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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: APR 0 8 2013 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 in accordance with the instructions on 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 letters from the petitioner and beneficiary, copies of documents previously submitted, as well as additional evidence including the beneficiary's tax returns from 2010 and 2011.

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
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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 United States Citizenship and Immigration Services (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 March 23, 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 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.
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> > (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 and accompanying evidence, the beneficiary entered the United States on December 29, 2006 and again on July 31, 2007 in F-1 nonimmigrant student status authorizing his studies at [redacted] toward a Master's degree in "Dental Hygiene/Hygienist." In a letter accompanying the petition, the petitioner stated that the beneficiary has served "since 2007 as a volunteer Pastor of [redacted] in USA." In a separate letter, dated June 30, 2008, the petitioner thanked the beneficiary "for the voluntary services you rendered to this Ministry from March 2007 to June 30th 2008 before your appointment as the Minister in-charge on July 1, 2008."

The petitioner submitted a letter from the Board of Trustees of the petitioning organization, which described the beneficiary's work history in the United States as follows:

> [The beneficiary] has excellent work experience in the United States, which he has gained through his employment as an Adjunct Faculty Member with [redacted] an Associate Minister with [redacted] of Norfolk for 2 years and six months; [redacted] in the United States for 5 years.... He is a Masters of Arts Degree Candidate in the School of Psychology, Human Services Counseling at [redacted] United States[.]

The petitioner submitted a copy of the beneficiary's resume, which indicated that the beneficiary volunteered as an associate minister for [redacted] Norfolk from December 2006 to June 2009, and also volunteered as vice president of [redacted] in Hampton Roads, Virginia from 2007 to 2010 offering "counseling services on diet and nutrition." The resume also stated: "Founded [redacted] Norfolk Virginia (A Non Denominational Church) USA (2008)."

The petitioner also submitted a Form I-864, Affidavit of Support, from the signatory of the petition, [redacted] indicating his intent to provide financial support to the beneficiary and his wife. The petitioner submitted an uncertified copy of [redacted] Form 1040 tax return for the year 2010.

On July 21, 2012, 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 instructed the petitioner to submit experience letters from current and former employers including detailed information about the positions held and the work performed. The notice also instructed the petitioner to submit evidence that the beneficiary received compensation or evidence of self-support during the qualifying period. The petitioner was instructed to submit the beneficiary's Social Security Card record, an itemized statement showing the employers the beneficiary has worked for since the date his card was issued. Additionally, the notice stated: "If the experience was gained in the United States provide evidence that the beneficiary was authorized to accept employment."

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

> On July 1, 2008 [the beneficiary] was appointed the Minister-in-Charge of [redacted] and Ministries in which capacity he continued to work on voluntary basis till date, in which capacity he certainly was when the I-360 application was filed on his behalf in March 2012.

In a separate letter, the signatory of the petition stated:

> I [redacted] the welfare Committee Chairman of [redacted] hereby confirm that I have been supporting our Pastor and Family since 2009 till date and will continue to sponsor all his daily needs. I

hereby document that his room and board are well provided and insured. Copy of Lease attached with last payment receipt to the property owner's bank account and and property Insurance for the property coverage by the also attached.

also indicated that the beneficiary receives "monthly pensions allowance adequately to support himself and his family too" from the and submitted a copy of a certificate from the Director of

The petitioner submitted a copy of a lease between and the beneficiary for a property at Norfolk, Virginia for $550.00 per month for the period June 1, 2009 to May 30, 2010. The petitioner also submitted copies of payment receipts from dated September 10, 2012 and October 5, 2012 for $550.00 each. The bank receipts each included a handwritten note indicating that they were "To: for the beneficiary's "house rent," but they did not identify the source of the funds being deposited.

The petitioner did not submit an itemized record of the beneficiary's earnings from the Social Security Administration as requested, instead submitting only a photocopy of the beneficiary's Social Security card, issued on August 27, 2007.

On October 22, 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 maintained lawful status and employment authorization during the qualifying period. The director also found the petitioner's evidence insufficient to establish that the beneficiary was engaged in compensated employment as required under the regulations.

