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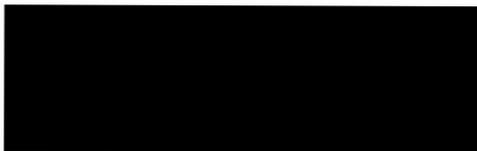
FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: DEC 22 2008  
EAC 01 177 55629

IN RE: Petitioner:  
Beneficiary:



PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, initially denied the petition for abandonment. The director later reopened the proceeding on the petitioner's motion and denied the petition on its merits. The Administrative Appeals Office (AAO) withdrew the director's decision and remanded the matter for a new decision. The director again denied the petition. Pursuant to the AAO's prior instructions, the matter is now before the AAO on certification. The AAO will affirm the director's decision to deny the petition, and the AAO will enter a separate finding of material misrepresentation.

The petitioner is a Hindu organization. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a religious instructor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a religious instructor immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established its ability to compensate the beneficiary from the petition's filing date onward.

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 two issues in contention here both relate, in different ways, to the beneficiary's compensation (or lack thereof), and therefore we shall combine, to an extent, the discussion of these two issues. 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 petition was filed on April 25, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a religious instructor from April 26, 1999 to April 25, 2001.

In letters that accompanied the initial filing, [REDACTED], identified at the time as Trustee and Vice President of the petitioning entity, states: "We are prepared to offer [the beneficiary] a salary of \$300 per week" and that the beneficiary "will not be solely dependent on any other supplemental employment or solicitation of funds for support." The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

*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.

The petitioner filed Internal Revenue Service (IRS) Form 1023, Application for Recognition of Exemption, in 2001. On that form, under Part IV A, "Statement of Revenue and Expenses," the petitioner indicated that it had not paid "Compensation of officers, directors, and trustees" or "Other salaries and wages," and that it had not budgeted for future payments along those lines.

In correspondence dated March 23, 2002, the petitioner's then attorney of record, [REDACTED] twice stated: "There is no salaried employee in [the petitioning entity]. All are volunteers." [REDACTED] in a letter dated March 14, 2002, states that the beneficiary "will not be paid until the approval of his permanent residency application. Until then, his 40 hour [weekly] work has been made and will be made on a no-salaried basis."

A letter dated July 10, 2000, on the letterhead of [REDACTED], Jamaica, New York, indicates that the beneficiary "had worked in our organization from July 1996 to July 2000 as a religious Instructor and writer." The letter indicates that the beneficiary "had worked approximately 40 hrs a week" during that time. The name of the organization's president, [REDACTED] appears at the bottom of the letter, but the signature above that name is that of [REDACTED]

The petitioner has submitted a copy of its IRS Form 990-EZ Return of Organization Exempt From Income Tax for the fiscal year ending June 30, 2001. The return indicates revenue of \$56,164 offset by expenses of \$22,988, leaving a net excess of \$33,176. The return does not reflect the payment of any salaries, wages, or officer compensation. This return identifies [REDACTED] as the Secretary of the petitioning organization.

We need not discuss the director's first substantive denial notice or the petitioner's appeal in detail here, as the AAO's prior decision of September 30, 2005 already addressed them. We will, however, observe that the AAO had stated: "the petitioner submitted no evidence that the beneficiary did not rely upon secular

employment for his support.” Noting that the petitioner had, so far, never employed any paid workers, the AAO stated that the petitioner had not sufficiently demonstrated the existence of a valid offer of paid employment.

On December 5, 2005, the director issued a request for evidence (RFE), in which the director instructed the petitioner to “submit evidence that explains how the beneficiary supported himself” while working without pay for the petitioner. The director also requested copies of the beneficiary’s income tax returns for 1999-2001. In response, [REDACTED] now identified as President of the petitioning entity, states:

Our organization was registered in June 2000. The founders of this organization were previously members of the [REDACTED] . . . where [the beneficiary] was volunteering full time prior to volunteering for us. . . .

During the two years prior to the filing of this petition, [the beneficiary] was not authorized by the Immigration & Naturalization Service to be employed. Therefore we were unable to put him on the payroll, nor to have a written contract with him. He worked with us on a volunteer basis. During religious services and instruction etc., members of the congregation make daily donations. They are called “pranami.” Giving pranami is a regular practice in Hindu Religious organizations. These donations were made for [the beneficiary]. Because [the beneficiary] is so well respected and cared for by the members of our organization, for his wonderful volunteer service for our organization, he resides with members of this organization, who provide him with room and board. . . .

