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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

D13

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: DEC 22 2010

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(i)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Mari Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a Roman Catholic parish. It seeks to classify the beneficiary as a nonimmigrant religious worker under section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1), to perform services as a cantor. The director determined that the petitioner failed to establish: (1) that the beneficiary would work at least 20 hours per week; (2) that the intended position qualifies as a religious occupation for which the beneficiary is qualified; or (3) how the petitioner would compensate the beneficiary. The director also found that the petitioner failed to submit required evidence of its tax-exempt status.

On appeal, the petitioner submits a brief from counsel. Counsel argues that the evidentiary requirements in the regulations "substantially burden the Roman Catholic Church's free exercise of religion and therefore is a violation under the Religious Freedom Restoration Act of 1993" [RFRA]. U.S. Citizenship and Immigration Services (USCIS) addressed this argument in the preamble to the latest version of the religious worker regulations:

> USCIS disagrees with the specific notion that the final rule violates the RFRA. The RFRA provides:
>
> > Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except * * * if it demonstrates that application of the burden to the person—
> > (1) is in furtherance of a compelling governmental interest; and
> > (2) is the least restrictive means of furthering that compelling governmental interest.
>
> Public Law 103–141, sec. 3, 42 U.S.C. 2000bb–1. The final rule is intended to permit religious organizations to petition for admission of religious workers under restrictions that have less than a substantial impact on the individual's or an organization's exercise of religion. A petitioner's rights under RFRA are not impaired unless the organization can establish that a specific provision of the rule imposes a significant burden on the organization's religious beliefs or exercise. Further, this rule is not the sole means by which an organization or individual may obtain admission to the United States for religious purposes, and DHS believes that the regulation, and other provisions of the INA and implementing regulations, can be administered within the confines of the RFRA. An organization or individual who believes that the RFRA may require specific relief from any provision of this regulation may assert such a claim at the time they petition for benefits under the regulation.

> Nor does this final rule impose a "categorical bar" to any religious organization's petition for a visa or alien's application for admission. Instead, the rule sets forth the evidentiary standards by which USCIS will adjudicate nonimmigrant and immigrant petitions.

73 Fed. Reg. 72276, 72283-84 (November 26, 2008). With respect to the provision that "[a]n organization or individual who believes that the RFRA may require specific relief from any provision of this regulation may assert such a claim at the time they petition for benefits under the regulation," we note that the petitioner raised no RFRA concerns until the appellate stage. Also, the above language does not require USCIS to comply with every request for relief under RFRA.

USCIS revised its regulations under express instructions from Congress. Section 2(b)(1) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391 (Oct. 10, 2008), required the Department of Homeland Security to "issue final regulations to eliminate or reduce fraud" related to religious worker petitions. While the provisions related to nonimmigrant religious workers have no expiration date, the October 2008 legislation extended the special immigrant nonminister religious program only until March 5, 2009. From the wording of the statute, it is clear that this extension was so short precisely because Congress sought to learn the effect of the new regulations before granting a longer extension. Congress has since extended the life of the program three times.[1] On any of those occasions, Congress could have made substantive changes in response to the regulations they ordered USCIS to promulgate, but Congress did not do so. Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it reenacts a statute without change. *Lorillard v. Pons*, 434 U.S. 575, 580 (1978). We may therefore presume that Congress has no objection to the new regulations as published, or to USCIS' interpretation and application of those regulations.

Counsel cites no judicial finding that any of the current regulations violate RFRA. Absent such a finding, the regulations remain binding on all USCIS employees, and neither the director nor the AAO has any discretion to set aside any provision of those regulations.

Having addressed counsel's objection to the regulations, we now turn to the merits of the petition. Section 101(a)(15)(R) of the Act pertains to an alien who:

> (i) for the 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; and
>
> (ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii).

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[1] Pub. L. No. 111-9 § 1 (March 20, 2009) extended the program to September 29, 2009. Pub. L. No. 111-68 § 133 (October 1, 2009) extended the program to October 30, 2009. Pub. L. No. 111-83 § 568(a)(1) (October 28, 2009) extended the program to September 29, 2012.

Section 101(a)(27)(C)(ii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii), pertains to a nonimmigrant who seeks to enter the United States:

> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
>
> (II) . . . 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) . . . 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.

