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

DATE: JUL 24 2014 OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
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:

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 self-petitioner seeks classification 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 religious school director for Florida.[1] The director determined that the petitioner failed to establish that she would be employed in a qualifying position. The director further determined that the petitioner violated the terms of her R-1 visa prior to the filing of the instant petition and therefore lacked the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition.

On appeal, the petitioner submits a brief and 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, 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

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[1] Part 1 of the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, identifies as the petitioner. Review of the petition form, however, indicates that the alien is the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 10 of the Form I-360, "Signature," has been signed not by any official of the church, but by the alien herself. Thus, the alien, and not the employer, has taken responsibility for the content of the petition. The petition was properly filed, because the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(6) allows the alien to file the Form I-360 petition on his or her own behalf. Also, the attorney who filed the appeal represents the alien, and therefore the appeal has also been properly filed.

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)(2) provides that in order to be eligible for classification as a special immigrant religious worker, an alien must:

(2) Be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position in one of the following occupations as they are defined in paragraph (m)(5) of this section:

(i) Solely in the vocation of a minister of that religious denomination;

(ii) A religious vocation either in a professional or nonprofessional capacity; or

(iii) A religious occupation either in a professional or nonprofessional capacity.

The regulation at 8 C.F.R. § 204.5(m)(5) includes the following definitions:

Religious occupation means 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.

Religious worker means an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister.

The petitioner filed Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on August 29, 2012. On the petition, the petitioner indicated that her prospective employer is affiliated with the denomination. The petitioner stated that she would be employed as "Director of Religious School" at and she described her prospective duties as follows:

> Plan, organize & direct the daily activities of the center, including the religious education of the students, train staff, counsel students and parents, plan activities and projects to attract, encourage and increase active student participation and attendance, and liaise with clergy/Pastor for advice.

In an accompanying letter dated March 30, 2012, the bishop of listed the same proposed duties. The petitioner also submitted documentation showing the curriculum and mission statement of the which states that it "is built on the desire to nurture each child in the Lord Jesus" and "to create a loving environment where children can learn and grow through positive, engaging, and developmentally appropriate experiences." In addition, the petitioner submitted a copy of her resume, which included a description of her duties as "Assistant Director/Director" of

> Direct the daily activities of the center. Responsible for organizing the schedules[,] decorating and furnishing the classrooms, setting up and maintaining staff and student records and liaising with the licensing authorities. Assist in training teachers and ensuring that good relations are maintained with parents. Ensuring that the religious curriculum is adhered to for preschool and elementary children. Also responsible for holding board meetings and keeping board members informed.

On February 28, 2013, the director issued a Request for Evidnece (RFE) asking, in part, for documentation showing the petitioner's daily work schedule along with the position's specific job duties. The director asked that the petitioner explain how the duties of the position relate to a traditional religious function of the church.

In a May 7, 2013, letter responding to the director's RFE, Bishop stated that the is a Christian school and is an extension of ministry, and that the proffered position is related to the traditional religious function of evangelism. The petitioner submitted a copy of a 1998 "Resolution" of the which stated, in part:

> THEREFORE BE IT RESOLVED that the MEETING IN THE 58TH General Assembly in Texas, affirms that the Christian School Ministries (day-care centers, kindergartens, elementary and high schools) are an integral arm of the local ministry in their organization, function, and goals (58th A., 1980, P. 51).

The petitioner also provided a general overview of the proffered position, stating in part:

> The director of the school is responsible for all aspects of the school[']s operation and is answerable to the pastor and church board of [redacted] These responsibilities would include but would not be limited to admissions, hiring of staff, developing and overseeing the financial budget, fund raising, enrollment and development policies and procedures, public relations, and programs.
>
> The director shall prayerfully develop and maintain a school that is thoroughly Christian in every area. The school is to be academically sound for the student body that it serves. She shall be a responsible leader of the school and its entire program. The director shall be a member of [redacted] and seek to promote the programs of the church and make the school an integral part of growing the church.

In addition, the petitioner submitted a list of duties and a daily and weekly work schedule. The submitted work schedule included 40 hours of duties, including four hours teaching and assisting with Sunday school and attending and assisting with the church service on Sunday. The work schedule indicated that the petitioner conducts or assists with a daily devotional each morning and interacts with parents during dismissal, and that the remainder of her time on weekdays is dedicated to administrative duties, instructional supervision, and assisting with lunch.

