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 SEP 19 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:

SELF-REPRESENTED

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 a senior pastor/president. 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 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;
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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 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 Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, was filed on November 19, 2012. 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.
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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.

The petitioner submitted initial evidence relating to the beneficiary's past work experience. The petitioner submitted an October 31, 2012 Certificate of Church Association signed by Reverend President, stating that the petitioning church has been a member of its denomination "from August 26, 2010 till present." The petitioner also submitted a "Certificate of Membership" and "Certificate of Career" from Reverend indicating that the beneficiary worked in the United States on behalf of as a self-supporting missionary and as a pastor from September 1, 2008 to December 31, 2011. A "Certificate of Ordination," dated October 31, 2012 and signed by Reverend certifies that the beneficiary was ordained into Christian ministry on October 21, 2010.

In further support of the petition, the petitioner submitted a November 16, 2012 letter from the petitioner's treasurer, which states that the beneficiary has been a member of the denomination since September 2008 in the capacity of a self-supporting missionary and pastor. According to Ms. , the beneficiary has worked as the petitioner's pastor since April 2009. Also

submitted with the petition was a November 1, 2012 letter from Reverend Senior Minister of the Massachusetts, stating that the petitioner has been meeting at its facilities since November 2009 under the beneficiary's leadership. The petitioner submitted a copy of a USCIS approval notice which states that the beneficiary was granted R-1 nonimmigrant status authorizing his employment with the petitioner from November 30, 2011 until November 1, 2013. The petitioner submitted a "Certificate of Payment" and accompanying pay slips which indicate that it paid the beneficiary gross earnings of $4,000 per month from January 2012 through October 2012. The pay slips indicate that payment was made "by cash" and that the gross earnings consisted of $2,000 for "Basic & DA," $400 for ministry assistance, and $1,600 for parsonage rent. The petitioner also submitted a copy of its unaudited financial statement for the year ended December 31, 2011. The statement contained no sums for the beneficiary's ministerial expenses. The financial statement contained the following note in a summary of significant accounting policies:

> Self-Supported Missionary Fund
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> The Church has been run by the self-supported missionary couple since her establishment, but they used their private fund[s] for their living and international ministry of the church, and its total amounts are more than $45,350, and this was originally from South Korea during their ministry; so for their fund the Church has counted their total expenses as [a] separate account for running the Church.

The director issued a Request for Evidence (RFE) on May 2, 2013, asking, in part, that the petitioner submit evidence of the beneficiary's work history during the two years immediately preceding the filing of the petition. In response to the RFE, the petitioner submitted a July 13, 2013 letter from the petitioner's treasurer stating that the beneficiary was employed as a full-time pastor since 2012 after more than two and one-half years of voluntary work. In a separate letter, dated July 13, 2013, the petitioner's treasurer further stated that the beneficiary worked 51 hours per week as a self-supporting minister/missionary, from April 2009 through December 2011, and as a paid employee with an annual salary of $48,000 including parsonage rent, from January 2012 through the date of the letter. The petitioner submitted a copy of the beneficiary's 2012 IRS Form W-2 indicating it paid the beneficiary $28,800 in wages. In its list of evidence submitted in response to the RFE, the petitioner stated, "The difference between real salary for [the beneficiary] $4000 and reporting salary to IRS $28,800 is that we generally don't report parsonage rent $19,200 to IRS."

Copies of the beneficiary's bank statements were submitted for all months of 2011 (account ending in 5884), along with copies of his wife's bank statements for the same period (account ending in 0068). The bank statements for the beneficiary's wife show ending monthly balances of: $33.21; $14.34; $0.47; $19.86; $200.99; $64.43; $40.66; $25.39; $97.07; $23.91; $15.41; and $38.74. The beneficiary's bank statements show ending monthly balances of: $5.82; $2.41; $2.41; $2.41; $2.19; $1.59; $1,711.71; $14,820.52; $139.60; $5.38; $5,758.70; and $32.94. The beneficiary's bank statements indicated several large deposits, including a $2,000 wire transfer by through on July 14, 2011, a $26,747 wire transfer by " through

on August 16, 2011, and a $10,000 ATM deposit on November 15, 2011. The petitioner offered no evidence or explanation regarding the source of the deposited funds.