The USCIS regulation at 8 C.F.R. § 214.2(r)(1) states that, to be approved for temporary admission to the United States, or extension and maintenance of status, for the purpose of conducting the activities of a religious worker for a period not to exceed five years, an alien must:

> (i) Be a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least two years immediately preceding the time of application for admission;
>
> (ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);
>
> (iii) Be coming solely as a minister or to perform a religious vocation or occupation as defined in paragraph (r)(3) of this section (in either a professional or nonprofessional capacity);
>
> (iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and
>
> (v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

We will first address the issue of evidence of the petitioner's tax-exempt status. The regulation at 8 C.F.R. § 214.2(r)(9) requires the petitioner to submit (i) a currently valid determination letter from the Internal Revenue Service (IRS) showing that the organization is a tax-exempt organization; or (ii) for a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt. (The regulation at 8 C.F.R. § 214.2(r)(9)(iii) deals with non-church religious organizations.)

The petitioner filed the Form I-129 petition on May 23, 2008. The petitioner's initial submission included documentation of its inclusion in *The Official Catholic Directory*. In a notice dated June 22, 2009, the director informed the petitioner that USCIS would deny the petition unless the petitioner submitted additional information, including a copy of a valid IRS determination letter establishing either the petitioner's individual tax-exempt status or a group exemption that covers the petitioning church.

In response, the petitioner submitted a copy of a Sales and Use Tax Certificate of Exemption. This document establishes the petitioner's exemption from certain state taxes, but it is not an IRS determination letter establishing individual or group exemption from federal income tax.

The director denied the petition on January 28, 2010, in part because "the petitioner did not submit a currently valid determination letter from the IRS." On appeal, counsel states that the director "erred in concluding that the petitioner is not a bona fide nonprofit religious organization." The director, however, made no such conclusion. Rather, the director concluded that the petitioner failed to submit required evidence (specifically, a copy of a valid IRS determination letter).

In the appellate brief, counsel states that the petitioner has submitted ample evidence of its religious character, and calls the regulation requiring an IRS determination letter "is . . . a constitutionally suspect regulation causing the [director] to not see the forest for the trees." It is, nevertheless, the regulatory requirement now in place, and the AAO has no authority to disregard or overturn such regulations. *See, e.g., Panhandle Eastern Pipe Line Co. v. Federal Energy Regulatory Commission,* 613 F.2d 1120 (C.A.D.C., 1979) (an agency is bound by its own regulations); *Reuters Ltd. v. F.C.C., 781 F.2d 946,* (C.A.D.C.,1986) (an agency must adhere to its own rules and regulations; ad hoc departures from those rules, even to achieve laudable aims, cannot be sanctioned). An agency is not entitled to deference if it fails to follow its own regulations. *U.S. v. Heffner,* 420 F.2d 809, (C.A.Md. 1969) (government agency must scrupulously observe rules or procedures which it has established and when it fails to do so its action cannot stand and courts will strike it down).

At the conclusion of the brief, counsel contends that "the demand for a[n] IRS determination letter" "is erroneous under the regulations." This assertion is false on its face, because (as counsel acknowledges elsewhere in the same brief) the regulations plainly and repeatedly require such a letter. Counsel argues that the IRS determination letter requirement "is probably the '**least effective**' means to protect against fraud. It is in fact quite easy for an organization or entity to obtain 501c3 status with the IRS" (counsel's emphasis). Nevertheless, counsel does not state whether the petitioner even attempted to obtain a copy of an IRS determination letter, which would already exist (and require no further fees or applications) if the petitioner is covered by a group determination ruling.

We agree with the director's finding that the petitioner has not provided required evidence of its tax-exempt status. On this basis alone, even if other grounds were not present, USCIS may not approve the petition. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. 8 C.F.R. § 103.2(b)(14). We stress that this is not a conclusive finding that the petitioner is not a tax-exempt religious organization. Rather, it is only a finding that the petitioner has failed to submit specific evidence required by USCIS regulations.

The second issue we will address concerns the beneficiary's proposed work schedule. The regulation at 8 C.F.R. § 214.2(r)(1)(ii) requires that the beneficiary must be coming to the United States to work at least in a part time position (average of at least 20 hours per week).

