqualifying nature of those factors.

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, 2008, 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, 2008, 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 regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work.

The AAO's RFE addressed various basic issues. We shall now discuss these issues and the petitioner's responses to each of them. Regarding the first issue, the AAO stated:

> The record is inconsistent regarding the source and extent of the beneficiary's compensation during the 1999-2001 qualifying period. In an affidavit dated February 25, 2002, the beneficiary states: "I was remunerated $400.00 per week for my living expenses, which included in part some donations from parishioners." Later, in a statement dated October 20, 2004, the beneficiary states: "I have been employed *without a salary*. While it is difficult to work *without financial compensation* I am committed to the work of the church" (emphasis added). It is difficult to reconcile the beneficiary's statement that he "was remunerated $400.00 per week" with his later claim that he worked "without financial compensation"; these assertions appear to contradict one another.

In response, counsel states:

> To the extent that [the beneficiary's] letter of October 2004 indicates that he received no salary or remuneration current undersigned counsel acknowledges his responsibility for the confusion. Counsel assisted [the beneficiary], whose English is still not fluent, in the preparation of that statement. My understanding of the situation was that there was no salary or remuneration in the classic American sense of the term. For that reason, we structured the statement as it was. However, throughout the rest of the submissions of December 2004, we were clear that [the beneficiary] received cash and in-kind payments to compensate him. Therefore, this discrepancy is due more to my own lack of understanding of the situation, as the attorney on the case, than in any intent on the part of [the beneficiary] or the Church to mislead.

We note that counsel's explanation rests upon the premise that the beneficiary's poor grasp of English prevents him from fully understanding the content of English-language documents presented for his signature. We shall revisit this issue elsewhere in this decision.

If the October 2004 letter stopped at "I have been employed without a salary," we could afford more weight to counsel's statement that the intent was simply to indicate that the beneficiary received "no salary or remuneration in the classic American sense of the term." In fact, however, the next sentence in that letter reads: "While it is difficult to work without financial compensation I am committed to the work of the church." The clear implication of this passage is that the beneficiary experienced hardship owing to the lack of "financial compensation." Counsel's explanation seems to imply that the beneficiary was paid regularly, but it was "difficult" *for the reason* that the payments were not specifically called a "salary." The nature of

this difficulty is never explained. The October 2004 letter, written by counsel and signed by the beneficiary, very strongly implies that the beneficiary was not paid *at all*. If this discrepancy arose from counsel's "lack of understanding of the situation," then other statements made by counsel at that time must be viewed through the prism of the now-admitted "lack of understanding."

After the discussion of the beneficiary's own apparently contradictory claims, the AAO also stated:

> In a letter dated March 6, 2002, the chancellor of the Romanian Orthodox Archdiocese in America and Canada, stated the petitioning church "is currently providing [the beneficiary] with an apartment and a salary commensurate with the guidelines of our Archdiocese." In a later letter, dated September 10, 2003 states that the beneficiary "was provided an apartment including utilities by the parish as well as an appropriate salary either in cash or in-kind, *sometimes paid by the parish* and *sometimes* by individual parishioners" (emphasis added). Thus, the record contains contradictory claims regarding whether the beneficiary received a salary. There is also some question about the source of the beneficiary's compensation; some letters state that the expense was split between the parish itself and individual parishioners, whereas other letters appear to indicate that parishioners alone bore this burden, which is why the church has no financial documentation of any payments to the beneficiary.

In response, the petitioner submits a new affidavit from who asserts that the petitioning church "descended into chaos," "following the collapse of communism in Eastern Europe" and the removal of the petitioner's parish priest "by a group of self-interested persons. indicates that this situation severely disrupted record-keeping procedures at the petitioning church. tates: "The parish, either through regular or special parishioner contributions, provided [the beneficiary] with sufficient resources . . . either in cash or in-kind," which is said to be the typical means by which Romanian Orthodox parishes compensate their clergy, notwithstanding the petitioner's earlier submission of what appear to be check stubs for payments to the beneficiary's predecesso as and is based in Massachusetts and therefore it is not clear to what degre personally witnessed the events in Pennsylvania and New Jersey that he relates. He provides no church records or other documents.

