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

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PUBLIC COPY

[redacted]

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Date: JUN 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:

SELF-REPRESENTED

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. 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 an ordained reader/minister. The director determined that the petitioner failed to establish that it qualifies as a bona fide non-profit religious organization in the United States.

On appeal, the petitioner submits a letter from [redacted] and a letter from the Internal Revenue Service (IRS) addressed to [redacted]

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 –
>
> > (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 (USCIS) regulation at 8 C.F.R. § 204.5(m)(3) provides that in order to be eligible for classification as a special immigrant religious worker, an alien must be coming to work for a bona fide non-profit religious organization in the United States, or a bona fide organization which is affiliated with the religious denomination in the

United States. The regulation at 8 C.F.R. § 204.5(m)(5) states, in pertinent part:

> (5) Definitions. As used in paragraph (m) of this section, the term:
>
> *Bona fide non-profit religious organization in the United States* means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the IRS confirming such exemption.
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> *Bona fide organization which is affiliated with the religious denomination* means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code and possessing a currently valid determination letter from the IRS confirming such exemption.
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> *Tax-exempt organization* means an organization that has received a determination letter from the IRS establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the Internal Revenue Code . . .

The regulation at 8 C.F.R. § 204.5(m)(8) states:

> *Evidence relating to the petitioning organization.* A petition shall include the following initial evidence relating to the petitioning organization:
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> (i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or
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> (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.

The petitioner filed the Form I-360 petition on July 22, 2010. Accompanying the petition, the petitioner submitted a letter from the Illinois Department of Revenue confirming that the petitioning organization is exempt from taxation in Illinois.

On March 22, 2011, USCIS issued a Request for Evidence which, in part, instructed the petitioner to submit documentary evidence that it qualifies as a nonprofit religious organization. The notice specifically instructed the petitioner to submit a determination letter from the IRS indicating the petitioner's Employer Identification Number (EIN) and confirming that it is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code.

In a letter responding to the notice, the petitioner stated the following:

> Our Federal Tax Number is: [redacted] We presently do not possess an IRS 501(c)(3) Tax Exempt Certification. The IRS has told us that we are a tax exempt organization but, the certificate you seek was unnecessary. We were further told that you may contact the IRS directly at [redacted] to verify our tax exempt status. We have attached the certificate from the State of Illinois showing our tax exempt status.

The petitioner again submitted the letter from the Illinois Department of Revenue and additionally submitted its articles of incorporation and evidence of its religious nature and activities, including a newsletter and photos.

The director denied the petition on June 14, 2011, finding that the petitioner had not established that it qualifies as a bona fide nonprofit religious organization in the United States that is exempt from taxation. The director noted the petitioner's assertion that it was told by the IRS that the certificate is unnecessary. The director stated:

In supplementary information published with changes to the regulations in 2008, USCIS stated:

> USCIS recognizes that the IRS does not require all churches to apply for a tax-exempt status determination letter, but has nevertheless retained that requirement in this final rule....
>
> [A]n organization must apply for and receive an IRC section 501(c)(3) determination letter to demonstrate nonprofit status if that organization wishes to utilize either the R-1 nonimmigrant or the special immigrant religious worker program.

By the time the petitioner filed the petition on July 22, 2010, the new regulations were already in effect. The new regulations included a revised definition of "bona fide nonprofit religious organization" at 8 C.F.R. 204.5(m)(5). USCIS replaced the phrase "one that has never sought such exemption but establishes to the satisfaction of the Service that it would be eligible therefore if it had applied for tax exempt status" with "possessing a currently valid determination letter from the IRS confirming such exemption."

On appeal, the petitioner submits a letter from The Serbian Orthodox Diocese of New Gracanica-Midwestern America, stating, in pertinent part:

> In support of the above application we wish to say that the petitioner, [redacted] and as such uses our own tax exempt number under section 501(c)(3) of the Internal Revenue Codes: [redacted] For some reason, the Board of our local church, when submitting the above application, stated that they "presently do not possess the IRS 501 (c)(3)". It is true that they, as a local church do not have they [sic] own number, but they, as a part of the Diocese, do have it.