[The beneficiary] has been on the payroll since October 1, 2005.

in stating that the beneficiary “resides with members of this organization, who provide him with room and board,” did not clearly indicate whether or not this arrangement was in place during the 1999-2001 qualifying period.

The petitioner has submitted copies of tax documents showing that the petitioner paid the beneficiary \$3,900 during the last quarter of 2005. The petitioner also submits copies of canceled checks that the petitioner issued to the beneficiary in early 2006. The petitioner’s Form 990 return for the year ending June 30, 2005 shows total revenue of \$37,735 and total expenses of \$28,669, leaving a net excess of \$9,066. The petitioner’s net assets totaled \$79,635 as of the end of the petitioner’s 2004-2005 tax year.

Almost all of the reported income was in the form of “Contributions, gifts, grants, and similar amounts.” Neither the 2000-2001 return nor the 2004-2005 return shows any amount listed under “Benefits paid to or for members,” “Salaries, other compensation, and employee benefits,” or “Professional fees and other payments to independent contractors.” Thus, the petitioner reported incoming “contributions” and “gifts,” on its Form 990 returns, but did not report outgoing “compensation” or “benefits” in any form. The petitioner otherwise accounted for expenditures paid from those contributions. Therefore, there is no evidence on the tax forms to show that any contributions reported as revenue by the petitioner were converted into “pranami” for the beneficiary. The returns also indicate that the directors of the petitioning entity each devote no more than 20

hours per week to the entity. The returns do not indicate that anyone works or has worked full-time in the operation of the petitioning entity.

The petitioner has submitted IRS Form 1040 income tax returns for the beneficiary, for 1999, 2000 and 2001. The returns in the record are originals, with original signatures, rather than copies. On these returns, the beneficiary identified himself as a "Religious Instructor" and claimed to have received "Business income" in the amounts of \$2,966 in 1999; \$3,459 in 2000; and \$3,528 in 2001. On the returns, the beneficiary did not identify the petitioner under "Business name," but the beneficiary provided the address of the petitioning entity under "Business address." The amounts claimed on the beneficiary's newly executed tax returns do not correlate to any line item expense shown on the petitioner's Form 990-EZ return from 2000-2001 (although we acknowledge that, because the beneficiary's tax returns deal with a January-December calendar year while the petitioner's Form 990 returns deal with a July-June fiscal year, no exact dollar amount correlation would be expected).

All three of the beneficiary's income tax returns are dated February 15, 2006. Thus, the beneficiary did not report this income at the time. The beneficiary prepared these tax returns only after the director requested evidence of the beneficiary's support during the two years prior to the petition's 2001 filing date. Therefore, the tax returns are not contemporaneous evidence of payments made to the beneficiary. Rather, the returns amount to an unsubstantiated claim, created years after the fact in response to a request for evidence. As such, the returns cannot and do not carry the same evidentiary weight as documentary evidence that actually existed in 1999-2001.

In sum, the materials submitted in response to the director's most recent request for evidence do not support the claim that the petitioner collected *pranami* and passed them on to the beneficiary. The materials also offer no first-hand, contemporaneous evidence to show that the beneficiary collected *pranami* directly from worshipers. At early stages in the petition process, the petitioner had numerous opportunities to discuss the beneficiary's newly-alleged receipt of *pranami*, but the petitioner did not offer any such claim at the time.

The director denied the petition on July 20, 2006, stating that the beneficiary's tax returns "don't provide a name of the entity(ies) for which he worked. Therefore, it appears that the beneficiary supported himself with contributions from individuals in the religious community." The director also concluded that the petitioner had not adequately established the beneficiary's required continuous religious work during the qualifying period.

The AAO does not agree with the entirety of the director's decision. While it is true that the beneficiary's tax returns do not identify the petitioner by name, they do show the petitioner's address. Also, the returns identify the beneficiary as a "religious instructor," and therefore the returns are not *prima facie* evidence that the beneficiary engaged in secular employment during the qualifying period. More significant, as we have discussed, is the fact that the beneficiary did not prepare these returns until after it became clear that the lack of evidence jeopardized the possibility for approval of the petition.

