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: JUN 18 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 AAO on appeal. The AAO will dismiss the appeal.

The petitioner is a Pentecostal Christian church based in Fort Lauderdale, Florida. 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 the minister of a Spanish-language congregation in New Jersey. The director determined that the petitioner had not established (1) that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition, or that (2) the beneficiary was in lawful immigration status throughout that two-year period.

On appeal, the petitioner submits a legal statement, a witness letter, and supporting 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;
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> (ii) seeks to enter the United States—
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> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
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> > (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 petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on April 4, 2013. A cover letter submitted with the petition reads, in part: "Please note that we are re-filing the application I-360, after the same was already approved by your office." The letter indicated that the petitioner and the beneficiary were "victims of [a] fraudulent organization" that

handled the earlier petition. The earlier Form I-360 petition, with receipt number , was filed August 2, 2004 and approved August 3, 2005.[1]

The beneficiary filed Form I-485, Application to Register Permanent Residence or Adjust Status, on June 29, 2010. In denying the adjustment application on November 22, 2010, the Director, Nebraska Service Center, informed the beneficiary that his immigration proceeding was terminated under section 203(g) of the Act, which states: "The Secretary of State shall terminate the registration of any alien who fails to apply for an immigrant visa within one year following notification to the alien of the availability of such visa." Because the beneficiary did not file a timely adjustment application, he can no longer adjust status or apply for an immigrant visa based on the approved petition from 2004.

Many of the materials submitted with the petition in April 2013 are dated 2004 or earlier, and therefore appear to be photocopies of documents submitted with the earlier petition. Between the filing of the two petitions, new regulations took effect, which changed the evidentiary requirements for special immigrant religious worker petitions. *See* 73 Fed. Reg. 72276 (Nov. 26, 2008). Therefore, documentation that might have been sufficient before November 29, 2008, would no longer be adequate under the revised regulations.

I. Unauthorized Employment

The first issue before us concerns the beneficiary's immigration status. 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, 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 USCIS regulation at 8 C.F.R. § 204.5(m)(11) requires that qualifying prior experience, if acquired in the United States, must have been authorized under United States immigration law.

The petitioner's April 2013 filing included a copy of Form M-737, Optional Checklist for Form I-360 Religious Worker Filings. This checklist included information about the evidentiary requirements relating to the beneficiary's past employment. Handwritten check marks on the document show that someone reviewed the checklist during the preparation of the petition.

Part 4, line 2f of Form I-360 asked whether the beneficiary had "ever worked in the U.S. without permission," to which the petitioner answered "No." Materials submitted with the petition show that the beneficiary entered the United States as a B-2 nonimmigrant visitor for pleasure on April 7, 2004. B-2 nonimmigrants are not permitted to engage in employment in the United States. *See* 8 C.F.R. § 214.1(e). The petitioner acknowledged that the beneficiary's nonimmigrant status expired six months later on October 6, 2004. Asked, on Part 3, line 13 of the petition form, to specify the beneficiary's current nonimmigrant status, the petitioner answered "Imm. Proceedings."

[1] USCIS records indicate that the documentation from that petition was destroyed in 2009.

The above information indicates that the beneficiary remained in the United States after his nonimmigrant status expired eight and a half years before the petitioner filed the petition. These assertions are not consistent with the claim that the beneficiary had never worked in the United States without authorization. There is another inconsistency in the employer attestation submitted with the petition. On line 1b, under "Number of employees working at the same location where the beneficiary will be employed," the petitioner stated "3." On line 3 of the attestation, asked to list the responsibilities of other "employees who work at the same location where the beneficiary will be employed," the petitioner stated: "no one else will work at the same location as alien. The [beneficiary] will be the only employee there."

On May 2, 2013, the director issued a request for evidence (RFE), asking for various required documents that the petitioner had not submitted with the petition. The director stated: "If any of the experience was gained while working in the United States, provide evidence that the beneficiary was employed while in lawful status." The petitioner responded to the RFE, stating that the petitioner had employed the beneficiary full-time in the United States since 2006, but the response did not address or acknowledge the director's request for evidence of lawful status.

The director denied the petition on October 28, 2013, stating:

> The petitioner states that the beneficiary has been employed with them since November 30, 2006, however, during that time, according to USCIS records, the beneficiary has not been in lawful immigration status (R1). In fact, several submissions for R Visa have been denied. Therefore, the beneficiary did not have authorization to work.

On appeal, the petitioner states: "Included please find a copy of the Employment Authorization Document of the beneficiary showing the date he was Authorized to work in the United States." The petitioner does not explain why it did not submit this evidence in response to the RFE. On this basis alone, the petition may not be approved. *See* 8 C.F.R. § 103.2(b)(14). The petitioner's submission of previously requested documentation on appeal does not establish that the director made the incorrect finding based on the record available at the time of the denial. Where, as here, the director has notified the petitioner of a deficiency in the evidence and given the petitioner an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988).

