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

(b)(6)

[redacted]

Date: JUN 10 2013 Office: CALIFORNIA SERVICE CENTER [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:
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,

for 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 reject the appeal. In the alternative, the appeal would 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 sub deacon. The director determined that the evidence did not establish that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

The petitioner submits no additional evidence on appeal.

As an initial procedural matter, the record shows that the petition was not properly filed, and therefore there is no valid proceeding upon which to base an appeal. Part 1 of the Form I-360 petition identifies the beneficiary's prospective employer, as the petitioner. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.2(a)(2) states: "An applicant or petitioner must sign his or her application or petition." That same regulation generally requires a handwritten signature unless the petition is filed electronically. The regulation at 8 C.F.R. § 204.5(a)(1) requires that employment-based immigrant petitions must be accepted for processing under the provisions of 8 C.F.R. § 103. In this instance, Part 10 of the Form I-360, Signature, was left blank.

There is no regulatory provision that waives the signature requirement for a petitioning U.S. employer. The petition has not been properly filed because neither the alien nor the employer signed the petition. Under the regulation at 8 C.F.R. § 103.2(a)(7)(i), an application or petition which is not properly signed shall be rejected as improperly filed, and no receipt date can be assigned to an improperly filed petition. While the Service Center did not reject the petition, the AAO is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 at 3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001).

The signature line on the Form I-360 provides that the petitioner is certifying, "under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it [are] all true and correct." To be valid, 28 U.S.C. § 1746 requires that declarations be "subscribed" by the declarant "as true under penalty of perjury." *Id.* In pertinent part, 18 U.S.C. § 1621, which governs liability for perjury under federal law, mandates that: "Whoever in any declaration under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true is guilty of perjury." 18 U.S.C. § 1621.

The probative force of a declaration subscribed under penalty of perjury derives from the signature of the declarant; one may not sign a declaration "for" another. Without the petitioner's actual signature as declarant, the declaration has no evidentiary force. *See In re Rivera,* 342 B.R.

435, 459 (D. N.J. 2006); *Blumberg v. Gates,* No. CV 00-05607, 2003 WL 22002739 (C.D.Cal.) (not selected for publication).

Although the signatures of a church official appear elsewhere on petition documents, such as on an employer attestation, these signatures attest only to those specific parts of the petition form, not to the integrity of the entire petition, including supporting materials and information. In a Request for Evidence (RFE) issued on July 13, 2012, the director instructed the petitioner to submit "Page 11 of Form I-360 duly signed by the authorized signatory of the petitioning organization," and the petitioner complied with that request. To the extent that the director found that this submission cured the deficiency in the initial filing, the AAO disagrees. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). Further, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

Only the alien or the intending employer may file Form I-360 for a special immigrant religious worker. Because neither of these parties signed the petition, the petition was not properly filed and there is no lawful proceeding upon which to base an appeal. The AAO must therefore reject the appeal.

Furthermore, the Form I-290B was untimely filed. In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party or the attorney or representative of record must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.8(b). The date of filing is not the date of mailing, but the date of actual receipt at the location designated for filing. *See* 8 C.F.R. § 103.2(a)(7)(i). An appeal that is not filed within the time allowed will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(B)(*i*).

The record indicates that the service center director issued the decision on November 19, 2012. It is noted that the service center director gave notice to the petitioner that it had 30 days to file the appeal. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit. The record indicates that a Form I-290B was initially submitted on December 19, 2012, but was rejected by USCIS because Part 2 of the form, Information about Appeal or Motion, was not completed. A completed Form I-290B was received on January 10, 2013, or 52 days after the decision was issued. Accordingly, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(*2*) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Director of the California Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director determined that the late appeal did not meet the requirements of a motion and forwarded the matter to the AAO.

Even if properly filed, the petitioner has failed to establish eligibility for the benefit sought, so the AAO would dismiss the appeal.

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 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 April 25, 2012. 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:

(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 and accompanying evidence, the beneficiary arrived in the United States on October 31, 2010 in B-2 nonimmigrant status, the validity of which was extended until October 29, 2011. The regulation at 8 C.F.R. § 214.1(e) states that aliens in such status "may not engage in any employment." The beneficiary subsequently held F-2 nonimmigrant status as the spouse of an F-1 student. The regulation at 8 C.F.R. § 214.2(f)(15)(i) states that an alien in such status "may not accept employment." The record does not indicate that the beneficiary held any status in the United States that would have authorized him to work for [redacted] during the qualifying two-year period.

