U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

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MAY 2 2 2009

FILE: WAC 07 097 53288 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:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO remanded the matter to the director for issuance of a new decision under substantially revised regulations. The director again denied the petition and, on the AAO's instruction, certified the decision to the AAO for review. The AAO will affirm the denial of the petition.

The petitioner is a member church of the Independent Assemblies of God International that 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 minister. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience and membership in the petitioner's religious denomination immediately preceding the filing date of the petition, or that the beneficiary is authorized to perform the functions of a minister in the petitioner's denomination. The record contains no response to the certified decision.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.4(a)(2) indicates that the petitioner may submit a brief within 30 days after the director serves notice of a certified decision. The permitted time period has elapsed, and the AAO has received no response to the certified denial. The AAO therefore considers the record to be complete as it now stands.

We note that the record contains Form G-28, Notice of Entry of Appearance as Attorney or Representative, executed by [redacted] of Voices for Immigrants Justice. [redacted] does not claim to be an attorney as defined in 8 C.F.R. § 1.1(f), or as an accredited representative as defined in 8 C.F.R. § 1.1(j), as required in 8 C.F.R. §§ 103.2(a)(3) and 292.1, and there is no claim that Voices for Immigrants Justice is recognized by the Board of Immigration Appeals as required by in 8 C.F.R. § 292.2. Instead, [redacted] stated: "I am a law school graduate employed as senior advate [*sic*] for a community non-profit organization." 8 C.F.R. § 292.1(a)(2) states, in part:

> (a) A person entitled to representation may be represented by any of the following:
>
> * * *
>
> (2) Law students and law graduates not yet admitted to the bar. A law student who is enrolled in an accredited law school, or a law graduate who is not yet admitted to the bar, provided that:
>
> * * *
>
> (iii) In the case of a law graduate, he or she has filed a statement that he or she is appearing under the supervision of a licensed attorney or accredited representative and that he or she is appearing without direct or indirect remuneration from the alien he or she represents; and

> (iv) The law student's or law graduate's appearance is permitted by the official before whom he or she wishes to appear (namely an immigration judge, district director, officer-in-charge, regional director, the Commissioner, or the Board). The official or officials may require that a law student be accompanied by the supervising faculty member, attorney, or accredited representative.

The record does not show that is appearing under the supervision of a licensed attorney or accredited representation, without remuneration. Therefore, we consider the petitioner to be unrepresented in this proceeding.

When the petitioner filed the petition in 2007, older regulations governed the special immigrant religious worker program. Subsequently, however, Congress enacted the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008).[1] As required under section 2(b)(1) of that statute, USCIS promulgated a rule setting forth new regulations for special immigrant religious worker petitions. Supplementary information published with the new rule specified: "All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

Section 557(b) of the Administrative Procedure Act (APA), 5 U.S.C. § 557(b), provides that an initial agency decision is not final if "there is an appeal to, or review on motion of, the agency within time provided by rule." Because there was a pending appeal in this proceeding when the new statute became law, the matter is still pending and therefore subject to the new rule.

TWO YEARS IN DENOMINATION

The USCIS regulations at 8 C.F.R. §§ 204.5(m)(1) and (3) require the petitioner to show that the beneficiary has been a member of the petitioner's religious denomination throughout the two years immediately preceding the filing of the petition. The petitioner filed the petition on February 16, 2007, and therefore the two-year qualifying period began in February 2005. The beneficiary spent most of that period in Nigeria, and arrived in the United States in November 2006. The petitioner, therefore, must account for the beneficiary's denominational membership in both Nigeria and the United States.

8 C.F.R. § 204.5(m)(5) defines "religious denomination" as a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes one or more of the following:

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[1] The use of the term "nonminister" in the name of the statute simply acknowledges that certain provisions of the statute that pertained to nonministers – but not to ministers – had expired and therefore required reauthorization in order to remain in effect. Therefore, the term "nonminister" does not mean that the new regulations apply only to nonministers. Many key provisions in the regulations, including the provisions relating to past experience, apply equally to both ministers and nonministers.