On appeal, the petitioner again asserts that the beneficiary has been serving as minister-in-charge of the petitioning church since "taking up the full time voluntary appointment on July 1, 2008." The signatory of the petition states that he has been providing the beneficiary's support and will continue to do so, asserting that the evidence already submitted sufficiently demonstrates this support. The petitioner also asserts and submits evidence that it filed a Form I-129, Petition for Nonimmigrant Worker, on the beneficiary's behalf on December 24, 2008, as well as a previous Form I-360 petition on May 18, 2010. The beneficiary argues that he continuously held valid F-1 nonimmigrant status throughout the qualifying period and "did all that was legitimately required of me to follow the process to change my F1 status to R-1 and from R-1 to I-360 and I-485."

The AAO finds that petitioner has not established that the 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). The record indicates that the previously filed petitions referenced by the petitioner were denied on June 3, 2009 and July 21, 2010 respectively. Further, the petitioner has not submitted documentation to show that the beneficiary held any authorization to perform optional practical training pursuant to his F-1 student status. Therefore, as an F-1 student, 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.

Although the petitioner has indicated that the signatory of the petition supported the beneficiary and his family throughout the qualifying period, it is not clear that such support was provided as "compensation" for employment. The AAO notes that the petitioner has consistently indicated that the beneficiary's work for the petitioning organization was done on a volunteer basis. Further, the petitioner has not provided sufficient verifiable documentary evidence to show such support. As mentioned by the director in her decision, neither the lease agreement nor the purported rent receipts submitted establish that the petitioning church or the signatory of the petition paid for the beneficiary's housing. 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)). On appeal, the petitioner submits uncertified copies of the beneficiary's tax returns for 2010 and 2011, indicating that he reported income of $10,800 and $8,400 in those years respectively. The returns do not, however, identify the source of his income. The AAO finds that this evidence is insufficient to demonstrate continuous, compensated employment as required under 8 C.F.R. § 204.5(m)(11).

Regardless, the issue of whether or not the beneficiary was compensated has no effect on the beneficiary's lack of employment authorization which would permit his employment as a religious worker during the two-year qualifying period. The AAO agrees with the director's finding that the petitioner has not established that the beneficiary has the requisite two years of continuous and lawful work experience immediately preceding the filing date of the petition.

On appeal, the petitioner also asserts that the director misstated several facts pertaining to the timeline of the beneficiary's studies and employment prior to the start of the two-year qualifying period. As these issues do not affect the beneficiary's eligibility for the benefit sought, they need not be discussed in this decision.

As an additional matter, the AAO finds that the petitioner has not established how it intends to compensate the beneficiary. 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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

The USCIS regulation at 8 C.F.R. § 204.5(m)(10) states:

> *Evidence relating to compensation.* Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

On the Form I-360 petition, the petitioner described the beneficiary's proposed compensation as "an hourly wage of $18.51 and $38,501 per year on clergy grade level 3. on 40 hours per week." As mentioned above, the petitioner submitted an Affidavit of Support from the signatory of the petition, [redacted] as well as an uncertified copy of his tax return for the year 2010.

In the July 21, 2012 RFE, USCIS instructed the petitioner to submit evidence regarding its ability to compensate the beneficiary in accordance with the regulation at 8 C.F.R. § 204.5(m)(10).

In a letter submitted in response to the RFE, the petitioner stated:

> That the Employer has made available verifiable evidence of how the employer is to be compensated through the Ministries Sponsor/Petitioner [redacted] on behalf of the Ministry to the beneficiary and his family, who is the Chairman of welfare Committee representing the church.

In a separate letter dated September 20, 2012, the board of trustees of the petitioning church asserted that the "Church Responsibilities" to the beneficiary would include payment of salaried compensation in the amount listed on the petition, as well as provision of an automobile allowance, a retirement plan, and hospitalization insurance.

The regulation at 8 C.F.R. § 204.5(m)(10) requires the petitioner to submit initial evidence of "how the petitioner intends to compensate the alien," and the regulation at 8 C.F.R. § 204.5(m)(7)(xi) requires the petitioning employer to attest to the statement that "any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer." The petitioner indicated that the petitioning church will provide salaried compensation to the beneficiary, but no IRS documentation has been submitted regarding the finances of the petitioning organization or its ability to provide the proffered wage, nor has the petitioner provided an explanation for its absence along with comparable, verifiable documentation. Instead, the petitioner has submitted evidence including uncertified IRS documentation regarding the ability and intent of an individual to support the beneficiary "on behalf of" the petitioning organization. The AAO finds that this arrangement does not meet the requirements of 8 C.F.R. §§ 204.5(m)(7)(xi) and (10).

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.