In the materials accompanying the petition and in subsequent submissions, the petitioner has consistently indicated that the beneficiary has served [redacted] as a sub deacon on a volunteer basis since November 2010. Accompanying the petition, the petitioner submitted a letter from the [redacted] in Macedonia, who stated that the beneficiary performed voluntary work for the church from 1989 until his departure for the United States in 2010.

On November 19, 2012, the director denied the petition. The director noted that the regulation at 8 C.F.R. § 204.5(m)(11) requires qualifying prior experience to have been authorized under United States immigration law. The director also found that the beneficiary's purported volunteer work during the qualifying period was not qualifying experience under the regulations. The director therefore concluded that the evidence was insufficient to establish that the beneficiary was

performing qualifying religious work for at least the two-year period immediately preceding the filing of the petition.

On appeal, counsel argues that the director erred in finding that the beneficiary's volunteer work was not qualifying experience. Counsel states the following, in pertinent part:

> The requirement that the position be "salaried" appears to be inconsistent with the list of religious occupations given in the regulation itself, which includes positions-perhaps most notably "missionaries"-who do not always receive salaries. We further note that in promulgating the final rules at issue, the agency explicitly stated that they had been "revised to account more clearly for uncompensated volunteers, whose services are engaged but who are not technically employees." 56 Fed.Reg. 66965 (Dec. 27, 1991)(emphasis added). ...
>
> Petitioner submitted a letter indicating that a legitimate religious work was performed on a voluntary basis. USCIS did not refute the evidence submitted. However, it chose to ignore it.
>
> In Soltane v. DOJ, 381 F3d 143, 150 (3rd Cir 2004), the court rejected the AAO ruling that position must be paid as contrary to the regulations because the "agency explicitly stated" that the regulations had been "revised to account more clearly for uncompensated volunteers, whose services [sic] are engaged but who are not technically employees.

USCIS revised its special immigrant religious worker regulations effective November 26, 2008, prior to the filing of the instant petition. The authorities cited by counsel dealt with the previous regulations, and are therefore not relevant to the instant matter.

Regarding the petitioner's claim of the beneficiary's volunteer work, such work is not considered to be qualifying experience under the current regulations. 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 either abroad or in the United States "working" as a volunteer cannot be considered qualifying employment.

For the reasons discussed above, the AAO agrees with the director's conclusion that the evidence is insufficient to establish that the beneficiary has the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition.

As an additional matter, the petitioner has failed to establish that the proffered position is a qualifying religious occupation and that the prospective employer qualifies as a bona fide non-profit religious organization.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(5) defines "religious occupation" as an occupation that meets all of the following requirements:

> (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.
>
> (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.
>
> (C) The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible.
>
> (D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

In a letter accompanying the initial filing of the petition, [redacted] of the petitioning church describes the beneficiary's duties as:

1. Assisting the priest in all religious functions.
2. Teaching Sunday school.
3. Teaching bible according our Diocese program.
4. Participating in all charitable activities, by collecting charitable donations and distributing them on the poor.
5. Participating in church choir.

The petitioner states on the Form I-360 that the beneficiary will work at least 35 hours per week but does not provide a weekly schedule or delineate how much time is spent on any of the above-described duties. This lack of detail is important as several of the listed duties that include teaching, and participating in the collection and distribution of charitable goods and participating in the church choir appear to be administrative in nature. As cited above, the regulation requires that the beneficiary's duties primarily relate to a traditional religious function and be recognized

as a religious occupation within the denomination. The petitioner has not established that the beneficiary's position meets these essential elements of the regulation.

Regarding the petitioner's eligibility as a bona fide non-profit religious organization, the 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.
>
> *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.
>
> *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:
>
> (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.

The Form I-360 petition identified the prospective employer as [redacted] No "IRS Tax #" was written in the space provided on the petition. Accompanying the petition, the petitioner submitted 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. The petitioner also submitted a letter from [redacted], stating that [redacted] "is an integral part of our [redacted], … which is registered with the Internal Revenue Service under the EIN number: [redacted] Despite any affiliation between the two organizations, the petitioner has not established that the [redacted] applied for or was granted a group exemption which would apply to subordinate organizations.

The AAO may deny an application or petition that fails to comply with the technical requirements of the law 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 conducts appellate review on a *de novo* basis).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, if the AAO did not reject the appeal, it would dismiss the appeal.

ORDER: The appeal is rejected or, in the alternative, dismissed.