The director denied the petition on February 6, 2014, finding that 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.

On appeal, the petitioner states it has established that the beneficiary has been employed as a full-time minister during the two-year period immediately preceding the filing of the petition. In support of that assertion, the petitioner provides the beneficiary's 2012 IRS Form 1040, U.S. Individual Income Tax Return, indicating income of $28,800 paid for religious services, as noted on Schedule C of the tax return. The petitioner also submits an Electronic Wage Reporting (EWR) document for Forms W-2/W-3 online which shows wages paid to the beneficiary by the petitioner of $28,800, $6,000 for "parsonage utility," and $4,800 for "ministry assistance." Although the document does not identify the tax year of the submission, a separate EWR document indicating "Submission Status" and reflecting wages paid of $28,800 indicates it was submitted on March 14, 2013 for the tax year 2013. The petitioner's IRS Form 990EZ, Short Form Return of Organization Exempt from Income Tax, also reflects $28,800 in wages paid in 2012. Pay slips for November and December 2012 corroborate payments of $2,400 per month, although they reflect wages of only $2,000 while reporting ministry assistance of $400 per month.[1] The "Certificate of Payment" statements, however, indicate that the beneficiary received "earnings" of $4,000 per month from January 2012 through December 2013.

Finally, the petitioner submits a letter dated March 3, 2014 from Reverend Senior Minister of the Massachusetts which states that the petitioning church has been meeting on the third floor of its facility since November 2009 under the beneficiary's leadership. Reverend states that the petitioner conducts services at its facility Sunday at 9 a.m. and 5 p.m., conducts 5:30 a.m. prayer services each day Tuesday through Saturday, and conducts weekday meetings twice a week.

The petitioner has submitted sufficient documentation to establish that the beneficiary worked in qualifying religious work from January 2012 until the date of filing on November 20, 2012. However, the petitioner has failed to submit sufficient documentation of the beneficiary's qualifying experience from November 2010 through December 2011.

The petitioner has asserted that, from November 19, 2010 to December 31, 2011, the beneficiary worked as a voluntary self-supported missionary. To the extent that the beneficiary was performing volunteer work during that period, such 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

[1] The petitioner also submitted pay slips for each month in 2013, with each reflecting wages of $2,000 and ministry assistance of $400.

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). Although the petitioner has asserted that the beneficiary was working as a self-supported missionary for it has not established that the position he held was part of an established program for temporary, uncompensated missionary work as part of a broader international program of missionary work, as described in 8 C.F.R. § 214.2(r)(11).

Even if the petitioner had successfully established that the beneficiary's uncompensated position was part of an established program, the petitioner has not submitted sufficient evidence of self-support during the relevant period under 8 C.F.R. § 204.5(m)(11). That regulation requires the petitioner to show how the beneficiary was able to provide for his support and that of any dependents by providing such documents as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney or other verifiable records. Although the petitioner asserted that the beneficiary held private funds of more than $45,350, the only financial documentation submitted regarding the beneficiary's ability to self-support during the relevant time period consisted of copies of bank statements for the beneficiary and his wife. The balances of these bank accounts, noted above, are insufficient to provide for the support of the beneficiary and any dependents. The petitioner provided no other evidence that the beneficiary had the stated private funds to provide for his self-support. Further, the unidentified deposits included on the beneficiary's bank statements contradict the petitioner's assertion that the beneficiary supported himself through his own funds. 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).

The petitioner submitted statements from indicating that it had in excess of $50,000 in the bank in 2013 and 2014. To the extent that the funds in the petitioner's account are meant to represent the beneficiary's private funds with which he supported himself and the ministry, the petitioner offers no explanation as to why the fund balance showed no significant decrease over time.

Accordingly, the petitioner has not established that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition.[2]

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[2] 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

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.

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proceeding, this issue may require further discussion as the petitioner provides no evidence that the beneficiary was authorized to work for the petitioner or prior to November 30, 2011.