The director determined in her decision of July 30, 2013, that the proffered position did not qualify as religious occupation. The director stated that a majority of the petitioner's time "appears to be spent on administrative duties."

On appeal, the petitioner contends that the offered position is a qualifying religious occupation. The petitioner states that, although the position involves some duties that are administrative, the duties are primarily related to the religious function of evangelism, and clearly involve inculcating or carrying out the religious creed and beliefs of the denomination. In support of this assertion, the petitioner submits a March 18, 2001 document entitled "Goals for [redacted]" wherein it is noted that the church commits itself to intentionally reach the unconverted through preaching, teaching and any other means, and that every program of the church reflects an evangelistic attitude. The petitioner also submits a copy of an August 16, 2013 "Letter to Parents," in which she states, in part, that "these are some of the most important years of your child's growth and development and we teach them to view the world from God's perspective." In addition, the petitioner submits a copy of the school's handbook and its preschool Bible curriculum.

In support of the arguments regarding her secular duties, the petitioner cites *Camphill Soltane v. U.S. Dept. of Justice,* 381 F.3d 143 (3d Cir.2004) and *Love Korean Church v. Chertoff*, 549 F.3d 749 (9th Cir. 2008), both of which dealt with the definition of religious occupations under the previous regulations for special immigrant religious workers. The current regulations were published on November 26, 2008. As the courts' interpretations applied to regulations which are no longer in effect,

they are not relevant to the instant case. The petitioner also cites unpublished AAO decisions interpreting the previous regulations. While 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding.

The petitioner has established that, within the prospective employer's denomination, the operation of Christian schools relates to the traditional religious function of evangelism. However, the current definition of religious occupation focuses on the nature of the specific duties to be performed, requiring that duties be "primarily" religious, rather than administrative. In this instance, the submitted evidence indicates that the majority of the petitioner's time will be spent performing duties which are administrative in nature. Accordingly, the petitioner has not established that she will be employed in a qualifying religious occupation.[2]

As an additional ground for denial of the petition, the director found that the petitioner had engaged in unauthorized employment during the two-year qualifying period immediately preceding the filing of the petition. The USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that she 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. Therefore, the petitioner must establish that she was continuously performing qualifying religious work in lawful immigration status throughout the two-year period immediately preceding August 29, 2012.

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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[2] Although USCIS approved other petitions that had been previously filed on behalf of the petitioner, USCIS is not precluded from reassessing the petitioner's eligibility. USCIS is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Agencies need not treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the petitioner, we are not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

(i) Received salaried compensation, the petitioner must submit [Internal Revenue Service (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.

On the petition, the petitioner indicated that she had served in the proffered position "for several years." She stated that she would "remain on the same salary as previously approved on her R-1 visa which is $35,000.00." In her accompanying resume, the petitioner stated that she had been "Assistant Director/Director" since 2002, and had also served as an elementary school teacher at Florida, from 2004 to 2010. The petitioner submitted approval notices demonstrating that she had been granted R-1 status authorizing her employment with from September 27, 2010 to May 1, 2012, and from May 2, 2012 to November 1, 2014.

At the time of filing, the petitioner submitted an uncertified copy of her 2011 IRS Form 1040, U.S. Individual Income Tax Return, filed jointly with her husband, indicating total income of $32,918 for the year. Two accompanying Forms 1099-MISC, Miscellaneous Income, indicated that the petitioner received compensation from of $2,000 and $24,000 respectively during the year 2011. The petitioner also submitted an uncertified copy of the petitioner's jointly filed 2010 Form 1040, indicating total compensation of $35,545 for the year. Additionally, the petitioner submitted copies of her pay statements for various pay periods of 2012.

In the February 28, 2013 RFE, the director requested additional information about the petitioner's work history including, in part, official copies of the petitioner's Forms W-2 for the past two years and an itemized record of the petitioner's earnings from the Social Security Administration (SSA).

In response, the petitioner submitted an official copy of her jointly filed IRS Tax Return Transcript for 2012, listing total income of $42,284, which included wages of $31,400, business loss of $1,536, pension income of $7,420, and "other income" of $5,000. The petitioner's accompanying 2012 Wage and Income Transcript did not reflect earnings from , but indicated that the petitioner received $5,000 from Bank of America, and $7,420 in

pension income from [redacted] The petitioner also submitted an official copy of her joint IRS Tax Return Transcript for 2011, listing total income of $32,918, which included wages of $24,000, business income of $2,668, and pension income of $6,250. The Schedule C portion of the transcript included $2,000 in business income described as "tutoring" service." The petitioner's accompanying 2011 Wage and Income Transcript showed two Forms 1099-MISC from [redacted] for $24,000 and $2,000 respectively, as well as $6,250 in pension income from [redacted]. Additionally, the petitioner submitted her SSA earnings record. The SSA record indicated that the petitioner earned $20,001.25 from [redacted] and $13,600 from [redacted] in 2010, and $24,000 from [redacted] in 2011.