The director appears to have relied, to some extent, on 8 C.F.R. § 204.5(m)(2) (which states that fund raising is not a religious occupation) and 8 C.F.R. § 204.5(m)(4) (which requires the petitioner to show that the

beneficiary will not be dependent on solicitation of funds for support). The director evidently concluded that, by receiving *pranami* in lieu of a wage or salary, the beneficiary supported himself by soliciting funds. We do not agree with this reasoning. It is not unusual for a religious organization to rely on contributions from that organization's members. Such contributions appear, rather, to be the chief means of support for a broad variety of religious institutions. Therefore, it is not inherently disqualifying for an alien to be remunerated through donated funds. Rather, the disqualifying circumstances arise when an alien's sole or primary duty is to solicit and/or obtain those donations. Here, while the petitioner claims that the beneficiary subsisted off of donations from church members, there is no indication that the beneficiary's primary duty was to solicit those donations.

We concur, however, with the director's more general finding that the record does not adequately establish that the beneficiary worked continuously for the petitioner during the two years immediately preceding the filing of the petition. Contemporary tax records indicate that the petitioner's officers worked part time with no compensation, and the petitioner has repeatedly stipulated that it had no paid employees whatsoever until October 2005, well into the adjudication of the present petition. Upon its founding in 2000, the petitioner indicated in IRS documentation that it did not anticipate and had not budgeted for any expenditures for salaries for the next several years. Given that the petitioner – and, apparently, its predecessor from which the beneficiary and several principals of the petitioner came – has no evident history of employing paid, full-time staff, it is reasonable to be skeptical of the assertion that the only paid, full-time worker will be an individual whose continued presence in the United States is contingent on an offer of paid, full-time employment.

In response to the certified decision, counsel states:

The Director states: “[h]owever documentation to establish the employment dates, training, and salary of the beneficiary **should** consist of more than a statement.” Emphasis added. The director does not state that more than a statement must or shall be provided, only “should.” Clearly, there are situations in which statements are sufficient. This is one such case. The beneficiary was not authorized to work, during the two year period immediately preceding the filing of the instant petition. Furthermore, the record contains evidence in addition to the petitioner's statement.

Counsel has taken the director's comments out of context to imply that the submission of corroborating evidence is simply an option to be exercised at the petitioner's discretion. This is not the case. In appropriate cases, the director may request appropriate additional evidence relating to the eligibility under section 203(b)(4) of the Act of the religious organization, the alien, or the affiliated organization. 8 C.F.R. § 204.5(m)(3)(iv). 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). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). We are not persuaded by counsel's apparent assertion that the beneficiary's long-term violation of immigration law entitles the petitioner to a lesser burden of proof.

Counsel acknowledges and quotes 8 C.F.R. § 204.5(m)(3)(iv), but counsel states “[i]t is not appropriate in this case to require payroll records” because the petitioner was “legally prohibited from employing the beneficiary.” Where the cited regulation refers to “appropriate cases,” the decision as to which cases are “appropriate” lies not with the petitioner’s attorney, but with the director. Counsel asserts that the petitioner’s failure to compensate the beneficiary resulted from the petitioner’s desire to avoid violating immigration law by harboring an alien who lacked lawful status.

Although counsel has contended that the petitioner need not produce evidence of the beneficiary’s past work, counsel asserts that the petitioner has, in fact, produced “documents” relating to the beneficiary’s work during the qualifying period. Counsel identifies only two examples of these documents, both of which are letters signed by [REDACTED] in 2000 and 2004 respectively.

The assertion that the beneficiary has been supported through *pranami* donations did not come to light until quite late in the proceeding, and the petitioner has offered no persuasive evidence to support this new claim. The preparation of new tax returns several years after the relevant tax years raises serious questions regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991) (discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings).

Apart from uncorroborated claims and evidence tailored, after the fact, to address the director’s concerns, the record indicates that the petitioning organization is staffed by part-time volunteers. Part-time volunteer work of this kind is not qualifying experience. *See Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In reviewing the beneficiary’s alien file, the AAO encountered documentation from 2003 which raised questions of credibility. On November 15, 2006, the AAO advised the petitioner of this adverse information. The AAO stated:

Each of the [beneficiary’s income tax] returns indicates that the beneficiary’s sole source of reported income was business income that he earned by working at [the petitioning] organization. . . .

Nothing in [the petitioner’s] RFE response indicated that the beneficiary worked anywhere other than [the petitioning] organization from 1999 to 2001.

