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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

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[Redacted]

FILE: [Redacted]
WAC 06 260 53471

Office: CALIFORNIA SERVICE CENTER Date:

JUL 22 2010

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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.

[Redacted]

Chief, Administrative Appeals Office



DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner, according to its articles of incorporation, "is organized exclusively for charitable, scientific, and educational purposes." 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 "brother" in its religious order. The director determined that the petitioner has not established that the beneficiary seeks to enter the United States for the sole purpose of engaging in religious activity.

Counsel asserts on appeal that the director erred in determining that the beneficiary has not and will not be solely engaged in religious activity. Counsel submits a brief and additional documentation in support of the appeal.

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 –

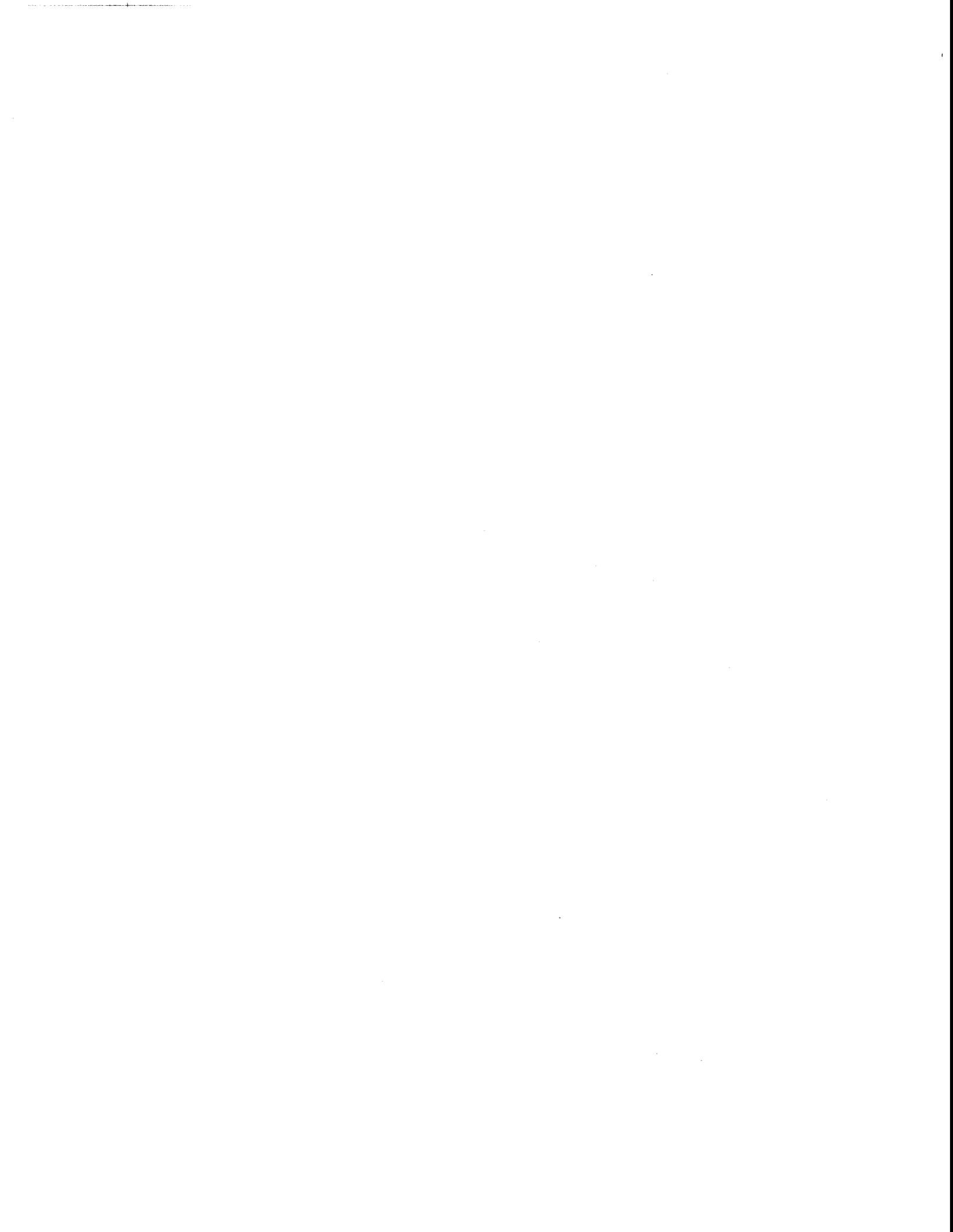
(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before September 30, 2012, 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 September 30, 2012, 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).