In denying the petition on July 30, 2013, the director stated that the petitioner's tax documentation indicated she had earned a profit from tutoring services in violation of her R-1 nonimmigrant status which only allowed her employment with [redacted] The director stated: "The 2011 tax year indicates she had made $11,000 dollars and [in the] 2012 tax year, she had indicated earnings of $5000.00."

On appeal, the petitioner states that the $5,000 she received in 2012 was from "a foreclosure of her home from [redacted]" and that, in 2011, she received $2,000 "additional salary from an underpayment," and that her husband's wages were also reported on the joint return, accounting for some extra income.

The evidence does not support the director's finding that the petitioner engaged in unauthorized self-employment in the form of tutoring services. The tax documentation does not indicate that the petitioner reported $11,000 income from tutoring services in 2011. Although she did list $2,000 in business income under the heading of tutoring services during that year, the submitted Form 1099-MISC for that amount supports the petitioner's assertion that this income came from [redacted] not outside employment. The tax documentation also demonstrates that the $5,000 in "other income" during 2012 came from [redacted]

However, as stated previously, the petitioner indicated on her resume that she was employed by [redacted] from 2004 to 2010 and her SSA record indicates that she earned $20,001.25 from Imagine Schools Inc in 2010. USCIS records indicate that the petitioner held H-1B nonimmigrant status authorizing her employment with [redacted] from August 15, 2007 to May 2, 2009, and from May 3, 2009 to June 18, 2009. The petitioner has not established that she was authorized to work for Imagine Schools during 2010. The regulation at 8 C.F.R. § 214.1(e) provides that a nonimmigrant may engage only in such employment as has been authorized. Any unlawful employment by a nonimmigrant constitutes a failure to maintain status. As the petitioner has not established whether her 2010 employment with [redacted] occurred during the two-year qualifying period immediately preceding the filing of the petition, she has not established that she maintained lawful immigration status throughout the qualifying period, as required under 8 C.F.R. § 204.5(m)(4).

In addition, the petitioner has not submitted sufficient evidence to establish that she was engaged in qualifying, compensated employment throughout the qualifying period. The regulation at 8 C.F.R. § 204.5(m)(11) generally requires compensated employment, and it requires the petitioner to submit IRS documentation of any salaried compensation. In support of the petition and in response to the director's RFE, the petitioner submitted copies of purported 2012 pay statements from However, these statements are not verifiable evidence as they only consist of the assertions of the employer, and the petitioner has not submitted IRS documentation of the asserted 2012 compensation. 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)). The submitted 2012 Tax Return Transcript did not identify the sources of the petitioner's wages, and the accompanying Wage and Income Transcript did not include income from Further, the submitted SSA record did not include the petitioner's 2012 earnings.

As an additional matter, the petitioner has not established how the prospective employer intends to compensate her. 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.

As stated above, the petitioner indicated on the petition that she held the proffered position for several years and that she would "remain on the same salary" of $35,000 per year. However, the submitted IRS documentation indicates that the prospective employer paid the petitioner less than the proffered wage in 2010 and 2011. 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 to the lack of IRS documentation for 2012, the submitted pay statements indicate that the petitioner did not begin receiving the proffered wage until June 30, 2012, having been paid $1,000 per two-week pay period (equivalent to $26,000 per year) from January 1, 2012 to February 24, 2012, and $1,100 per week ($28,600 per year) from February 25, 2012 to June 29, 2012. As the petitioner was not being paid the proffered wage, the

submitted documentation of past compensation is insufficient, on its own, to demonstrate the employer's ability to pay the proffered wage. At the time of filing, the petitioner also submitted an audited balance sheet for [redacted] "for the period ended May 31, 2012." However, the balance sheet did not indicate the beginning date of the period covered, and listed "Payroll Liabilities" of only $1,158, and "Working Capital" of $20,772. Accordingly, the petitioner has not established the prospective employer's ability to provide the proffered compensation.

We will dismiss the appeal for the above stated reasons, with each considered as an independent and alternative 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).

ORDER: The appeal is dismissed.