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 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:
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 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 Administrative Appeals Office (AAO) remanded the matter to the director for consideration under new regulations. The director again denied the petition and certified the decision to the AAO for review. The AAO will affirm the denial of the petition.

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 minister. The director determined that the petitioner failed to establish that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition.

In response to the notice of certification, the petitioner submits a statement from counsel, letters from officials of three "neighboring" churches, a letter from [redacted], and copies of documents already in the record.

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,
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> > (II) before October 31, 2009, 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 October 31, 2009, 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).

According to the United States Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(4), the petitioner must 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 May 10, 2007. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work in lawful immigration status throughout the two-year period immediately preceding that date.

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:
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> > (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.

The USCIS regulation at 8 C.F.R. § 204.5(m)(12) reads:

> *Inspections, evaluations, verifications, and compliance reviews.* The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may

> include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

Accompanying the Form I-360 petition, the petitioner submitted a letter from [redacted] dated April 3, 2007 and signed by [redacted] for the Miami South District. The letter asserted that the beneficiary "has been acting as a full-time [redacted] on an R-1 visa since June 2004, when the Key West mission was established." The petitioner also submitted uncertified copies of the beneficiary's Form 1040 federal tax returns, which indicated that he earned business income of $25,200 in 2005 and $24,000 in 2006 but did not identify the source of the income.

On October 23, 2007, USCIS issued a Request for Evidence (RFE), in part requesting additional evidence regarding the beneficiary's work history during the two-year qualifying period immediately preceding the filing of the petition. The notice specifically instructed the petitioner to submit experience letters written by the beneficiary's previous and current employers, including "the employer's name, 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 additionally instructed the petitioner to submit documentary evidence to show that the beneficiary received compensation for his work.

In a letter responding to the RFE, counsel for the petitioner described the beneficiary's purported weekly schedule of duties and stated that the letter from [redacted] "fully describes the experience and credentials of the beneficiary." The petitioner resubmitted a copy of that letter and also submitted photographs purportedly showing the beneficiary working as a minister. Additionally, the petitioner submitted photocopies of processed checks from the petitioner to the beneficiary showing approximately monthly payments covering the period from May 2005 to November 2007. The petitioner resubmitted copies of the beneficiary's tax returns for 2005 and 2006 and additionally submitted a copy of the beneficiary's tax return for 2007 and an amended tax return Form 1040X for 2004. The AAO notes that, like a delayed birth certificate, the amended tax return created several years after the fact raises serious questions regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991)(discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings).

The director denied the petition on February 28, 2008, finding in part that the beneficiary did not have two years of qualifying experience according to the regulations in effect at that time. On April 3, 2008, the petitioner appealed the decision. On December 12, 2008, the AAO remanded the petition for consideration under new regulations that took effect in November 2008.

On February 4, 2009, the director issued a Notice of Intent to Deny the petition (NOID), instructing the petitioner to submit evidence in compliance with the new regulations, including an employer

attestation and evidence relating to the beneficiary's prior employment.

In a letter responding to the NOID, counsel asserted that "[u]pon his arrival here in June 2004 on an R-1 religious worker nonimmigrant visa, [redacted] immediately settled down to tackle the challenge of building the small Iglesia in Key West." The petitioner submitted an employer attestation, with an attached "Detailed Description of Aliens Proposed Daily Duties" as well as an attached "Description of alien's qualifications for proffered position," which stated that the beneficiary began working for the petitioner in June 2004 "on an R-1 religious worker nonimmigrant visa." The petitioner also submitted a letter from [redacted] which stated, in part:

> By this communication I certify that [redacted] has performed pastoral duties since his arrival to the United States on an R-1 visa, when he incorporated the [redacted]. under the laws of the State of Florida and according to the rules of the Church of God. [redacted] met all of the requirements established by the organization of the Church of God in order to be able to carry our all pastoral functions of the ministry.

The petitioner submitted a copy of the beneficiary's tax return from 2008 as well as a Form W-2 for 2008 indicating that he was paid $24,000 by the petitioner during that year. Additionally, the petitioner submitted copies of the beneficiary's Internal Revenue Service (IRS) Tax Return Transcripts for the years 2005 to 2007 which did not indicate the source of his income.