Even if the petitioner had submitted the documentation in response to the RFE, it would not have established the beneficiary's eligibility. The Form I-766 Employment Authorization Card reproduced on appeal is marked "card valid from 11/02/10 to 11/01/11." This card does not establish that the beneficiary was authorized to work in the United States after November 1, 2011. The petitioner has not established that the beneficiary was able to renew his work authorization, or that he was authorized to work in the United States between November 2, 2011 and April 4, 2013. The petitioner, therefore, has not overcome this ground for denial.

II. Evidence of Past Employment

The USCIS regulation at 8 C.F.R. § 204.5(m)(11) reads:

> *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.
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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.
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> If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

When the petitioner filed the petition in April 2013, the petitioner did not include IRS documentation or comparable evidence of the beneficiary's qualifying employment during the two years immediately preceding the filing of the petition. In the May 2013 RFE, the director quoted the regulatory language from 8 C.F.R. § 204.5(m)(11), including the requirement that "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."

In response to the RFE, the petitioner submitted a statement from Rev. president of the petitioner's board of directors, stating that the beneficiary "has been working in the ministry as a pastor on a full time basis since November 30, 2006." A statement from the beneficiary contains the same assertion.

The petitioner submitted a list of salary checks that the organization claimed to have issued in 2012. The petitioner also submitted a copy of a bank statement for December 2012, which does not reflect any of the checks it claims to have issued to the beneficiary. The list shows that the beneficiary

received check number [redacted] in the amount of $2,367.10, on November 30, 2012, and check [redacted] for $3,359.81, on December 31, 2012. The December 2012 bank statement shows checks numbered between [redacted] none of which was in an amount greater than $1,200.00. Therefore, the one bank statement does not corroborate the list of claimed paychecks. The list of claimed salary checks bears the heading "w-2 – Pastor's Salary," but the petitioner did not submit copies of IRS Forms W-2 or any explanation for their absence.

The petitioner's RFE response included insufficient evidence of compensation in 2012, and no evidence of compensation in 2011 or early 2013.

In the October 2013 denial notice, the director cited the regulation at 8 C.F.R. § 204.5(m)(11) and stated that "the petitioner failed to provide any proof of salary/paystubs for the two years of full time employment immediately preceding the filing date of this petition."

On appeal, the petitioner submits photocopies of bank statements, including images of processed checks. The petitioner indicates that these checks include weekly paychecks issued to the beneficiary from April 3, 2011 to March 24, 2013. The beneficiary's claimed compensation in the last months of 2012 consisted of the checks described below:

Number	Date	Amount	Number	Date	Amount
[redacted]	11/04/12	$523.71	[redacted]	12/09/12	$407.98
	11/11/12	$816.56		12/16/12	$530.17
	11/18/12	$708.93		12/16/12	$500.00
	11/25/12	$317.90		12/23/12	$624.00
	12/02/12	$657.56		12/30/12	$640.10

The numbers, dates, and amounts on the December 2012 checks are consistent with the bank statement submitted in response to the RFE. The monthly totals are, likewise, consistent with the monthly totals shown on the previously submitted list of salary checks. The list of salary checks, however, showed monthly salary checks with three-digit check numbers.

The USCIS regulation at 8 C.F.R. § 204.5(11)(a) requires the petitioner to submit IRS documentation of salaries paid. USCIS advised the petitioner of this requirement on three occasions: as part of the list of required evidence on the Form M-737; in the RFE; and in the denial notice. The petitioner has not acknowledged or complied with this requirement, or accounted for the absence of the required IRS documentation.

Where an applicant or petitioner does not submit all requested additional evidence and requests a decision based on the evidence already submitted, a decision shall be issued based on the record. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the benefit request. 8 C.F.R. § 103.2(b)(14). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence pertinent to the facts at issue. 8 C.F.R. § 103.2(b)(2)(1).

The copies of paychecks would constitute secondary evidence, but the petitioner has not demonstrated the unavailability of the required IRS documentation. Also, the petitioner's inconsistent claims regarding the nature of the paychecks raise general questions of credibility. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Further doubts arise from the petitioner's claim that the beneficiary has never worked in the United States without authorization, when the record indicates otherwise.

The amounts shown on the claimed paychecks raises another issue. The petitioner has claimed not only that the beneficiary worked for the petitioner since 2006, but that this employment was full time. The checks reproduced in the record, however, show widely varying amounts from week to week. Chec dated June 6, 2011, is for $1,030.75, more than five times the amount ($200.00) on chec dated March 24, 2013.

The petitioner has not submitted the required IRS documentation of the beneficiary's past compensation, and the evidence that the petitioner did submit is inconsistent and raises further questions. The petitioner has not established its claim to have compensated the beneficiary for full time employment throughout the two-year qualifying period.

The AAO will dismiss the appeal 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, the petitioner has not met that burden.

ORDER: The appeal is dismissed.