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: AUG 29 2014 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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
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. We will dismiss the appeal.

The petitioner is a Christian 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 required two years of continuous, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits additional evidence.

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, 2015, 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, 2015, 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 U.S. 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 continuously working as a minister or in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, for at least the two-year period immediately preceding the filing of the petition. The Form I-360, Petition for Amerasian Widow(er), or Special Immigrant, was filed on April 23, 2013. 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 [Internal Revenue Service] documentation that the alien received a salary, such as an IRS Form W-2 [Wage and Tax Statement] 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.
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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.

In a January 30, 2013 letter supporting the Form I-360 petition, the petitioner stated that the beneficiary has been a member of its organization since 2011, playing "significant roles" in the church as the Director of the Music Ministry and then as the Elder in Charge of Prayer and Ministry. The petitioner stated that, based upon the beneficiary's devotion and dedication to the duties of those positions, the beneficiary was "elevated to the position of Associate Pastor." The petitioner did not state when the beneficiary first began working as an associate pastor with the petitioner. However, the beneficiary's résumé indicates that he has served as the petitioner's associate pastor since 2011.

At the time of filing, the petitioner also submitted a copy of the beneficiary's Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status, indicating that the beneficiary was a full-time graduate student at [redacted] from September 9, 2010 to September 30, 2013, and that the beneficiary additionally worked part-time at [redacted] for curricular practical training from February 15, 2012 to September 30, 2012.

On May 14, 2013, the director issued a Request for Evidence (RFE) asking, in part, that the petitioner provide evidence of the beneficiary's two years of past work experience with the petitioner. The petitioner was asked to provide evidence of the beneficiary's past compensation, verifiable documentation of room and board provided to the beneficiary, audited financial statements and Internal Revenue Service (IRS) documentation of compensation such as Forms W-2 or certified tax returns.

In a July 22, 2013 letter responding to the RFE, the petitioner stated that the beneficiary "has been serving voluntarily in [the capacity of Associate Pastor] for two years plus now putting in over 35 hours weekly." The petitioner also stated that, "[a]t this time, the church has not started remunerating Pastor [redacted] for his services; however, the church would commence remuneration upon the approval of the petition." The petitioner submitted copies of IRS Forms 1099-MISC, Miscellaneous Income, for the senior pastor and an associate pastor to show past compensation it had paid for similar positions in 2011, but did not submit evidence of any compensation provided to the beneficiary.

The director denied the petition on August 27, 2013, finding that the petitioner had not established that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition. The director stated that volunteer work is not considered qualifying employment under the regulations.

On appeal, the petitioner submits a letter from its senior pastor, dated September 17, 2013, stating that it had not previously sent financial documentation of its compensation of the beneficiary because the beneficiary was not on its payroll, but that the church had supported the beneficiary through financial gifts and "donations and cash offerings from church members as compensation for his pastoral services." In support of that assertion, the petitioner submits a copy of a check from the church, dated January 22, 2012, made payable to the beneficiary in the amount of $500.00 and referenced as a "gift." A second check was submitted, dated April 22, 2012, made payable to the beneficiary in the amount of $1,094.00 and referenced as a "love offering."

On June 2, 2014, we issued a notice to the petitioner, in part requesting an explanation as to how the beneficiary was able to serve the petitioning organization on a full-time basis ("over 35 hours weekly") during the qualifying period, in addition to his full-time studies and part-time curricular practical training. In a June 29, 2014 letter responding to our request, the petitioner states, in pertinent part:

> The church does not keep any records of how many hours he works, but our estimate is that he puts in about 35 hours of effort weekly. . . .We did not ask him to keep a journal or record of these things because there was not [a] salary attached to his position due to his immigration status. While [the beneficiary] was a full time student during some of this time, our understanding was that his academic program only requires him to be at school one day during the week.

The petitioner also submits a June 27, 2014 letter from the beneficiary, stating:

> It is true that I was a full time student at [redacted] back then, but the truth is that my program affords me the opportunity to go to school only on Thursdays between 5:45pm – 9:15pm EST. This basically affords me the privilege to spend more time doing God's work which is a passion for me. I also worked on [sic] **part-time** with [redacted] and that leaves me with more time to work voluntarily at [redacted] (Emphasis in original).