(A) A recognized common creed or statement of faith shared among the denomination's members;

(B) A common form of worship;

(C) A common formal code of doctrine and discipline;

(D) Common religious services and ceremonies;

(E) Common established places of religious worship or religious congregations; or

(F) Comparable indicia of a bona fide religious denomination.

In a letter that accompanied the initial filing of the petition, [redacted] Presiding Bishop of the petitioning entity, stated that the beneficiary "has met the required qualification and the two years of membership in the denomination. He started with The Assemblies of God, Ever Increasing Word Ministries and finally appointed a Resident Pastor with the Mountain of Fire & Miracle Ministries in June 2001."

The petitioner submitted a copy of a Certificate of Registration, stating that the petitioning church "is duly registered with the Independent Assemblies of God International." The certificate is dated January 1, 2007, with an expiration date of December 31, 2007, indicating that the certificate requires annual renewal. The petitioner did not submit a copy of a similar certificate to show that Mountain of Fire and Miracles Ministries is also a member of the Independent Assemblies of God International.

The record suggests that Mountain of Fire and Miracles Ministries is a separate denomination. The petitioner submitted a November 3, 2006 letter from [redacted], Regional Overseer of Mountain of Fire and Miracles Ministries, Abuja, Nigeria. The letter does not mention the Independent Assemblies of God International. The letterhead of that letter indicates, instead, that Mountain of Fire and Miracles Ministries has its own "International Headquarters" in Lagos, Nigeria.

On June 6, 2007, the director issued a request for evidence (RFE). The director instructed the petitioner to submit "documentary evidence to establish whether a connection exists between the petitioner and any other church the beneficiary has worked at between 2-16-2005 and 2-16-2007." In response, Rev. Brown stated:

[The petitioner] is an affiliate unit of Independent Assemblies of God. . . .

[The petitioner's] religious denomination is Pentecostal (charismatic) faith movement, which holds a particular doctrine that all Christians are gifted by the Holy Spirit with the

evidence of speaking in tongues (unknown languages) as the Spirit gives utterance among other basic Christian truth. . . .

Ecclesiastical Governing
The officers of the ministry shall be that of a president, who will serve as the Presiding Bishop of the work of the Lord. Vice presidents of various divisions and the governing council will serve as the Board of the Ministry. . . .

Religious Connection

[The petitioner] and the Mountain of Fire & Miracles Ministries are connected by common doctrine, which is apostolic, and the power of the Holy Spirit, prayers, Christian Services, establishing churches of like mind across the world. . . .

Membership
. . . [T]he beneficiary has been in our denomination since 2001.

(Emphasis in original.) The petitioner submitted printouts from http://www.mountainoffire.org, the web site of Mountain of Fire and Miracles Ministries. The printouts did not describe or mention the ministries' ecclesiastical government. The printouts refer to "Ministry to French Speaking Countries" and "Ministry to other African Countries," but not to any affiliation with the Independent Assemblies of God or any other entity in the United States.

The petitioner also submitted letters from a "Regional Overseer" of Mountain of Fire and Miracles Ministries, one of which referred to "Regional Administrator[s]." Ministry documents also refer to "Regional Headquarters." The petitioner's description of its own "Ecclesiastical Government" does not mention regional headquarters, overseers or administrators. This indicates that the two ministries have different forms of ecclesiastical government.

The director denied the petition on October 4, 2007, in part because "[t]he petitioner has not established that there is an institutional relationship or common governing body" shared by the petitioner and by the beneficiary's previous employer. The petitioner appealed the decision on November 5, 2007, but the petitioner's appeal did not address this finding by the director.

On February 4, 2009, the director issued a notice of intent to deny the petition. The director advised the petitioner of new regulatory requirements. The director did not directly mention the denominational affiliation issue, but the director also did not state that this issue had been resolved. The petitioner's response to the notice did not address the issue of the petitioner's relationship to the beneficiary's denomination in Nigeria.

On March 30, 2009, the director denied the petition. The director noted the petitioner's previous submissions, both with the initial petition and in response to the 2007 request for evidence. The director concluded that, while the two "organizations . . . have tenets similar to" one another, "[t]he petitioner

has not established that there is an institutional relationship or common governing body between" those organizations.