It appears that the beneficiary received some form of payments deriving from parishioners' contributions, but we cannot determine the nature or amount of those payments, and the petitioner admits that no records were kept of these payments.

A related issue concerns the beneficiary's housing arrangements. We are satisfied with the petitioner's explanation that some documents show a Hagerstown, Maryland address for the beneficiary because he obtained a driver's license while briefly staying at that address.

Several of the remaining issues concern various aspects of the petitioner's inconsistent descriptions of the beneficiary's work. In a July 31, 2003 decision regarding the present petition, the AAO stated: "The petitioner has . . . submitted a 'weekly schedule of activities.'" The AAO reproduced this list, and elsewhere in the same 2003 decision, the AAO stated:

> The petitioner submits a series of documents, collectively labeled as the beneficiary's weekly work schedule from April 1999 to September 14, 2002. It is not clear when the individual pages of the schedule were printed. . . . There is no reason to believe that the schedule . . . constitutes persuasive, contemporaneous evidence of the beneficiary's work.

Counsel refers to this detailed schedule as a "calendar." We shall do the same here, for consistency and to avoid confusion with the one-page "weekly schedule of activities."

The petitioner filed a motion to reopen on August 21, 2003, stating that further materials would be submitted "within 30 days." As the AAO has previously noted, the AAO has no regulatory authority to accept supplements to a motion once it has been filed. Even if such authority had existed, the petitioner submitted nothing during the initial 30-day period. Instead, a supplementary submission arrived well over a year later, on December 22, 2004. This submission included contemporaneous documentation from the 1999-2001 qualifying period. In a February 24, 2005 decision, the AAO refused to consider the petitioner's untimely submission, and limited consideration to the petitioner's August 2003 submission that constituted the original motion.

Following litigation in federal court,[2] the AAO agreed to reopen the matter in order to consider both the calendar and the December 2004 supplement. In examining this evidence, the AAO noted several conflicts between the calendar and the few pieces of contemporaneous evidence that have surfaced. In fact, the AAO was unable to find a single instance in which a specific piece of contemporaneous evidence matched a specific entry on the calendar. The AAO listed these conflicts in its RFE. In response, counsel does not dispute any of these conflicts, but asserts "in any conflict between that calendar and specific contemporaneous documentation . . . the contemporaneous documentation is correct."

Counsel further states: "[w]e also note that the calendar purporting to show [the beneficiary's] time from 1999-2002 is not accurate. . . . As a result, the only thing the computer calendar really provides is a more general look at a regular schedule of events – like services and visitations – but not irregular work – like travel and the renovations." The petitioner had long ago provided a "general look at a regular schedule," in the form of the single weekly schedule, to illustrate a typical week at the church, and the AAO already discussed this "weekly schedule of activities" in its 2003 decision. Thus, the petitioner's submission of over a hundred additional "general" schedules adds nothing to the record that would support a favorable finding; the calendar is, therefore, superfluous at best.

Now that the AAO has analyzed the calendar in detail, and has found numerous discrepancies in the calendar, counsel admits "the calendar . . . is not accurate," and that it was compiled well after the qualifying period. Thus, in this latest submission, counsel has stipulated the very grounds by which the AAO had originally refused to consider the calendar. Only when the AAO provided the petitioner with irrefutable proof of the calendar's inaccuracy did counsel attempt to recast the calendar as a "general" overview of the beneficiary's schedule.

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[2] *Holy Trinity Romanian Orthodox Church et al. v.* [redacted], 05-cv-01413-JG (E.D. Penn., 2005)

The new affidavit signed by the beneficiary discusses the preparation of the calendar:

> In September 2002 I prepared a weekly calendar of my activities from April 1999 through September 14, 2002. I did this on the computer at the parish but the original source of information were [sic] written personal calendars which I have since thrown out. I prepared this calendar on the instruction of the lawyer who was handling the case at that time. I do not believe that I understood her very well, but I believed at the time that I was supposed to show my activity for each individual day. The problem was that my written calendars did not show the individual appointments the way the final computer calendar did. I felt I needed to show what my regular week was like, so most of the weeks in the computer calendar are almost identical. If there is any place where the computer calendar differs with specific events from other evidence then I believe that the computer calendar is incorrect.
>
> The computer calendar is useful because it does reflect what my regular schedule was but it does not include many of the special event or things that occurred one time – like visiting other parishes away from Philadelphia.