On April 18, 2003, the beneficiary was detained by Immigration and Customs Enforcement (ICE). At that time, an ICE officer executed Form I-213, Record of Deportable/Inadmissible Alien, and related documents concerning the beneficiary. Among the related documents is Form I-826, Notice of Rights and Request for Disposition. The beneficiary’s signature, dated April 18, 2003, appears on this form, indicating that the beneficiary was present when the forms were executed.

The Form I-213 indicates that the beneficiary was employed in “service” earning \$200 per week. The documentation executed with this form refers to [the petitioning] organization on several occasions, but it also repeatedly identifies [REDACTED] and Grocery Store as the beneficiary’s

employer from 2000 to 2003. This document, therefore, identifies an employer that [the petitioning] organization failed to mention in response to a specific request for evidence relating to the beneficiary's means of support during 1999-2001, and that the beneficiary himself failed to mention on 1999-2001 tax returns that he executed in 2006 in response to the 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). In this instance, the director requested evidence regarding the beneficiary's means of support from 1999 to 2001. If the beneficiary worked for [REDACTED] and Grocery Store during any part of that time, then [the petitioner's] failure to identify that employment precluded a material line of inquiry.

The director has repeatedly indicated that the beneficiary's means of support, and the possibility of outside employment, are material issues in this proceeding. In this context, concealing information about the beneficiary's secular employment would amount to willful misrepresentation of a material fact. By signing what purport to be 1999, 2000 and 2001 tax returns that do not mention this secular employment, the beneficiary appears to have participated in this willful misrepresentation that could lead to a finding of fraud under section 212(a)(6)(C)(i) of the Act.

In response to this most recent notice, counsel states: "*none* of the returns indicate that the beneficiary's sole source of reported income was business income that he earned by working at the petitioner's organization. The tax returns do not state a specific entity from where the income was earned. In fact, the petitioner organization is not mentioned on the tax returns at all" (counsel's emphasis). Counsel also asserts that the beneficiary, on his tax returns, stated that "religious instructor" was his "principal business" rather than his only business.

It remains that, on the tax returns, the beneficiary identified his occupation as "religious instructor" and nothing else. Also, the beneficiary did not report any "wages" or "salary" on his tax returns. He only claimed "business income." All of this claimed "business income" is reported on Schedule C-EZ, "Net Profit From Business (Sole Proprietorship)." Unless the beneficiary is, or was, the sole proprietor of [REDACTED] at the time, his income from that business would not be reflected on Schedule C-EZ. Under "business address," the beneficiary listed his own apartment; he did not list the address of [REDACTED]

Counsel continues: "Requiring the beneficiary to specify each source of income on the tax return is an impossible burden of proof. There is no place on the tax return to enter this information." Counsel states that [REDACTED] never issued any Forms W-2 to the beneficiary, and that the petitioner cannot be faulted for failing to submit evidence that does not exist. The record contains nothing from any [REDACTED] official to corroborate this or any other claim regarding the circumstances of the beneficiary's employment there. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 2, 4 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The regulation at 8 C.F.R. § 103.2(b)(2)(i) states:

The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

Primary evidence, here, would be Forms W-2 or payroll documents from [REDACTED]. The petitioner cannot demonstrate the unavailability of this evidence simply by having counsel state that the evidence does not exist. Neither the petitioner nor counsel is in a position to know [REDACTED]'s record-keeping practices first-hand. Secondary evidence would also derive from [REDACTED] or at least from current or former officials of that company. The petitioner has offered nothing along these lines. Instead, the petitioner presents affidavits from a temple official, the beneficiary, and two individuals who state that they shared an apartment with the beneficiary. The petitioner has not accounted for the absence of primary and secondary evidence, or demonstrated that the beneficiary's roommates have direct personal knowledge of how much the beneficiary earned at [REDACTED]. Therefore, 8 C.F.R. § 103.2(b)(2)(i) does not require us to give any weight to the new affidavits.

Counsel states that the beneficiary earned only a "negligible" amount at the deli, and therefore this employment was "immaterial" to the petitioner's claims. Again, no one from [REDACTED] or with access to that business' records, corroborates the assertion that the beneficiary's secular income was "negligible." Furthermore, the director had specifically inquired as to "how the beneficiary supported himself." In light of such a request, information about any such source of support is material to that inquiry.