At the outset we note that on November 26, 2008, U.S. Citizenship and Immigration Services (USCIS), as required under section 2(b)(1) of the Special Immigrant Nonminister Religious



Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008), 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.

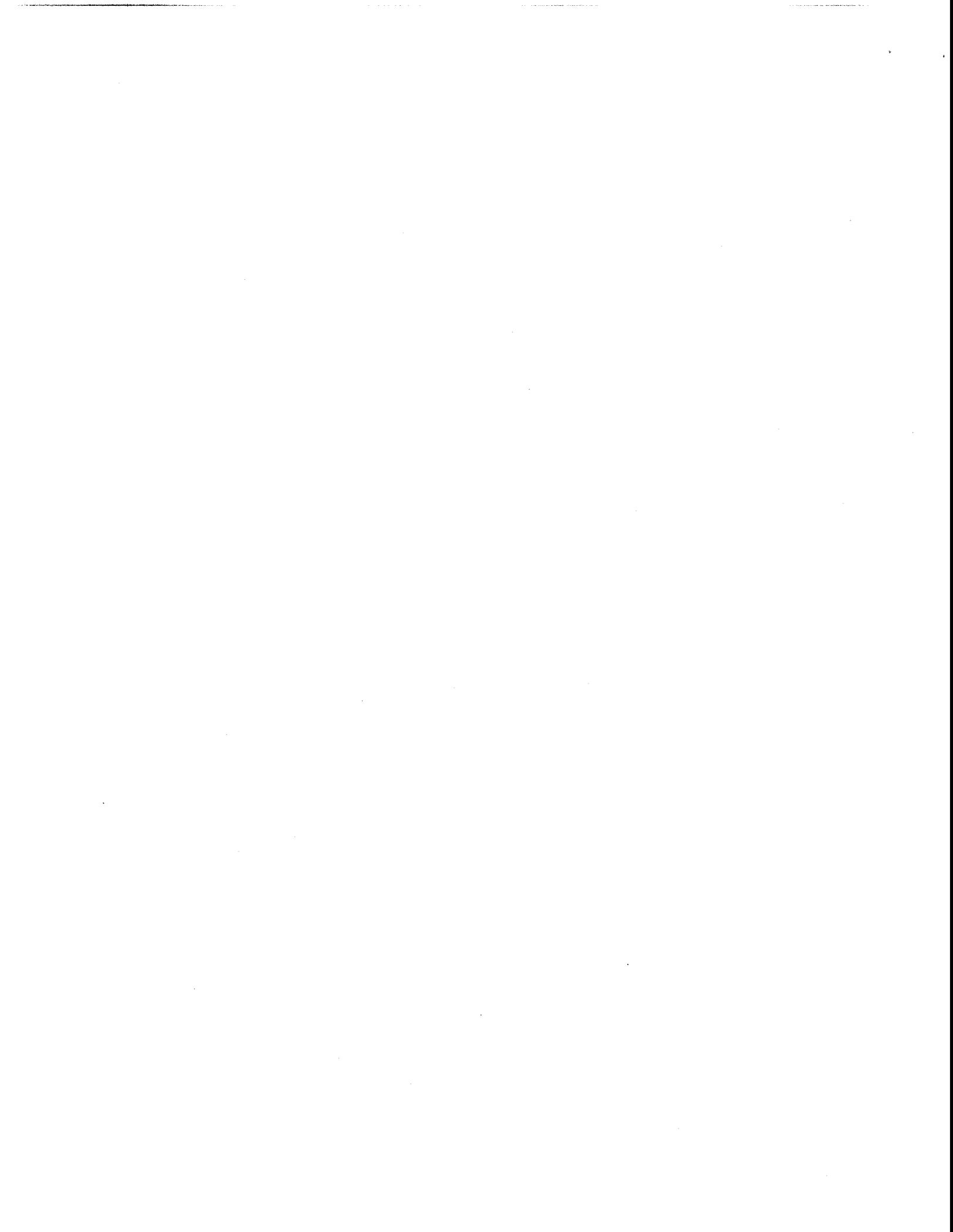
73 Fed. Reg. 72276 (Nov. 26, 2008). As this case was pending on the effective date of the new rule, the new regulations apply. That being said, however, neither the old regulations nor the new regulations require the beneficiary to seek to enter the United States solely for the purpose of engaging in religious work as a brother performing services as religious director of the petitioning organization. Rather, this requirement relates only to those aliens seeking to enter as ministers. 8 C.F.R. § 204.5(m)(2)(i). Accordingly, we hereby withdraw the director's finding on this issue.