By September 2002, the petitioner had already appealed the initial denial of the petition. The petitioner was, therefore, on notice that serious questions existed as to the nature and extent of the beneficiary's work during the qualifying period. Given this context, it seems inexplicable that detailed *contemporaneous* evidence, in the form of the beneficiary's "written personal calendars," would be "thrown out" in favor of an after-the-fact calendar that the beneficiary knew to be in conflict with the actual record of events.

Also, the calendar is not simply dozens of identical pages showing the same schedule each week. The schedule purports to show one-time events and other variations. For example, as noted in the RFE, the calendar indicates that the beneficiary was "[h]elping for the roof repairs" from 8:00 a.m. to 5:00 p.m. on May 24, 1999. We have seen nothing in the record that would cause us to conclude that the calendar is in any way a reliable or sufficient record of the beneficiary's activities, although the calendar was originally submitted as exactly that. It appears, instead, that at least some of the supposedly specific entries on the calendar were fabricated after the fact to create the *appearance* of a detailed record. Pursuant to *Matter of Ho*, the credibility issues arising from the calendar do not simply disperse with counsel's admission that the document "is not accurate." *Id.* at 586.

The next issue concerns the beneficiary's work at another church. In its RFE, the AAO wrote:

> You previously submitted a letter from an official of St. Michael & Gabriel Romanian Orthodox Church in Roebling, New Jersey, indicating that the beneficiary "has been active in our Church over the past one year." The letter is not dated, but you submitted the letter in May 2000. An accompanying letter from then president of your church council, states that the beneficiary has worked at the church in Roebling "[o]ver the past year." letter is dated May 8, 2000. Thus, officials of your church and the church in Roebling both indicate that the beneficiary had performed work at the Roebling church from c. May 1999 to May 2000.

Both letters indicated that this arrangement was to continue into the future, with the Roebling church contributing toward the beneficiary's compensation.

**Please provide dates and times showing when (during the 1999-2001 qualifying period) the beneficiary was at the church in Roebling. Submit contemporaneous documentation from the church in Roebling to establish that the beneficiary received the promised compensation, and to specify what exactly the beneficiary was doing while at that church. Please explain why the detailed hourly schedule you submitted does not mention any of the beneficiary's claimed visits to the church in Roebling.**

(Bold in original.)

In response to the RFE, the petitioner does not answer any of the requests that appeared in bold type in the original RFE. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). [redacted] states: "The Roebling parish had separated from the Archdiocese and part of [the beneficiary's] activities there were to explore bring [sic] that community back into canonical status." The new affidavit signed by the beneficiary contains a different explanation:

> Some of my work with [the petitioning church] has also involved visiting and working at other parishes in the immediate area. These are two parishes in particular, Saint Michael's in Roebling, New Jersey and Saint Constantin and Helen in Hagerstown, Maryland. . . . The work at Saint Michael's mostly involved helping them with religious functions because their priest at the time, Father [redacted] was older and about to retire. He was not able to do all of the work.

The petitioner neither submits anything new from the Roebling church nor explains the absence of such evidence. Officials from both churches stated, *at the time*, that the beneficiary was working in Roebling for $500 a month. Subsequently, the beneficiary himself prepared a calendar that made no mention of the Roebling church at all. The petitioner has now disavowed the calendar, but that does not change the fact that the petitioner previously attempted to secure immigration benefits for the beneficiary based on that calendar. We must consider the issue of the beneficiary's work in Roebling to be unresolved. Because the nature and extent of the beneficiary's duties is central to the claim of eligibility, we conclude that the petitioner has failed to submit requested evidence and thereby precluded a material line of inquiry.

