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: JUN 18 2012 Office: CALIFORNIA SERVICE CENTER

[redacted]

IN RE: Petitioner:
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:

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,

Perry Rhew
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 appeal will be dismissed.

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 priest. The director determined that that the petitioner had failed to submit an Internal Revenue Service (IRS) 501(c)(3) letter establishing its qualifying tax-exempt status and to establish that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

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;
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> (ii) seeks to enter the United States –
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> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
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> > (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
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> (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 issues presented on appeal are whether the petitioner has submitted an IRS 501(c)(3) letter establishing its qualifying tax-exempt status and whether the petitioner has established that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(8) reads, in full:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

(i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or

(ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or

(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.

At the time of filing, the petitioner submitted evidence of its tax exempt status with the state of Missouri. In her April 2, 2010 Request for Evidence (RFE), the director acknowledged the state exemption, but noted the specific requirements of evidence of federal tax exempt status under Section 501(3)(3) of the Internal Revenue Code.

In response to the RFE, the petitioner submitted a copy of its state tax exemption, which the director indicated was insufficient. In a letter dated May 13, 2010, counsel for the petitioner indicated that the petitioner requested from the IRS a current 501(c)(3) determination letter, which the petitioner had not yet received. Counsel stated that the petitioner did already possess tax exempt status.

Counsel also requested that USCIS grant an extension for the petitioner to submit a copy of this letter.

On appeal, however, the petitioner submits an April 16, 1992 letter from the IRS indicating that the Coptic Orthodox Church – Diocese of North America, Inc. is 501(c)(3) tax exempt. The petitioner additionally submitted an August 26, 2010 letter from [redacted] of the Coptic Orthodox Patriarchate Archdiocese of North America stating that the petitioner's church is under its jurisdiction.

The purpose of the RFE 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). 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). As in the present matter, where 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 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not, and does not, consider the sufficiency of the evidence submitted on appeal. The AAO concurs with the director's finding that the petitioner failed to establish its tax-exempt status.

Regarding the director's second ground for denial, the regulation at 8 C.F.R. § 204.5(m) provides that to be eligible for classification as a special immigrant religious worker, the alien must:

> (4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed. A break in the continuity of the work during the preceding two years will not affect eligibility so long as:
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> (i) The alien was still employed as a religious worker;
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> (ii) The break did not exceed two years; and
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> (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.

Therefore, the petitioner must show that the beneficiary worked 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 Form I-360 on October 27, 2009. Accordingly, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

The 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:
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> > (i) Received salaried compensation, the petitioner must submit IRS [Internal Revenue Service] documentation that the alien received a salary, such as an IRS Form W-2 [Wage and Tax Statement] or certified copies of income tax returns.
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> > (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.

On the Form I-360 petition, the petitioner indicated that the beneficiary arrived in the United States on June 4, 2008. Therefore, the beneficiary was not in the United States throughout the entire two-year qualifying period. On the Form I-360, under "Current Nonimmigrant Status," the petitioner wrote "R-1." The record shows that the beneficiary's R-1 nonimmigrant religious worker status expired on June 4, 2011.

The director noted in her July 26, 2010 decision that the petitioner had indicated that the beneficiary had been working for its church since June of 2008. Within her April 2, 2010 RFE, the director had asked the petitioner to submit its IRS Forms W-2 for the beneficiary for work performed in the United States in 2008 and 2009. Within its May 17, 2010 response, the petitioner instead submitted copies of the beneficiary's uncertified IRS Forms 1040 for 2008 and

2009. The director found that the petitioner had submitted neither the requested tax information regarding the beneficiary's employment nor substituted tax information that was reliable, as it was not certified.

On appeal, counsel submits information regarding the beneficiary's employment as a full-time priest with the Coptic Orthodox Church in the United States and in Egypt since 2002 when he was ordained. Counsel submits a copy of a June 19, 2009 certificate from [redacted] of the Coptic Orthodox Diocese in Beni Suef, Egypt delineating the beneficiary's consecration and service for that diocese; a copy of a certificate from the bishop's representative listing the dates of the beneficiary's service as a priest in Egypt and for the petitioner's church; an April 28, 2009 letter from the petitioner's treasurer on behalf of the petitioner's secretary, [redacted] stating the date of the beneficiary's ordination and describing his subsequent service as a priest; and a September 26, 2008 letter from the petitioner's arch priest, [redacted], stating that the beneficiary has been employed with the petitioner's church as a priest since June of 2008, earning a salary of $60,000.00. Counsel additionally submits an uncertified IRS Form 1099-MISC, indicating that it paid the beneficiary $18,000.00 in other income and $48,750.00 in nonemployee compensation in 2009.

Counsel for the petitioner has not explained why, if the beneficiary was working for the petitioner since June of 2008 full-time as a priest, no Form W-2 is available. Moreover, on his 2009 IRS Form 1099-MISC, the beneficiary indicated that $48,750.00 from the petitioner was for nonemployee compensation. Counsel for the petitioner does not explain for what services the petitioner paid the beneficiary $18,000.00 that year. In addition, the petitioner failed to provide certified copies of the beneficiary's tax documents when the director had noted that same deficiency within the IRS Forms 1040 for 2008 and 2009 submitted with the petitioner's May 17, 2010 response to the director's April 2, 2010 RFE.

Accordingly, the AAO finds that the petitioner has failed to satisfy the requirements of 8 C.F.R. § 204.5(m)(11)(i) regarding the beneficiary's employment in the United States, as the petitioner did not submit Forms W-2 or IRS documentation in the form of certified copies of federal income tax returns reflecting the beneficiary's compensation in 2008 and 2009. The AAO additionally finds that the petitioner has failed to provide evidence of similar compensation of the beneficiary in Egypt beyond the attestation. The regulation at 8 C.F.R. § 204.5(m)(11)(iii) requires comparable evidence of religious work outside of the United States.

Thus, the petitioner has failed to submit sufficient documentation to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the petition.

The petition will be denied for the above stated reasons. 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.

ORDER: The appeal is dismissed.