**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Service
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: JUL 24 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. On appeal, the Administrative Appeals Office (AAO) withdrew the director's decision and remanded the petition for further consideration. The director again denied the petition and, based on our instructions, certified the decision to us for review. We will affirm the denial of the petition.

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 (minister). The director found that the petitioner failed to establish that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition.

In the Notice of Certification, dated April 16, 2014, the director notified the petitioner that it could submit a brief or other written statement for consideration within 30 days. No brief or other communication has been received to date, and we will consider the record to be complete as it now stands.

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 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 working as a minister or in a qualifying religious occupation or vocation continuously for at least the two-year period immediately preceding the filing of the petition. The petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on June 12, 2012. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work 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 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.

On the Form I-360 petition and an accompanying addendum, the petitioner indicated that the beneficiary worked as a minister for the from March 2009 to July 2011, and as a minister for the petitioning church from December 2011 to the present. The petitioner submitted evidence that the beneficiary entered the United States on December 8, 2011 in R-1 nonimmigrant status authorizing his employment with the petitioner, and that he was previously granted R-1 nonimmigrant status authorizing his employment for the in North Carolina, from March 10, 2009, until September 9, 2011.

As evidence of past employment during the qualifying period, the petitioner submitted paychecks, payroll records, and bank records demonstrating compensation from the petitioning church to the beneficiary for the months of December 2011 through March 2012. The petitioner also submitted uncertified copies of the beneficiary's IRS Form 1040, U.S. Individual Income Tax Returns, for the years 2009, 2010, and 2011, indicating total income of $34,004, $24,843, and $18,217 respectively. An accompanying Form 1099-MISC, Miscellaneous Income, indicated that the beneficiary's income for 2009 came from the of but the petitioner did not submit evidence to identify the source of the beneficiary's reported income during 2010 or 2011.

In a December 26, 2012 letter, submitted in response to the director's October 22, 2012 Request for Evidence (RFE), the petitioner stated the following regarding the beneficiary's work history during the qualifying period:

> Note that the five month sabbatical period from July 2011 to December 2011 was forced by pending period of non-immigrant visa petition on USCIS. During the period, Rev. had been regular member of the petitioning church but had not worked without USCIS authorization to do so.

On October 16, 2013, we found that the petitioner overcame the ground for denial stated in the director's February 13, 2013 decision, but that it had not established that the beneficiary had the required two years of qualifying experience immediately preceding the filing of the petition. We

stated that, although the petitioner had referred to the break in the beneficiary's employment from July to December 2011 as a "sabbatical," it had not established that the beneficiary was still employed as a religious worker as required for a qualifying break in religious work under 8 C.F.R. § 204.5(m)(4)(i). We further found that the petitioner failed to establish that the beneficiary was engaged in qualifying religious work preceding the acknowledged break in employment. We stated that the petitioner failed to support its assertion that the beneficiary was employed by the until July 2011, as it had not submitted any evidence of compensation from that church during 2010 or 2011. 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 November 19, 2013, the director issued a Notice of Intent to Deny the Petition (NOID) based on our findings. In a December 19, 2013 letter responding to the notice, the petitioner contended that the period from July to December 2011 does qualify as an acceptable break under 8 C.F.R. § 204.5(m)(4). The petitioner asserted that the break in the beneficiary's work "was purely due to immigration law and regulation," but that the beneficiary was employed by the petitioner during that time receiving non-salaried compensation of $3,000. In a separate letter, dated December 16, 2013, the petitioner stated that it hired the beneficiary in July 2011 but, based on advice from counsel, he did not begin working until he was authorized to do so in December 2011.

The petitioner submitted a copy of the beneficiary's 2010 Form 1099-MISC from the demonstrating that the reported income on his 2010 tax return came from that organization. The petitioner also submitted copies of the beneficiary's 2011 and 2012 Forms W-2, Wage and Tax Statements, from the petitioning church along with copies of the beneficiary's previously submitted uncertified tax returns for those years. The 2011 Form W-2 indicates that the petitioner paid the beneficiary $15,216.63 in wages and $12,450 for parsonage during that year. The beneficiary's 2011 tax return listed total income of $18,217 for the year, including $15,217 in wages and $3,000 in business income, which the beneficiary identified on Schedule C-EZ as being from his work as pastor of the petitioning church.

On April 16, 2014, the director found that the petitioner failed to establish that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition. The director denied the petition and, based on our instructions, certified the case to us for review. The director noted that, in support of a previously filed Form I-129, Petition for a Non-immigrant Worker ( the petitioner submitted evidence that contradicts assertions made in support of the instant petition regarding the beneficiary's employment history and purported sabbatical. In support of the non-immigrant petition, the petitioner submitted an April 14, 2011 letter from the of stating that the beneficiary was an assistant pastor from August 7, 2005 to January

31, 2011. Additionally, the petitioner submitted copies of processed checks from the petitioner to the beneficiary from as early as March of 2011.

In support of the instant petition, the petitioner has repeatedly asserted that the beneficiary was employed by the until July 2011. However, the petitioner has not submitted any evidence of his employment by that church during 2011. Instead the submitted tax documentation indicates that the beneficiary only received compensation from the petitioner during 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).

Further, the submitted evidence does not support the petitioner's assertion that it first hired the beneficiary in July and paid him only non-salaried compensation of $3,000 until he began working with authorization in December. Although the beneficiary's 2011 tax return includes $3,000 in business income attributed to his work for the petitioner, it also includes $15,216.63 in wages from the petitioner, consistent with the submitted 2011 Form W-2. The submitted pay statement from December 2011 only accounts for $2,968.33 in wages for that month. In addition, as noted by the director, copies of processed checks submitted with the previously filed non-immigrant petition indicate that the petitioner was compensating the beneficiary as early as March 2011.

For the reasons discussed above, we find that the record does not support the petitioner's assertions regarding the beneficiary's work history during the qualifying period or the break in the continuity of his religious work. Accordingly, the petitioner has not established that the beneficiary has the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition.

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 director's decision is affirmed. The petition is denied.