(b)(6)

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

DATE: NOV 28 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,

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition on July 17, 2012. On further review, the director determined that the beneficiary was not eligible for the visa preference classification and properly served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the petition, stating the reasons therefore. The director subsequently exercised her discretion to revoke the approval of the petition on April 9, 2014. The matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner is a Sikh temple. 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 preacher (priest). In revoking the petition, 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.

The petitioner submits a brief on appeal. On the Form I-290B, Notice of Appeal or Motion, dated April 22, 2014, the petitioner indicated its intent to submit a brief and/or additional evidence within 30 days of filing the appeal. We have received no further communication to date, and we will therefore consider the record 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, 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
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

Section 205 of the Act, 8 U.S.C. § 1155, states that the Secretary of the Department of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Id.*

The 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 Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, was filed on February 21, 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 [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.
>
> (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.

In a January 19, 2012 letter accompanying the Form I-360 petition, the petitioner described the beneficiary's work history as follows:

> In the United States [the beneficiary] was sponsored by [redacted] NY on R-1 status and worked as their preacher from October 2009 till February 2010.
>
> In February 2010, [the petitioner] sponsored [the beneficiary] for R-1 status. From February 2010 till the approval of the R-1 application he worked as a volunteer preacher and was not paid a salary. Upon approval of the R-1 application in September 2010, the [petitioner] started paying him the salary stated in the employment contract.

The petitioner submitted initial evidence of compensation received by the beneficiary during the two-year qualifying period immediately preceding the filing of the petition. For the year 2010, the petitioner submitted a copy of the beneficiary's IRS Form W-2, indicating $4,872.77 in wages from the petitioner, and an uncertified copy of the beneficiary's IRS Form 1040, U.S. Individual Income Tax Return, listing $4,873 in wages and $8,135 in business income from "Relegious [sic] Offering." For the year 2011, the beneficiary's IRS Form W-2 indicated $19,491 in wages from the petitioner, and his IRS Form 1040 included $19,491 in wages and $12,671 in business income from "Religious

Offering." The petitioner also submitted photocopies of the beneficiary's paychecks from January 1, 2012 and February 5, 2012, in the amount of $1,500 each.

On March 16, 2012, the director issued a Request for Evidence (RFE), in part requesting additional evidence regarding the beneficiary's work history during the two-year qualifying period. In a May 26, 2012 letter responding to the RFE, the petitioner stated:

> [The beneficiary] is working for the Petitioner since February 2010 as a priest. He along with his family are provided free accommodation. From February 2010 until the approval of his R-1 status in September 2010 he worked as a fulltime volunteer priest at our [redacted] and was provided free board and lodging. After the R-1 approval in September 2010 he is paid a regular monthly salary and free accommodation.

The petitioner submitted photocopies of checks from the petitioner to the beneficiary dated between October 3, 2010, and June 2, 2012. The petitioner also submitted a 2010 IRS Form 1099-MISC, Miscellaneous Income, listing $8,135 in income from the petitioner to the beneficiary. In addition, the petitioner submitted a copy of the beneficiary's Itemized Statement of Earnings from the Social Security Administration (SSA), covering the years 2009 through 2011. The statement listed $4,872.77 in earnings from the petitioner in 2010, and self-employment earnings of $5,511.00 in 2010 and $9,681 in 2011.

The director approved the Form I-360 petition on July 17, 2012. On January 6, 2014, the director issued a NOIR, stating that the petitioner failed to establish that the beneficiary was engaged in qualifying employment between February 21, 2010, and September 1, 2010. The director stated that the beneficiary had served the petitioner as a volunteer during that time and that he also lacked employment authorization. In a February 1, 2014 letter responding to the NOIR, the petitioner stated that performing religious work at a temple "is not considered employment" according to the Sikh religion. The petitioner asserted that the "volunteer" work performed by the beneficiary from February 2010 through August 2010 "is similar to work done by missionaries." The petitioner also asserted that the beneficiary was engaged in qualifying religious work from May 2009 to February 2010, and that "[a]dding these nine months to the period from September 2010 to February 2012 adds up to over two years period [sic] preceding the filing of the I-360 Petition."

The director revoked approval of the petition on April 9, 2014, finding that the petitioner failed to overcome the grounds for revocation described in the NOIR. The director stated that, according to the petitioner, the beneficiary "was not considered an employee for the period from February 15, 2010 to August 31, 2010 and received no compensation." The director found that "this creates a gap in the required continuous religious work requirement." The director also noted the beneficiary's lack of lawful immigration status and employment authorization during the period in question. Regarding the beneficiary's experience prior to the two-year qualifying period, the director stated that such experience "will not be counted toward the two year requirement."

On appeal, counsel for the petitioner asserts that the beneficiary was performing volunteer religious work "and pursuing religious studies" at the petitioning temple from February 2010 to August 2010. Through counsel, the petitioner again contends that the beneficiary's religious work is not considered employment, but is instead similar to the work of missionaries. Further, the petitioner again argues through counsel that, if the beneficiary's religious work prior to the start of the qualifying period is taken into account, the beneficiary has more than the required two years of qualifying experience.

The petitioner indicated in response to the director's RFE that the beneficiary "was provided free board and lodging" while working as a volunteer. The Board of Immigration Appeals has ruled that an alien who "receives compensation in return for his efforts on behalf of the Church" is "employed" for immigration purposes, even if that compensation takes the form of material support rather than a cash wage. *See Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982). However, the petitioner did not provide documentary evidence in support of the assertion that it provided such support. 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 petitioner has not established that the period from February 2010 to August 2010 meets the requirements of an acceptable break in the continuity of the beneficiary's work under 8 C.F.R. § 204.5(m)(4). Although counsel asserts on appeal that the beneficiary was pursuing religious studies during the period in question, the petitioner has not submitted documentary evidence to support this assertion. *See* 8 C.F.R. § 204.5(m)(4)(iii). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The regulation at 8 C.F.R. § 204.5(m)(11) refers to "[q]ualifying prior experience during the two years *immediately* preceding the petition *or preceding any acceptable break* in the continuity of the religious work." (Emphasis added). However, as the petitioner has not established that the period in question qualifies as an acceptable break, the beneficiary's work experience prior to the start of the qualifying period cannot be counted toward the two-year experience requirement.

As an additional matter, the petitioner has not resolved discrepancies in the evidence concerning the beneficiary's compensation during the qualifying period. As stated previously, the petitioner submitted the beneficiary's IRS Form W-2 for 2011, indicating $19,491 in wages from the petitioner, and this amount was also included on the beneficiary's uncertified tax return. However, the submitted SSA earnings record did not include any earnings from the petitioner during 2011 which calls into question the validity of the tax documentation submitted to USCIS. The petitioner did not provide an explanation for this or any other discrepancies between the figures on the submitted tax documents and those on the SSA earnings record. 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). Although the petitioner submitted photocopies of paychecks purportedly issued to the beneficiary during 2011, the photocopies did not include evidence that the checks had been cashed or deposited, and accordingly do not constitute verifiable evidence of compensation.

For the reasons discussed above, the petitioner has not established that the beneficiary was continuously performing qualifying religious work during the two years immediately preceding the filing of the petition.[1]

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.

[1] As the petitioner failed to establish the continuity of the beneficiary's qualifying experience, we do not need to reach the issue of the lawfulness of the beneficiary's experience under 8 C.F.R. § 204.5(m)(4) and (11). In any subsequent proceeding, this issue may require further discussion as the petitioner provides no evidence that the beneficiary held employment authorization during the portion of the qualifying period from February 2010 to August 2010.