U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

C1

[redacted]

Date: DEC 20 2012 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting 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 AAO will dismiss the appeal.

The petitioner is a church. 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 pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits a timeline describing the beneficiary's "Activities and Connection with the Church from January 2010 to January 2012."

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).

The United States Citizenship and Immigration Service's (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 petitioner filed the petition on January 30, 2012. Therefore, the petitioner must

establish that the beneficiary was continuously performing qualifying religious work in lawful status throughout the two-year period immediately preceding that date. The regulation at 8 C.F.R. § 204.5(m)(4) also sets forth the requirements for an acceptable break in the continuity of an alien's religious work as follows:

> A break in the continuity of the work during the preceding two years will not affect eligibility so long as:
>
> (i) The alien was still employed as a religious worker;
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> (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…

The USCIS regulation at 8 C.F.R. § 204.5(m)(11) provides:

> *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. If the alien was employed in the United States during the two years immediately preceding the filing of the application and:
>
> (i) Received salaried compensation, the petitioner must submit IRS documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of income tax returns.
>
> (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.
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> (iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.

If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

In materials accompanying the Form I-360 petition, the petitioner indicated its intent to employ the beneficiary as [redacted], a mission church sponsored by the petitioning church, [redacted] The petitioner submitted a copy of the beneficiary's resume, which included the following entry under "work experience":

> 04/2010 – Present: [redacted], a mission church of [redacted] While in training at Truett Seminary, Baylor University, voluntarily worked in conjunction with the [redacted] in planting [redacted]

The resume did not include any other work experience during the two-year period immediately preceding the filing of the petition. A letter from [redacted], also submitted with the petition, expressed the need for the pastoral services of the beneficiary "who has been involved on a voluntary basis in starting this church since January 2010." No explanation was provided for the discrepancy between the start dates provided in the beneficiary's resume and the letter from [redacted]. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On March 1, 2012, USCIS issued a Request for Evidence, in part requesting additional evidence regarding the beneficiary's work history. The notice instructed the petitioner to submit experience letters from current and former employers including a weekly breakdown of duties, "specific dates of employment, specific job duties, number of hours worked per week, form and amount of compensation, and level of responsibility/supervision." The notice also instructed the petitioner to submit evidence that the beneficiary received compensation or evidence of self-support during the qualifying period. Additionally, the notice stated "If the experience was gained in the United States provide evidence that the beneficiary was authorized to accept employment."

In response to the notice, the petitioner submitted an unsigned document with the heading "Evidence that the Beneficiary has been working for at least 2 years (1/30/2010 to 1/30/2012) as a minister with this organization." The document described the beneficiary's work history stating, in part:

> [redacted] has been voluntarily working for more than 2 years (April 2010-present) with the Ghana Baptist Convention church planter-facilitator to plant this mission church of [redacted] does not receive any compensation in the form of salary or wages for his work with [redacted] He is supported by some philanthropists in the church, waiting for the approval of this petition before he can officially assume the position of the Pastor of the Church. …

[redacted] is a member of [redacted] sponsors some students of the [redacted] Students of the Convention at Truett become members of a [redacted] while in seminary. For example, [redacted] beneficiary of this petition) was a member of [redacted] member [redacted] is also a member) and did his supervised ministry (mentoring) at [redacted] and continued his post-graduation practical training at [redacted]

On June 5, 2012, the director denied the petition, finding that the petitioner had not established that the beneficiary has the requisite two years of qualifying work experience immediately preceding the filing of the petition. Specifically, the director found that the evidence failed to show that the beneficiary was engaged in compensated employment as required under the regulations

On appeal, the petitioner submits a detailed timeline of the beneficiary's "activities and connection with the church" during the two-year qualifying period immediately preceding the filing of the petition. The timeline indicates that from January to December of 2010, the beneficiary was a member of [redacted] and an "active participant of the International Sunday school class of the church whilst a student at Baylor University." The document also states: "During this time, he was invited by the church planter-facilitator, [redacted], to help in the [redacted] which later became the [redacted]." The timeline states that from January to April 2011, as part of his program at the seminary, the beneficiary served as a student mentor in ministry at [redacted] on an unpaid basis. The timeline indicates that the beneficiary graduated from the seminary in May 2011, and that, since July 2011, he "was doing his Post completion Optional Practical Training as minister in charge of [redacted] under the guidance of [redacted] of [redacted]"

The petitioner argues that the beneficiary's time as a seminary student and as a mentor "is counted towards his time and service in ministry." The petitioner additionally argues:

> Though the beneficiary was not compensated as a religious worker because he was enrolled FULL TIME in an accredited program for Religious studies, he continued to work in programs affiliated with the Petitioner during the two-year period (1/30/2010 – 1/30/2012) immediately preceding the filing of the petition.