The final issue involves the beneficiary's work at the petitioning church. Recent submissions have indicated that the beneficiary personally repaired the roof of the petitioner's church building. The discredited calendar shows one day devoted to such work; checks payable to a hardware store show that the beneficiary purchased supplies there; and various witnesses assert that the beneficiary has devoted a very considerable amount of time and effort to repairing the roof, refurbishing the bathroom, and so on.

In its RFE, the AAO wrote:

Please be advised that building maintenance is not qualifying religious work. The regulation at 8 C.F.R. § 204.5(m)(2) states that, for a minister, there must be a reasonable connection between the activities performed and the religious calling of the minister. Building renovations are not activities generally connected with the religious calling of a minister, and they do not become more so simply because the building being repaired is a church, any more than renovations to a hospital are connected with the profession of a surgeon. . . .

As noted above, the photograph showing the beneficiary on the roof of the church is dated May 26, 1999. The hourly schedule you provided does not indicate that he performed roof repairs that day; the tasks listed in the schedule for May 26, 1999 are "Matins," "Divine Liturgy," "Social Hour," "Bible School" and "Vesper." Also, the schedule includes "Shopping for church's needs" on only three days during the qualifying period: May 8, 2000; July 31, 2000; and February 12, 2001. The schedule does not list shopping on June 2-4, 1999, which are the dates on the checks payable to Home Depot.

As noted above, counsel has dismissed the discrepancies on the calendar by acknowledging the document to be "not accurate." Counsel's admission does not resolve the credibility issues arising from the petitioner's having submitted that document in the first place. With regard to the secular nature of building renovations, counsel deems the AAO's observations to be "especially offensive," and states:

> The work [the beneficiary] performed on Church renovations must be seen as religious work. He often did it with parishioners. Exhibit 1. The renovated church building made the congregation stronger and brought in more members. Exhibits 2 and 4. Physical work on a church building is a central function of a parish priest. Exhibits 3 and 9. That is something that [the beneficiary] already did in Romania. Exhibit 3.

Exhibit 1 is the new affidavit signed by the beneficiary. Exhibit 2 is [redacted]s new affidavit, in which he asserts that "[g]athering people around a physical project is a time-honored way in which one builds a sense of community and common purpose." Exhibit 3 is an English-language affidavit by the Archbishop of Suceava of Raduati in Romania, who states: "Part of [the beneficiary's] job as a priest in Romania was to build a church in the village of Todiresti, Suceava County, between 1994-1998, and also to attract parishioners from outside the church. In Romania, building a church is part of the religious duties of a priest." The reference to "building a church" is subject to interpretation, and could refer to "building" a church in the sense of organizing and uniting the congregation. There is no Exhibit 9. Only eight exhibits accompanied the petitioner's latest submission, and the exhibit list included in that submission shows only eight exhibits. The petitioner submits no objective, documentary evidence to show that carpentry/construction/renovation is generally viewed as a religious function routinely performed by clergy in the Romanian Orthodox denomination.

As noted in the AAO's 2003 decision, the petitioner had previously filed another petition on this beneficiary's behalf. As part of that first petition, in a letter dated May 10, 2000, George P. Sfedu, then president of the petitioner's church council, stated:

1. The church does not have <u>any</u> non-religious salaried employees. All the work (administrative or physical) is being performed by church council or volunteers. A list of [members of the] church council is attached.
2. The only salaried person is the parish priest. . . . The parish priest holds other employment as well (outside the church).

At the time of the above letter, the beneficiary was identified as the petitioner's assistant priest, meaning, necessarily, that the beneficiary was not a "salaried person" at the time (notwithstanding later specific references to a "salary" that the beneficiary was said always to have received). The reference to the parish priest's "other employment" also suggests that the position of parish priest at the petitioning church is not a full-time occupation, or at least was not so in 2000. More relevant to the specific issue under discussion is the issue of "physical" "work" at the church.