The petitioner additionally submits a letter from the IRS to [redacted] confirming that it is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code.

In the letter submitted on appeal, [redacted] that the petitioner does not have its "own number" and that it instead uses the diocese's "tax exempt number." However, in response to the Request for Evidence, the petitioner stated that its "Federal Tax Number is: [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).

Furthermore, the IRS determination letter submitted on appeal does not indicate that the [redacted] was granted a group tax-exemption, therefore the petitioner has not established that it qualifies as a religious organization that is recognized as tax-exempt under a group tax-exemption under 8 C.F.R. § 204.5(m)(8)(ii).

Accordingly, the AAO agrees with the director's determination that the petitioner failed to establish that it qualifies as a bona fide nonprofit religious organization.

As an additional matter, the AAO finds that the petitioner has not established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition. 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 Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the alien 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. Therefore, petitioner alien must establish that the beneficiary was continuously performing qualifying religious work in lawful status throughout the two-year period immediately preceding July 22, 2010.

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.

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

According to the Form I-360 petition and accompanying evidence, the beneficiary entered the United States on August 10, 2007 in R-1 nonimmigrant status which authorized him to work for [redacted] until [redacted] In a letter accompanying the petition, the diocesan secretary from [redacted] stated that the beneficiary "worked at our [redacted] The letter also stated that the beneficiary "presently teaches Sunday School and helps with Church Services aat one of our churches [redacted] At the time of filing, the petitioner also submitted copies of the beneficiary's tax returns from 2008 and 2009 in which the beneficiary listed his occupation as "priest" but did not indicate the source of his income.

In the Request for Evidence issued on March 22, 2011, USCIS instructed the petitioner to submit copies of the beneficiary's IRS Forms W-2 for 2008 and 2009. In response, the petitioner submitted copies of the beneficiary's Forms 1099 for the years 2008, 2009 and 2010. These forms indicated that the beneficiary received $14,400 from [redacted] 2008, $7,120 from the petitioner in 2009, and $6,600 from the petitioner in 2010.

The AAO finds the evidence insufficient to establish the beneficiary's continuous, qualifying employment during the qualifying period. The experience letter submitted by the petitioner from [redacted] does not provide specific dates of employment to establish the continuity of the beneficiary's experience, nor does it provide a sufficient description of the beneficiary's duties to establish that his prior experience would be qualifying religious work. Furthermore, the petitioner has not established that the beneficiary's work was authorized under United States immigration law.

According to the record, the beneficiary held R-1 nonimmigrant status which authorized him to work for [redacted] from August 10, 2007 to August 9, 2010. The tax documents submitted by the petitioner indicate that the beneficiary began working for the petitioner in 2009. However, the record does not indicate that the beneficiary held authorization to work for the petitioner during the qualifying period.

The regulations at 8 C.F.R. §§ 214.2(r)(3)(ii)(E), as were in effect when the beneficiary was approved as an R-1 nonimmigrant, required an authorized official of the organization to provide the "name and location of the specific organizational unit of the religious organization" for which the alien would work. The regulation at 8 C.F.R. § 214.2(r)(6) stated:

> *Change of employers.* A different or additional organizational unit of the religious denomination seeking to employ or engage the services of a religious worker admitted under this section shall file Form I-129 with the appropriate fee ... Any unauthorized change to a new religious organizational unit will constitute a failure to maintain status..."

Further, the regulation at 8 C.F.R. § 214.1(e) provides that a nonimmigrant may engage only in such employment as has been authorized. Any unlawful employment by a nonimmigrant constitutes a failure to maintain status.

In this instance, the beneficiary's R-1 status during the qualifying period only authorized his employment with the named employer, [redacted] The beneficiary was not authorized to engage in employment with any affiliated organization without first obtaining authorization through a separate Form I-129 petition. Although the exact date that the beneficiary began working for the petitioner is not clear, the evidence suggests that the beneficiary was engaged in unauthorized employment for the petitioner during the qualifying period, thereby failing to maintain lawful status.

The petition will be denied 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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.