We affirm the director's apparently uncontested finding. The record does not show that the petitioner and Mountain of Fire and Miracles Ministries share a common type of ecclesiastical government, as 8 C.F.R. § 204.5(m)(5) requires. We reject the assertion that "Pentecostal" is a religious denomination. The term "Pentecostal" describes a number of distinct and independent Christian denominations, rather than a specific religious denomination in its own right. The petitioner, therefore, has not shown that the beneficiary belonged to the petitioner's religious denomination throughout the two-year period immediately preceding the filing of the petition in 2007.

ORDINATION

The second stated ground for denial concerns the beneficiary's authorization to work as a minister. 8 C.F.R. § 204.5(m)(5) defines a "minister" as an individual who:

> (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct such religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
>
> (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
>
> (C) Performs activities with a rational relationship to the religious calling of the minister; and
>
> (D) Works solely as a minister in the United States, which may include administrative duties incidental to the duties of a minister.

8 C.F.R. § 204.5(m)(9) provides the evidentiary requirements relating to ministers:

> *Evidence relating to the qualifications of a minister.* If the alien is a minister, the petitioner must submit the following:
>
> (i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and
>
> (ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts,

curriculum, and documentation that establishes that the theological institution is accredited by the denomination, or

(iii) For denominations that do not require a prescribed theological education, evidence of:

(A) The denomination's requirements for ordination to minister;

(B) The duties allowed to be performed by virtue of ordination;

(C) The denomination's levels of ordination, if any; and

(D) The alien's completion of the denomination's requirements for ordination.

The director has acknowledged that "the beneficiary's duties are similar in scope and function to the term 'minister' as defined in the regulations." Therefore, we need not discuss the nature of those duties. At issue, instead, is the beneficiary's authorization to perform those duties.

In his initial letter, stated: "I . . . fully recognize [the beneficiary] as a qualified ordained Minister in our Churches." The petitioner submitted copies of various diplomas and certificates issued to the beneficiary, but none of these documents reflect the beneficiary's ordination as a minister.

In the 2007 RFE, the director requested "evidence to show that the beneficiary has been ordained and the requirements for ordination. If the religion does not have formal ordination procedures, there must be other evidence that the individual has authorization to conduct religious worship and perform other services usually performed by members of the clergy." In response, [redacted] apparently quoted from the petitioner's by-laws:

> **Power of Ordination:** upon satisfactory evidence of the qualification of a candidate for the ministry, the members of this church shall have the power, at any meeting of the members of Members [*sic*] lawfully convened for that purpose, on approval and recommendation of the deacons to ordain such candidate as a minister of the Gospel, by a two-thirds vote of the qualified voters present thereat and voting. No person shall be qualified for ordination by this church who does not give unreserved assent in writing, and verbally in the presence of the members assembled at such meetings, to the Doctrinal Basic and Declaration of Faith set forth in these by-laws.

The petitioner submitted further copies of certificates issued by Mountain of Fire and Miracles Ministries and other entities in Nigeria, but no evidence that would satisfy the petitioner's own requirements as quoted above. The director said as much in the 2007 denial notice.

The appeal from the 2007 decision includes an unsigned statement that reads, in part:

> [A]fter accepting the beneficiary to serve in New Covenant Church family, the beneficiary was officially ordained having evaluated him to be qualified based on his past experience, training and testimony. The ordination certificate from [the petitioner] was promptly issued before the beneficiary assumed his duties. The reason the ordination certificate was not [previously] sent to The Service is that we understood that only the prior documents were needed[,] not the current one.

The petitioner submitted a copy of the ordination certificate that the petitioner issued to the beneficiary on January 7, 2007, less than six weeks before the petition's February 16, 2007 filing date.

The director's 2009 notice of intent to deny the petition did not address the ordination issue, either to request more evidence or to state that the petitioner had met the requirements. In denying the petition, the director repeated the 2007 assertion that the petitioner had not submitted evidence to show that the beneficiary had met the stated requirements for ordination. The director stated: "[redacted] letter dated January 21, 2007 merely attested that the beneficiary is an ordained minister is insufficient."