Despite specific instructions from the director, in the December 5, 2005 RFE, to "submit evidence that explains how the beneficiary supported himself," neither the petitioner nor the beneficiary ever mentioned [REDACTED] in this proceeding until confronted with the beneficiary's statements made in another context. Counsel's explanation appears to be little more than an attempt to reconcile the newly-executed tax returns with the beneficiary's prior statements. We reject the implied claim that the beneficiary's tax returns, prepared many years after the fact, reflect any income he earned at [REDACTED]. While it is true that the returns identify no specific employer, everything in the returns that even hints at the nature or location of employment points away from employment at a private business owned by someone other than the beneficiary. Counsel denies that the petitioner and the beneficiary attempted to conceal this employment, but they certainly took no steps to disclose it, even when specifically asked to do so, and the vague explanations in the latest submission fail to account for the fact that *all* of the beneficiary's income was reported as business income from a sole proprietorship.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA

1988). 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. *Id.* at 582, 592. The AAO cited *Ho* in its letter of November 15, 2006.

Counsel attempts to distinguish this proceeding from *Ho*, stating that the precedent decision deals with affidavits that “were **directly contradicted by several documents** in the record” (counsel’s emphasis). While there are differences between *Ho* and the present proceeding, it remains that the Board of Immigration Appeals arrived at a general principle regarding “[d]oubt cast on any aspect of the petitioner’s proof” and “any inconsistencies in the record.” Furthermore, in the December 2005 RFE, the director did not limit inquiry to the beneficiary’s religious work. Rather, the director specifically requested “evidence that explains how the beneficiary supported himself.” The petitioner, at that time, could have disclosed information about the beneficiary’s purportedly “negligible” secular income. The petitioner chose instead to submit brand-new tax returns, prepared several years after their respective filing deadlines, that mentioned no wages whatsoever, classifying all of the beneficiary’s income as “business income” from a sole proprietorship, the nature of which was described as “religious instructor.”

The AAO has not claimed that the beneficiary’s claimed history as a religious worker is entirely fabricated. At issue is the extent of the beneficiary’s religious work, which is necessarily affected by any time that the beneficiary devoted to other pursuits. If the beneficiary’s religious work was part-time with little or no pay, such that his sole or primary means of support was secular employment, then we cannot find his religious work to have been continuous. Thus, the extent of his secular employment is material to this proceeding. Rather than provide all the necessary detail at the outset, the petitioner has repeatedly modified its claims regarding the beneficiary’s work to account for new information brought to light by the director or the AAO. The AAO stands by its prior assertion that the petitioner precluded a material line of inquiry by failing to disclose the beneficiary’s secular employment. We find that there exist legitimate and unresolved questions of credibility regarding the actual extent of the beneficiary’s past work, as well as (by extension) his intended future work.

If CIS fails to believe that a claim stated in the petition is true, CIS may reject that claim. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The AAO finds that the beneficiary, in his tax returns, knowingly concealed his secular employment in an effort to create the false impression that religious work was his sole means of support during the years covered by those returns. We find that the petitioner and the beneficiary sought thereby to mislead

Citizenship and Immigration Services (CIS) and the AAO on an element material to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States. *See* 18 U.S.C. §§ 1001, 1546. The tax returns appear to have been tailored to favor the beneficiary's claims of eligibility, rather than his actual employment and income. The AAO will enter a finding of material misrepresentation. This finding of material misrepresentation shall be considered in any future proceeding where admissibility is an issue.

An application or 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).

The remainder of counsel's response to the AAO's letter concerns allegations of persecution against the beneficiary in his native Bangladesh. The AAO is not indifferent to this information, but it falls outside the scope of the present proceeding. Such claims are more appropriate in the context of an application for asylum which, counsel acknowledges, the beneficiary has thus far chosen not to file.

Pursuant to the above discussion, we conclude that the petitioner has failed to establish its ability to pay the beneficiary at the proffered level, and that the petitioner has not shown that the beneficiary continuously engaged in qualifying employment throughout the two-year qualifying period.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal. 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. Here, the petitioner has not met that burden. Accordingly, we hereby affirm the director's decision.

**ORDER:** The director's decision is affirmed. The petition is denied.

**FURTHER ORDER:** The AAO finds that the petitioner and the beneficiary knowingly misrepresented material facts relating to the beneficiary's employment and income in order to conceal potentially disqualifying information relating to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States.