The petitioner does not submit any evidence to support the assertion that the beneficiary's full-time graduate program involved only one evening per week. Nor does the petitioner submit any evidence regarding the beneficiary's schedule during his part-time employment with [redacted] 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)). Accordingly, the petitioner has not resolved how the beneficiary was able to work full-time for the church, as asserted, in addition to his outside activities. 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).

In addition, the evidence indicates that the beneficiary was volunteering his services to the church during the two-year qualifying period immediately preceding the filing of the petition. Volunteer 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." Special Immigrant Religious Workers Proposed Rule, 72 Fed. Reg. 20442, 20446 (Apr. 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 nonimmigrant aliens "participating in an established, traditionally non-compensated, missionary program." Special Immigrant and Nonimmigrant Religious Workers Final Rule and Notice, 73 Fed. Reg. 72276, 72278 (Nov. 26, 2008); *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 cannot be considered qualifying employment.

The petitioner asserts on appeal that it supported the beneficiary during the qualifying period through financial gifts "as compensation for his pastoral services." However, the petitioner did not provide complete copies of the two submitted checks, to include the front and back, and it cannot be determined that these checks were negotiated and paid through normal banking channels. Further, the petitioner's assertion on appeal that the beneficiary was compensated directly contradicts the statement of the petitioner's pastor in his letter of July 22, 2013, wherein he stated that the petitioner was not paying the

beneficiary for his services and would begin to do so upon approval of the Form I-360 petition. The petitioner must resolve inconsistencies in the record by independent objective evidence. *Matter of Ho*, at 591-92. Even if the purported monetary "gifts" from the petitioner were found to be compensation for work performed, the petitioner has not submitted sufficient documentation to show that the beneficiary was continuously receiving such compensation during the two-year qualifying period immediately preceding the filing of the petition.

For the reasons discussed above, the petitioner failed to establish that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition required by regulation.

As an additional matter, the petitioner has not established how it intends to compensate the beneficiary. The AAO conducts appellate review on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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 indicated that it currently employs four employees, and that the beneficiary will be paid $3,000 per year. In the January 10, 2013 letter accompanying the petition, the petitioner stated:

> [The beneficiary's] remuneration shall be a base salary of $3,000.00 a year and he would be given the freedom to raise additional upkeep funds from members through donations and request for love offering. Additional[ly], the church shall be responsible for his feeding and accommodation.

The petitioner submitted unaudited copies of balance sheets dated December 31, 2011, December 31, 2012, and January 13, 2013. Each of the balance sheets indicated that the petitioner had no payroll liabilities, and a "parsonage" fund balance of "$0.00." The balance sheets listed current assets, including total cash assets in the petitioner's bank accounts of $49,201.90, $51,139.70, and $125,925.06 respectively. The petitioner did not provide copies of its bank statements.

The director's May 14, 2013 RFE instructed the petitioner to submit verifiable evidence of how it intends to compensate the beneficiary. The director stated that such evidence could include proof of past compensation for similar positions, verifiable documentation that room and board will be provided, audited financial statements, bank statements, cancelled checks, paystubs, and IRS documentation, if available.

In response to the notice, the petitioner submitted copies of Forms 1099-MISC for 2011 for its senior pastor and associate pastor, indicating non-employee compensation of $10,450 and $3,250 respectively.

The submitted evidence is not sufficient to establish the petitioner's ability to provide the proffered compensation. The petitioner did not submit any evidence of how it will provide the beneficiary's housing or food, and the submitted balance sheets indicate that no money has been allocated to the petitioner's parsonage fund or to payroll expenses. Although the balance sheets indicate that the petitioner has cash assets, no verifiable documentary evidence has been submitted to support the figures asserted. Going on record without supporting documentary evidence is not sufficient to meet the petitioner's burden of proof. *Matter of Soffici*, 22 I&N Dec. 158, 165. Further, although the petitioner submitted Forms 1099-MISC as evidence of compensation during 2011, it did not submit any evidence of any compensation paid during 2012 or 2013. The petitioner must establish its ability and intention to compensate the beneficiary as of the date the petition was filed on April 23, 2013. Furthermore, the petitioner does not allege that the beneficiary will be replacing either of the two individuals for whom a Form 1099-MISC was submitted. Therefore, the IRS Forms 1099-MISC for the pastor and associate pastor is not evidence of how the petitioner intends to compensate the beneficiary in addition to its current employees.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.