In the denial notice, the director did not address the petitioner's prior submission of a copy of an ordination certificate. At the same time, however, it remains that the petitioner did not provide this certificate when, in 2007, the director specifically requested "evidence to show that the beneficiary has been ordained." The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). Therefore, the petitioner's failure to submit this evidence when first requested prevents its consideration now.

The 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). Therefore, the petitioner's failure to provide a copy of the ordination certificate upon request was, and remains, a justifiable ground for denial. We affirm the director's finding in this regard.

TWO YEARS EMPLOYMENT

The third and final issue in this proceeding relates to the beneficiary's past employment. The USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working as a minister or in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The regulation at 8 C.F.R. § 204.5(m)(11) reads, in part:

"Qualifying prior experience during the two years immediately preceding the petition . . . if acquired in the United States, must have been authorized under United States immigration law."

Form I-360 indicates that the beneficiary was outside the United States for all but the last three months of the qualifying period. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work throughout the two years immediately prior to February 16, 2007, and that the beneficiary had lawful immigration status permitting him to work for the petitioner in the United States from November 16, 2006 to February 16, 2007.

On Form I-360, under "Current Nonimmigrant Status," the petitioner wrote "B1," with an expiration date of February 15, 2007 (the day before the filing date). Elsewhere on the same form, asked whether the beneficiary had "ever worked in the U.S. without permission," the petitioner answered "No." B-1 nonimmigrant status as a business visitor does not authorize an alien to work for an employer in the United States, although the alien can be on the payroll of a foreign employer.

The petitioner's initial submission included a November 3, 2006 letter from [redacted] of Mountain of Fire and Miracles Ministries, indicating that the beneficiary sought a B-1 visa to attend a short conference in New York in November 2006, after which time the beneficiary "is expected back home as soon as the programme is over." [redacted] wrote this letter before the beneficiary traveled to the United States, and clearly he did not expect the beneficiary to remain in the United States.

A January 22, 2007 letter from discussed the terms of the job offer to the beneficiary. It did not indicate that the petitioner already employed the beneficiary in any capacity.

In the 2007 RFE, the director instructed the petitioner to submit "evidence of the beneficiary's work history beginning 2-16-2005 and ending 2-16-2007." The director also requested "evidence to establish how the beneficiary has been supporting him or herself (and family members, if any) for the last two years." In response, [redacted] stated that the petitioner had worked "[a]s a Deliverance Minister [a]t the Regional headquarters [i]n Abuja" from June 18, 2001 to August 31, 2005; "with Mountain of Fire" from September 1, 2005 to November 2006; and at the petitioning church since his November 2006 arrival in the United States.

An August 5, 2005 letter from indicated that the beneficiary was "posted to Kwali Branch" of Mountain of Fire and Miracles Ministries beginning September 1, 2005. A November 4, 2004 letter from [redacted] indicated that the beneficiary was then a pastor at the ministries' Utako Regional Branch. The petitioner submitted documentation showing salary payments to the beneficiary in 2006.

While the letters mentioned above attested to the beneficiary's employment in Nigeria, they did not establish that he subsequently worked in the United States. Wire transfer documents show that the beneficiary repeatedly sent money to family in Nigeria during 2007, but these documents do not show where the beneficiary obtained this money. [redacted] stated that the beneficiary

"supported his family from his wages while in Nigeria and since he arrived [in] the United States," but the petitioner provided no evidence to show that the petitioner paid wages to the beneficiary.

An unsigned statement attributed to the beneficiary reads, in part:

> [redacted], **the Presiding Bishop of Petitioner** invited me to participate in the Petitioner's 24th annual Convention and Leadership Training. The event took place from November 12, 2006 through November 19, 2007.
>
> While at the Convention, I received information from my church in Nigeria informing me that due to some administrative changes at the Ministry's Headquarters in Lagos, Nigeria, my services at the Ministry were no longer needed. Thereupon, I shared this bad news with [redacted]
>
> On or about January 22, [redacted] extended an offer of employment to me. Given that I no longer have a job at my home church, have a pregnant wife and a child to support, I accepted the Bishop's employment offer and preparations were made by the bishop to file the pending petition.
>
> Because my family and I now face financial difficulties (I no longer receive my salary from my home church and I do not have a paying job here), I decided to remain in the United States while the petition is being processed. . . . I could not afford to buy the air ticket back to Nigeria because I now have to support myself and my family with gifts from some family friends I met in New York.

