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: NOV 0 3 2012 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

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:

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 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 associate 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 brief from counsel, two letters from the [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,
> >
> > (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 June 3, 2011. 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;
>
> (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.
>
> (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.

According to the Form I-360 petition, the beneficiary arrived in the United States on January 16, 2010 in B-2 nonimmigrant visitor status which expired on July 15, 2010. The regulation at 8 C.F.R. § 214.1(e) states that aliens in such status "may not engage in any employment." The record does not indicate that the beneficiary held any lawful status subsequent to the expiration of his B-2 status, or that he held any status that would have authorized him to engage in employment in the United States during the qualifying two-year period. Accordingly, any work performed by the beneficiary during that time is not considered qualifying prior experience under 8 C.F.R. § 204.5(m)(4) and (11).

In a letter accompanying the petition, the petitioner stated that the beneficiary "is a validly ordained Roman Catholic Priest for over 10 years serving the African French speaking community as a pastor." In a separate letter submitted with the petition, dated June 24, 2010, a representative from the [redacted] in Benin described the beneficiary's work history as follows, in pertinent part:

> He is ordained on the 16th day of September 1995. Since then he has worked in Ghana (1995 – 2000), Nigeria (2000 – 2004), one year in the Catholic Institute of Paris (2004 – 2005) and Liberia (2006 – 2008)[.] He has served the society in various areas as counselor and chaplain in various dioceses. ...
>
> Based on the request of the French speaking community and taking into consideration the letter of [redacted] Pastor of [redacted] can work in the United States of America. He is covered with health insurance.

On the beneficiary's Form G-325A, Biographic Information, submitted with his Form I-485, Application to Register Permanent Residence or Adjust Status filed on March 24, 2010, the beneficiary indicated that he has been employed by the petitioner since January 2010. The beneficiary indicated that, from July 2008 until December 2009, he was employed as a priest at St [redacted] and resided in Cotonou, Benin. The beneficiary submitted copies of his visa and Form I-94 with entry stamp, showing his entry into the United States on January 16, 2010 in B-2 nonimmigrant visitor status.

On August 31, 2011, 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 any of the experience was gained while working in the United States provide evidence that the beneficiary was employed while in lawful status."

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

> This is to state that [redacted] began volunteer pastoral ministry to the French Speaking Catholic Community at St. Martin's Catholic Church in Washington DC on June 20, 2009 while waiting for his work visa.

Counsel for the petitioner also asserted that the beneficiary was "involved in a volunteer pastoral ministry" for the petitioning church for the preceding two years and that he lives with a "family who provides him with day to day support." The petitioner submitted a Form I-134, Affidavit of Support from [redacted] dated November 30, 2009, which indicated her intent to provide the beneficiary with room, board, and health insurance.

On March 2, 2012, the director denied the petition, finding that the petitioner had not established that the beneficiary has the requisite two years of lawful, qualifying work experience immediately preceding the filing of the petition.

On appeal, counsel for the petitioner argues as follows:

> Rev [redacted] was on a sabbatical from the [redacted] and volunteered with parishioners while waiting for permission to work in the United States for the [redacted]. Exhibit 4.
>
> Pursuant to 8 CFR 204.5(m)(4), Rev. [redacted] was on sabbatical, the break did not exceed two years and he was still a member of the Catholic Church for the duration.

The petitioner submits a letter from the [redacted] in Benin, which states:

> Rev [redacted] is a priest of the [redacted] and belongs to Benin region. As a missionary he is employed by the [redacted] Society, here in Benin for the past 150 years. He is supported financially by the St [redacted] and our benefactors since he is not employed and therefore does not receive any salary from [redacted] Knowing that his status does not permit him to work in the United States of America we do give substantial help to him since June 1st, 2009. We will continue to support him from his home parish until he will get his status changed to a Religious Worker in St [redacted]

The petitioner also submits a second letter from the [redacted] dated September 16, 2011, requesting permission for the beneficiary "to work with our French speaking people residing in the tri-state area of DC, Virginia and Maryland." Additionally, the petitioner resubmits copies of letters previously submitted in response to the August 31, 2011 Request for Evidence.

Although counsel refers to the beneficiary's time in the United States as a "sabbatical," the petitioner has not submitted sufficient documentary evidence to support counsel's assertion that the period in question is a qualifying break under 8 C.F.R. § 204.5(m)(4). 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). The regulation requires that the alien was still employed as a religious worker and that the "nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States." None of the documentary evidence submitted by the petitioner establishes that the beneficiary was in the United States for religious training or sabbatical. Rather, the evidence consistently indicates that the beneficiary came at the request of the petitioning church to work as a pastor. Further, the letter from the [redacted] asserts for the first time on appeal the beneficiary "is employed by the [redacted] suggesting current employment. The AAO notes that no mention was made of this current employment in the initial filing or in response to the request for evidence which specifically focused on the continuity of the beneficiary's employment. Further, on the Form G-325A, the beneficiary did not include such employment but instead indicated that he is currently employed by the petitioner. 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).

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 cannot be considered qualifying employment.

Furthermore, the issue of whether or not the beneficiary was compensated has no effect on the beneficiary's lack of lawful immigration status during the two-year qualifying period.

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. In response

to the August 31, 2011 Request for Evidence, the petitioner indicated that the beneficiary began his volunteer pastoral work for the petitioning church on June 20, 2009. However, on the Form G-325A, the beneficiary indicated that he lived and worked in Benin through December of 2009. Further, there is no evidence in the record that the beneficiary entered the United States during the qualifying period prior to his entry in B-2 status on January 16, 2010. 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. To the extent that the beneficiary spent a portion of the qualifying period working abroad, the petitioner has not submitted sufficient evidence of such employment. The regulation at 8 C.F.R. § 204.5(m)(11) provides that, if the alien was employed outside the United States during the qualifying period, the petitioner must submit verifiable evidence comparable to IRS documentation regarding the alien's salaried or non-salaried compensation or verifiable evidence of self-support.

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.