The AAO notes that the petitioner indicates the beneficiary held employment authorization pursuant to his F-1 student status for at least a portion of the qualifying period. Therefore, other than the time period which he was authorized to perform optional practical training (OPT) from July 18, 2011 to July 17, 2012, the petitioner has not established that the remaining religious work performed by the beneficiary during the qualifying period was authorized under immigration law as required under 8 C.F.R. § 204.5(m)(11). As an F-1 student, during the time prior to his approved OPT, the beneficiary would only have been eligible for employment authorization under limited conditions

specified at 8 C.F.R. § 214.2(f)(9)-(11) and 274a.12(b)(16). The petitioner has not established that the beneficiary met any of those conditions. A nonimmigrant who is permitted to engage in employment may only engage in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status. 8 C.F.R. § 214.1(e).

Regarding the petitioner's claim of the beneficiary's volunteer work within the United States, such work is not considered to be qualifying experience. In the preamble to the proposed rule, USCIS recognized that although "legitimate religious work is sometimes performed on a voluntary basis . . . allowing such work to be the basis for . . . special immigrant religious worker classification opens the door to an unacceptable amount of fraud and increased risk to the integrity of the program." *See* 72 Fed. Reg. 20442, 20446 (April 25, 2007). The regulation at 8 C.F.R. § 204.5(m)(11) specifically requires that the alien's prior experience have been compensated either by salaried or non-salaried compensation (such as room and board), but can also include self-support under limited conditions. In elaborating on this issue in the final rule, USCIS determined that the sole instances where aliens may be uncompensated are those aliens "participating in an established, traditionally non-compensated, missionary program." *See* 73 Fed. Reg. at 72278. *See also* 8 C.F.R. § 214.2(r)(11)(ii). The petitioner has neither claimed nor established that the beneficiary was participating in such a program. Accordingly, any time the beneficiary may have spent in the United States "working" as a volunteer for the petitioner and/or affiliated organizations cannot be considered qualifying employment.

The AAO additionally notes discrepancies regarding the timeline of the beneficiary's work history during the two-year qualifying period immediately preceding the filing of the petition. As noted above, the evidence is not consistent regarding the date the beneficiary began working for the mission church[redacted], listing alternate start dates of January 2010 and April 2010. Further, previously submitted documents indicated that the beneficiary worked continuously for[redacted] from his start date until the present. However, on appeal, the petitioner indicates that the beneficiary worked for[redacted] from January to December 2010 and then from July 2011 until the present. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. The petitioner states on appeal that from January to April 2011, the beneficiary worked as a mentor at[redacted], but the petitioner has not submitted evidence from[redacted] to support this assertion. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Finally, the petitioner asserts on appeal that the beneficiary's time as a student "is counted" toward his qualifying experience. As only compensated employment or participation in an established missionary program is considered qualifying experience, the AAO disagrees with the assertion that religious study is qualifying experience. To the extent that the petitioner argues that the beneficiary's time as a student is a qualifying break, the petitioner has not submitted sufficient

documentary evidence to establish that the period in question is a qualifying break under 8 C.F.R. § 204.5(m)(4). The regulation requires that the alien was still employed as a religious worker and that the break "did not involve unauthorized work in the United States." The evidence is not sufficient to establish that the beneficiary was "employed" and held employment authorization throughout the qualifying period.

For the reasons discussed above, the AAO agrees with the director's finding that the petitioner has not established that the beneficiary has the requisite two years of continuous, qualifying religious work in lawful immigration status for at least the two-year period immediately preceding the filing date of the petition.

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, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.