In the 2007 denial notice, the director stated: "The petitioner did not submit any evidence to show that the petitioning organization has paid for the beneficiary's services since his arriving to [*sic*] the United States." An unsigned statement submitted on appeal contains the passage: "since the Beneficiary started working with us he is paid $400.00 per week to cover his basic expenses and to support his family at home. This evidence was not requested by the Service[,] only that the beneficiary should submit evidence of how the family is support[ed] was requested."

The petitioner submitted copies of four $400 checks from the petitioner to the beneficiary. All of these checks are dated after the petition's filing date; the earliest is dated March 15, 2007.

In the 2009 notice of intent to deny the petition, the director quoted the new regulations, including the requirement at 8 C.F.R. § 204.5(m)(11) that, if the alien worked in the United States during the two-year qualifying period, such work "must have been authorized under United States immigration law." The petitioner's response to the notice did not address this issue.

In the 2009 certified denial notice, the director found: "The petitioner did not submit any evidence to show that the petitioning organization has paid for the beneficiary's services since his arriving [in] the United States." As noted previously, the photocopied checks reflect payments after the end of

the two-year qualifying period. Also, there is no reliable evidence that these checks represent compensation for services rendered.

We agree with the director that the petitioner has not established the beneficiary's continuous employment as a pastor throughout the two-year qualifying period. Furthermore, the beneficiary had no legal authorization to work for the petitioner. Even if the petitioner paid the beneficiary $400 per month from November 2006 to February 2007, as the petitioner has claimed without proof, work performed in exchange for such payment would have amounted to unauthorized employment, which, in turn, disqualifies the beneficiary for the benefit sought.

When considering the lack of evidence that the petitioner employed the beneficiary in late 2006 and early 2007, we must also note Form I-360. On that form, the petitioner indicated, under penalty of perjury, that the beneficiary had never worked in the United States without authorization. The petitioner has since contradicted itself by claiming that the beneficiary immediately began working for the petitioner upon his arrival in November 2006.

Furthermore, the assertion that the beneficiary "supported his family from his wages . . . since he arrived [in] the United States" contradicts the statement attributed to the beneficiary himself, indicating that the beneficiary did "not have a paying job here" and, instead, had to rely on "gifts from some family friends."

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, 591 (BIA 1988). Section 204(b) of the Act, 8 U.S.C. § 1154(b), provides for the approval of immigrant petitions only upon a determination that "the facts stated in the petition are true." False, contradictory, or unverifiable claims inherently prevent a finding that the petitioner's claims are true. *See Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Systronics Corp. v. I.N.S.*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988).

We acknowledge that 8 C.F.R. § 204.5(m)(4) permits certain breaks in the continuity of the beneficiary's employment, but only if all of the following conditions apply:

(i) The alien was still employed as a religious worker;

(ii) The break did not exceed two years; and

(iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

Here, only (ii) appears to apply. The record indicates that the church in Nigeria fired the beneficiary shortly after his arrival in the United States, and the petitioner originally claimed that the beneficiary had never worked without authorization. Thus, the petitioner has not satisfied condition (i).

The supposed purpose of the beneficiary's November 2006 visit to the United States was to attend a training program, which would fall under condition (iii). That program, however, was only supposed to last a few days, and the record shows that the beneficiary never returned to Nigeria after the program ended. When the training program ended, so did the justification for the interruption of beneficiary's work in Nigeria. Even if we accept the petitioner's claim that the beneficiary did work for the petitioner (contradicting the earlier claim attributed to the beneficiary), this would necessarily mean that the petitioner did not meet condition (iii) because any such work would have been unauthorized. Also, condition (iii) requires continuous membership in the petitioner's denomination, and we have already found that the petitioner has not met this requirement.

For the above reasons, we affirm the director's finding that the petitioner has not met the requirement of two years of continuous employment immediately preceding the petition's filing date.

The AAO will affirm the denial for the above stated reasons, with each considered as an independent and alternative basis for denial. 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. The petitioner has not sustained that burden.

ORDER: The director's decision of March 30, 2009 is affirmed. The petition is denied.