While did not identify "the parish priest," other documents appear to identify the individual as (the record does not reveal whether or not and the beneficiary are related). The list of church council members, dated 1999, shows fourteen names; it does not include the beneficiary's name. Thus, according to a letter written by the parish council president *during* the 1999-2001 qualifying period, the only individuals performing "physical" "work" in the church were fourteen named council members and "volunteers."[3] This contemporaneous claim is not consistent with the *after-the-fact* claim that, at the very time that wrote this letter, the beneficiary was receiving $400 per week and (among other things) repairing the roof of the church. Considering that wrote this letter specifically for the benefit of the beneficiary, it would be difficult for us to conclude that accidentally forgot to mention the beneficiary when he listed those who were performing "[a]ll the work (administrative or physical)" at the church.

If "[p]hysical work on a church building is a central function of a parish priest" as counsel now claims, then it is certainly a valid question to ask why early descriptions of the beneficiary's duties did not mention this work at all, to the point that a letter from the then-church council president appears to specifically exclude the beneficiary from a list of people performing "physical" "work" at the church. The "weekly schedule of activities" that accounted for the beneficiary's full working day did not include repairs or renovations, and, as noted above, the calendar that the beneficiary himself is said to have prepared showed only one day devoted to repairs. Thus, the petitioner's and the beneficiary's statements about these repairs have been highly inconsistent.

The final issue remaining to be addressed concerns the petitioner's ability to pay the beneficiary at the proffered level. In analyzing a petitioner's ability to pay the proffered wage, the fundamental focus is whether the employer is making a "realistic" or credible job offer and has the financial ability to satisfy the proffered wage. Matter of Great Wall, 16 I&N Dec. 142, 145 (Acting Reg. Comm. 1977). The regulation at 8 C.F.R. § 204.5(g)(2) states:

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[3] Whether or not meant "salary . . . in the classic American sense of the term," there is no evidence that he or anyone at the petitioning church equates the term "volunteer" with $400 per week plus housing and utilities.

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

The priority date of a petition filed for classification as a special immigrant under section 203(b)(4) of the Act shall be the date the completed, signed petition (including all initial evidence and the correct fee) is properly filed with the Service. 8 C.F.R. § 204.5(d). In this instance, the petition was filed on April 30, 2001. In its RFE, the AAO stated:

> Parish council president has stated that the beneficiary will receive "a weekly salary of $400.00 plus room and board. Our parish is financially capable to pay said salary." . . . Other officials have indicated that the church will also pay for the beneficiary's utilities. Therefore, you must establish that you have consistently had the ability to pay the beneficiary $400 per week (equal to $20,800 per year), plus food, housing costs, and utilities, since April 30, 2001. . . .
>
> You have submitted a letter, dated April 18, 2001, from o states: "If the parish for any reason cannot continue to meet these financial requirements, the Archdiocese will assume these responsibilities *while he is being reassigned to another parish.*" This arrangement does not establish your ability to compensate the beneficiary at the proffered rate; it establishes only that the beneficiary will cease to work for your parish if you are unable to pay. 8 C.F.R. § 204.5(g)(2) requires evidence that *the employer* has the ability to pay; not that there exists some other entity that will assume responsibility if the employer defaults.
>
> When considering your church's ability to pay, we turn to the translated minutes from the church's annual meeting on February 11, 2001. These minutes state, on page 37: "The financial situation of the church is somewhat critical. It is at its survival limit, having need of funds for emergency repairs."

The AAO noted that an unaudited "Financial Account" indicates that the church's entire income for 2000, from all sources, was less than $13,000, well short of the proffered annual salary of $20,800 (plus additional consideration for utilities and other expenses above and beyond the $400 weekly base wage). The AAO, therefore, indicated that the petition cannot be approved unless the petitioner is able to demonstrate that, over the course of eleven weeks in early 2001, the petitioner's financial situation went from the "critical . . . survival limit" to a consistent and continuous ability to pay the beneficiary's full level of compensation.

Counsel states:

> [T]he lack of documentation is a function of the culture of the Romanian Orthodox Church, [the petitioner's] record keeping, and [the beneficiary's] immigration status leaving him with no social security number. Therefore, the evidence in this regard is [the beneficiary's] affidavit, the affidavit of the current Council President, and the statement of Reverend Apostola, along with the evidence already submitted.