While the record does not support the only stated ground for denial, the petition cannot be approved without additional information. 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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

As previously noted, the present petition was pending on the rule's effective date. However, as the director did not request the newly required documentation, the petitioner has not had an opportunity to submit those materials. Before rendering a new decision, the director must allow the petitioner a chance to complete the record.

Although the director improperly applied the requirements of a minister to the instant petition, we do find the director's concern about the beneficiary's outside employment to be relevant to whether the beneficiary violated his R-1 nonimmigrant religious worker visa status and therefore whether he worked continuously in qualified religious work for the two years immediately preceding the filing of the visa petition. The regulation at 8 C.F.R. § 204.5(m) provides in pertinent part:

(11) Evidence relating to the alien's prior employment. Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14, and if acquired in the United States, must have been authorized under United States immigration law.



The director determined that the beneficiary served as an officer of a corporation registered by the State of Florida. Although the beneficiary claimed to have only "loaned" his name and social security number to another individual to set up the corporation, the director determined that the beneficiary was actively involved in the organization, even though it did not show a profit. As aliens admitted as R-1s may not work in any capacity other than what the petition authorized, any work performed by the beneficiary's beyond his work for the petitioner would interrupt his two-year continuous work experience. 8 C.F.R. §§ 214.2(r)(1)(v), (2) and § 204.5(m)(11).

On appeal, the petitioner provided documentation indicating that the beneficiary had divested himself of all interest in the corporation. However, the beneficiary divested himself after the filing date of the petition. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1) and (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The fact that he divested himself at this late date, does not have any impact on his prior unauthorized employment.

On remand, the director should determine whether the beneficiary had the requisite qualifying experience.

Furthermore, on remand, the director shall determine if the petitioner has established it is a bona fide nonprofit religious organization. We note that the petitioner submitted a letter from the Internal Revenue Service (IRS) granting it tax exempt status under section 501(c)(3) of the Internal Revenue Code (IRC) as a public charity under section 509(a)(2). The regulation at 8 C.F.R. § 204.5(m)(8) provides:

(iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, as something other than a religious organization:

(A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and



(D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

As noted above, the petitioner's articles of incorporation do not indicate any religious purpose of the organization. Additionally, the director should insure that the prospective employer is a legitimate United States employer. We note that the Form I-360 was signed by an individual in Honduras and the beneficiary established and organized the petitioning organization in the United States. According to counsel, "The Order of the Brother of Ramon Pane is funded by Cardinal Oscar Rodriguez in Honduras and operates Fundacion Ramon Pane in the United States." The director determined that the beneficiary owns the property allegedly owned by the petitioning organization and is the financial agent of the organization.

Finally, the petitioner has not submitted the attestation required by the regulation at 8 C.F.R. § 204.5(m)(7).

An authorized official of the prospective employer of an alien seeking religious worker status must complete, sign and date an attestation prescribed by USCIS and submit it along with the petition. If the alien is a self-petitioner and is also an authorized official of the prospective employer, the self-petitioner may sign the attestation. The prospective employer must specifically attest to all of the following:

- (i) That the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation;
- (ii) The number of members of the prospective employer's organization;
- (iii) The number of employees who work at the same location where the beneficiary will be employed and a summary of the type of responsibilities of those employees. USCIS may request a list of all employees, their titles, and a brief description of their duties at its discretion;
- (iv) The number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past five years by the prospective employer's organization;
- (v) The number of special immigrant religious worker and nonimmigrant religious worker petitions and applications filed by or on behalf of any aliens for employment by the prospective employer in the past five years;



(vi) The title of the position offered to the alien, the complete package of salaried or non-salaried compensation being offered, and a detailed description of the alien's proposed daily duties;

(vii) That the alien will be employed at least 35 hours per week;

(viii) The specific location(s) of the proposed employment;

(ix) That the alien has worked as a religious worker for the two years immediately preceding the filing of the application and is otherwise qualified for the position offered;

(x) That the alien has been a member of the denomination for at least two years immediately preceding the filing of the application;

(xi) That the alien will not be engaged in secular employment, and any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer; and

(xii) That the prospective employer has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges, and that funds to pay the alien's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization.

This matter will be remanded. The director may request any additional evidence deemed warranted and given that the petitioner has never been given the opportunity to submit evidence related to the new regulation, the director should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.