On June 18, 2010, the director again denied the petition, finding that the petitioner failed to establish that the beneficiary has the requisite two years of qualifying work experience immediately preceding the filing of the petition. In the certified decision, the director questioned the validity of the petitioner's assertions regarding the beneficiary's schedule of duties, in part based on a failed compliance review. The director stated:

> The petitioning organization had 3 site visits. June 19, 2008, July 13, 2008 and July 23, 2008. Two visits were during weekdays. The investigating officer found no one at the church on the visits during the week. Without knowledge of set office hours, the investigating officer could not validate the duties or employment during the week. The site visit on Sunday, July 13, 2008 revealed the church was conducting services with approximately 100 persons in attendance.
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> The organization is a functioning and incorporated religious organization. However, the investigating officer could only verify the church activities appear to be limited to Sunday Service's [sic]. The USCIS is not convinced by the evidence of record of the full time work for the qualifying period prior to the filing of the I-360 petition on May 10, 2007.

In response to the Notice of Certification, counsel states that the petitioner was unaware of the site

visits discussed by the director, but acknowledges that a site visit was conducted at the petitioning church's new address on November 20, 2009, and a subsequent interview with [redacted] on December 4, 2009. Regarding the validity of the beneficiary's schedule of duties, counsel argues that most of the beneficiary's duties take place outside of the actual church building. Counsel states:

> The church holds *services* (as most Protestant churches do), solely on Sundays and on Wednesday evenings. On Saturday afternoons it holds Christian youth meetings and rehearsals of religious music. Bible studies and prayer meetings are generally held at parishioner homes. Over the rest of the week the pastor performs motley other *outside* ministerial tasks (visiting homes of parishioners, hospital visits, evangelistic campaigns, etc.).(A "minister" who physically remains "24/7" in the church building would not be a minister, but a monk.)

The petitioner submits letters from officials of three neighboring churches attesting to their knowledge of the beneficiary and his work as a minister at the petitioning church as well as a letter from the [redacted] stating that the beneficiary "has been visiting patients in our facility since 2004."

The AAO notes that, according to the record, the 2008 site visits discussed by the director were conducted not at the petitioning church, but at [redacted] the church of the signatory, [redacted] As noted by counsel, a compliance review was later conducted regarding the petitioning church.

Counsel's assertion that the beneficiary spends most of his time working outside of the church is contrary to previous assertions made by the petitioner and counsel himself. In his letter responding to the October 23, 2007 RFE, counsel provided the address of the church that the petitioner was renting space from at that time. He stated: "This is the physical address **where all religious activities take place**" (emphasis added). Further, in the employer attestation submitted in response to the NOID, the petitioner was asked to provide a "List of the specific address(es) or location(s) where the alien will be working." The petitioner only listed the church address, [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). Additionally, except for the letter from [redacted] the petitioner has not provided documentary evidence in support of counsel's assertions regarding the beneficiary's work outside of the church premises. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Further, the regulation at 8 C.F.R. §204.5(m)(4) requires that the beneficiary have been in lawful immigration status during the qualifying period and the regulation at 8 C.F.R. §204.5(m)(11) requires that any work performed during that time have been authorized under immigration law.

The petitioner has asserted at various times that the beneficiary has worked for the petitioner since June 2004 in R-1 nonimmigrant status, but has not submitted documentary evidence regarding the beneficiary's immigration status during the qualifying period. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The regulation at 8 C.F.R. §§ 214.2(r)(3)(ii)(E), as was in effect in 2004 when the beneficiary was purportedly 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, pursuant to 8 C.F.R. § 214.1(e), a nonimmigrant may engage only in such employment as has been authorized. Any unlawful employment by a nonimmigrant constitutes a failure to maintain status.

The petitioner has not submitted documentary evidence to establish that the beneficiary held R-1 nonimmigrant status which authorized his employment for the petitioner during the qualifying period. Therefore, the petitioner has not established that the beneficiary maintained lawful status under United States immigration law during that period.

For the reasons discussed above, the AAO agrees with the director's conclusion that the petitioner has not established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing 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 director's decision of June 18, 2010 is affirmed. The petition is denied.