Given counsel's assertion that the beneficiary cannot be held responsible for the contents of his October 2004 letter, on the grounds that he did not fully understand its contents, we cannot see why the same logic does not apply to the beneficiary's newly submitted affidavit. Counsel seems to seek an impermissible double standard, in which unfavorable statements by the beneficiary must be disregarded because the beneficiary did not know what he was signing, but favorable statements by the beneficiary must be accepted as the best available evidence. The fact that the new affidavit states, in English, "[t]his affidavit has been translated for me and I confirm its contents" does not resolve this issue.

The new affidavit, signed by the beneficiary, indicates that the beneficiary was "given the money directly from the Sunday collection." Counsel asserts that the beneficiary "was paid by parishioners and from the Sunday collection before it was deposited to the bank," and therefore these funds would not appear in bank records or anywhere else.

The AAO has already served notice on the petitioner that the above-cited regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only *in addition to*, rather than *in place of*, the types of documentation required by the regulation. A memorandum from [redacted] Associate Director of Operations, *Determination of Ability to Pay under 8 CFR 204.5(g)(2)* (May 4, 2004), reiterates that "[t]he petitioner <u>must</u> submit a copy of at least one of these required documents." In this instance, the petitioner has not submitted any of the required types of evidence. The petitioner maintains that the beneficiary is paid from unrecorded funds taken directly from the collection plate. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Counsel cites no regulatory or statutory provision to indicate that the employer's admittedly poor and chaotic record keeping provides an exemption to the above regulations. If poor record keeping *did* provide such an exemption, it would appear to be an incentive for employers to fail to keep records (or to conceal or destroy those records).

Because the petitioner has not provided the required evidence to show that it has been, and continues to be, able to pay the beneficiary's proffered wage, we cannot submit a favorable finding in this regard.

Counsel states: "I see a man of God, doing God's work in a way that any person of faith can recognize. As evidenced by his letter of support, [redacted] also agrees with me in this opinion." The petitioner has submitted a letter from Senat[redacted], but this letter takes no position on the outcome of the petition. Rather [redacted] states "I would appreciate full consideration of his . . . petition, according to U.S. Immigration regulation." Thus, the Senator has asked only that we follow the appropriate regulations when

considering the matter, something that we are required to do in every proceeding. Those regulations include 8 C.F.R. § 204.5(g)(2), which very specifically identifies what evidence we can accept to show ability to pay, and 8 C.F.R. § 103.2(b)(2)(i), which requires us to infer ineligibility when required evidence is unavailable.

Several affidavits in the response are intended to establish that the beneficiary is a priest at the petitioning church. The AAO does not dispute that the beneficiary is a duly ordained priest of the Romanian Orthodox denomination, or that he has been performing the duties of a priest to some extent. At issue, first and foremost, are serious questions of credibility that have arisen from the petitioner's submissions. It is impossible for us to find that all of the petitioner's claims are true, because those claims are sometimes in conflict. Given these credibility issues, we cannot simply take unsupported claims at face value. Competent objective evidence would overcome these issues, pursuant to *Matter of Ho*, but the petitioner admits that first-hand documentary evidence is virtually nonexistent due to deficient record keeping and other factors. The lack of primary evidence, coupled with the petitioner's inconsistent claims and statements, leaves little foundation upon which we could confidently base a finding of eligibility. Throughout the statute and regulations, it is evident that the burden is on the petitioner to establish that the beneficiary qualifies for the benefit sought; there is no burden on CIS or any of its constituent offices to prove that the beneficiary is ineligible. There is no presumption of eligibility that the immigration authorities must overcome to justify the denial of a benefit.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d at 694. However, anytime a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the beneficiary's claimed two years of experience as a priest is not credible. Accordingly, the petitioner has not established the beneficiary's eligibility for the requested immigrant visa classification.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the AAO will be affirmed, and the petition will be denied.

**ORDER:** The AAO's decision of February 24, 2005 is affirmed. The petition is denied.