U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

C1

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

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]

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, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, the AAO's previous decision will be affirmed and the petition will be denied.

The petitioner is a religious association. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a religious teacher and priest. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience performing the religious work immediately preceding the filing date of the petition. The AAO affirmed the director's decision and dismissed the appeal, adding that the petitioner had not established its ability to pay the beneficiary's proffered salary.

On motion, the petitioner submits new letters and financial documentation.

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 membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on April 30, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of his prospective position throughout the two years immediately prior to that date.

The beneficiary arrived in the United States on January 20, 2001, over three months before the filing date. The AAO initially found no credible indication that the beneficiary had worked for the petitioner from January through April of 2001. On motion, counsel maintains that the beneficiary has, in fact, worked at the petitioning entity since January 22, 2001, only three days after he ceased working in Pakistan. Mukarram Hakimuddin, president of the petitioning organization, states that the beneficiary "has been working with us from January 22, 2001 to the present time as a religious worker on a full-time basis. . . . He is being compensated during this time with salary, boarding and lodging." The petitioner had previously claimed to have paid the beneficiary $1,500 per month, in two installments per month.

Discussion of these payments ties into the other issue raised in the AAO's dismissal notice, specifically the petitioner's ability to pay the beneficiary's salary.

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, on appeal, submits annual financial statements and monthly bank statements. Counsel states "[t]he petitioner must be afforded any means to demonstrate ability to pay and should not be confined to tax returns and balance sheets." Counsel offers no support for the assertion that the AAO must accept whatever

financial evidence the petitioner chooses to offer. 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. Counsel argues, reasonably, that the petitioner is tax-exempt and therefore files no tax returns, but the regulation lists two other types of acceptable evidence. In this instance, the petitioner has not submitted any of the required types of evidence. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

The petitioner's bank statements do not provide a complete picture of the petitioner's financial situation, such as outstanding debts and liabilities. Even when taken at face value, the statements do not demonstrate the petitioner's ability to pay the beneficiary's monthly wage of $2,000. The monthly balance shown on the statements is sometimes well below $1,000, and never exceeds $6,000. On the day the petition was filed, April 30, 2001, the balance was $800.02; by month's end, the balance was down to $466.91.

While many months show a balance in excess of $2,000, this does not establish the petitioner's ability to pay the beneficiary $2,000 every month. A continuous balance of $2,000 reflects, in effect, the same $2,000 from month to month. Once that sum is withdrawn to pay the beneficiary, it is no longer available for future months. The petitioner must not only show sufficient assets to pay immediate wages, but also sufficient income to replenish those assets.

The petitioner has also submitted "Statements of Cash Receipts and Disbursements" for the calendar years 2001 and 2002. The accountant who prepared the statements asserts "I have not audited or reviewed the accompanying financial statement." The statement is, therefore, not an audited financial statement, but rather simply the petitioner's own declaration of its finances. The accountant adds that "[m]anagement has elected to omit substantially all of the disclosures ordinarily included in a financial statement prepared on the cash basis of accounting. If the omitted disclosures were included in the financial statement, they might influence the user's conclusions about the Organization's cash receipts and disbursements."

Apart from the auditing issue, the statements do not show the petitioner's ability to pay. The documents reflect the following information:

Year	Starting Cash	Cash Receipts	Cash Disbursements	Ending Cash	Increase
2001	$435	$21,882	$19,147	$3,170	$2,735
2002	3,170	19,663	17,251	5,582	2,412

The petitioner's net cash reserves are sufficient for less than three months' salary for the beneficiary, and the petitioner's net annual income is barely sufficient for one month. The new financial documents do not show that the petitioner even handles $24,000 per year, much less that it can afford to pay the beneficiary that amount.

Clearly, even if we were to disregard the regulations regarding documentary requirements to show ability to pay, the materials submitted on motion do not come close to establishing that the petitioner has ever been able to afford the beneficiary's proffered salary of $2,000 per month. Counsel does not explain why we ought to conclude otherwise; counsel merely states that the petitioner has submitted financial documentation. The petitioner does not establish its ability to pay merely by submitting financial documents. That is, we must consider not only whether the petitioner has *submitted* the documents, but also, obviously, the *contents* of those documents. In this instance, the available documents do not demonstrate that the petitioner has sufficient assets or income to pay the proffered wage.

The petitioner had previously argued that the beneficiary received $1,500 per month (an amount to increase upon approval of the petition), and the petitioner's appeal included copies of what purport to be pay receipts, reflecting twice-monthly payments of $750 each. Nevertheless, the newly submitted itemized list of "Cash Disbursements" does not show any payments to the beneficiary, nor any other payments that correspond to the amounts shown on the purported receipts. The beneficiary's alleged salary of $18,000 per year would account for more than the petitioner's entire annual disbursements for 2002, according to the new statements. The bank statements do not show checks or cash withdrawals matching these amounts either. The new documents serve only to raise very grave doubts as to the authenticity of the previously submitted receipts, which the new documents contradict.

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. 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). Because the petitioner's own bank statements do not account for the claimed $750 payments to the beneficiary, the record offers no reason at all for us not to conclude that the alleged receipts are actually fraudulent documents created for the purpose of facilitating the beneficiary's entry into the United States, an action which could make the beneficiary inadmissible under section 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i).

The materials submitted on motion resolve none of the grounds for denial or dismissal. Rather, they serve only to raise very serious credibility issues, providing yet another reason not to approve the petition.

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 June 20, 2003 is affirmed. The petition is denied.