On Part 5, line 6 of Form I-129, asked for the number of hours the beneficiary would work per week, the petitioner answered "approx. 5/week." The petitioner's initial filing included an unsigned statement that provided information about the cantor's work schedule:

> [R]ehearsals are Wednesday evenings from 7:00 to 9:00PM. During the pre-Christmas and pre-Easter Season, rehearsals are also held . . . [from] 11:45AM to 12:30PM.
>
> The Cantor is expected to function at his/her assigned liturgy: 4:00PM on Saturdays, 8:30 and 10:30AM on Sundays and at the special celebrations throughout the year. . . .
>
> In addition to these days, when the Cantor is not functioning in that role, he/she is also a member of the adult choir. The adult choir sings every Sunday at the 10:30AM liturgy and on special occasions which includes the annual Christmas concert.

The petitioner's initial claim is, on its face, non-qualifying, indicating that the beneficiary would work considerably less than 20 hours per week on average. *See* 8 C.F.R. § 214.2(r)(1)(ii).

On November 19, 2008, a USCIS officer visited the petitioning church in order to conduct a site inspection and compliance review. The regulation at 8 C.F.R. § 214.2(r)(16) describes such verification efforts. According to the inspection report, [redacted], pastor of the petitioning church, stated that the beneficiary would work as a cantor for one hour per week, with her remaining time devoted to rehearsing and singing in the church choir (which is a volunteer function rather than paid employment).

In the June 2009 notice, the director advised the petitioner of the findings from the site inspection, and of new regulatory provisions that took effect on November 26, 2008. One new provision, at 8 C.F.R. § 214.2(r)(8), requires the petitioner to submit a detailed attestation regarding the beneficiary, the petitioner, and the job offer.

In response, the petitioner submitted an attestation indicating that the beneficiary "will work . . . at least 20 hours per week." [redacted] stated:

> In my interview, in addition to the beneficiary performing her duties as a cantor for one hour each week, I indicated that much more is included in her duties. The beneficiary is also a member of the adult choir. . . .
>
> Additionally . . . , the beneficiary is also expected to be at the weekly Wednesday evening choir practices. . . .
>
> [T]he beneficiary performs two (2) duties . . . that of cantor and choir member.

[redacted] did not specify how many hours the beneficiary would devote to the duties of a cantor, as opposed to the duties of a choir member. [redacted] did not claim that any other member of the choir received payment for that activity, and an accompanying list of compensated employees did not include any members of the choir (or any other cantors).

In the denial notice, the director found that the petitioner failed to show "that the beneficiary will be working at least part-time (20 hours per week)." On appeal, counsel notes that the regulation at 8 C.F.R. § 214.2(r)(1)(ii) does not require "a minimum of 20 hours per week," but rather "average of at least 20 hours per week." This observation is correct as far as it goes, but the petitioner must still demonstrate that the beneficiary's duties will average at least 20 hours per week.

Counsel protests that the finding that the beneficiary's position occupied "only one hour per week. The people who are making this determination are not identified nor is there any indication of how this information was recorded." The record contradicts counsel's assertions. In the June 2009 notice of intent to deny the petition, the director stated: "Per [redacted] the beneficiary will only perform her duties as a can[t]or for one hour each week." The director specified that this information came from the November 2008 site inspection. In the petitioner's response to that notice, [redacted] did not deny stating that the beneficiary worked one hour per week as a cantor. Rather, he stated: "in addition to the beneficiary performing her duties as cantor for one hour each week, I indicated that much more is included in her duties. The beneficiary is also a member of the adult choir." The petitioner cannot now credibly contest the origin or authenticity of the "one hour each week" statement.

On the Form I-129 petition, which counsel prepared and which [redacted] signed under penalty of perjury on behalf of the petitioner, the petitioner specified that the beneficiary would work approximately five hours per week. The same document indicated that the petitioner would pay the beneficiary $100 per week, a very small sum consistent only with minimal employment. These claims are pivotal to this proceeding. Later, when advised of the regulatory requirement that the beneficiary must work an average of at least 20 hours per week, the petitioner inflated the beneficiary's work schedule and attempted to include her activities as a choir member into that schedule, and raised the salary offer from $100 per month to $100 per week. This revision of the original claim casts doubt on the petitioner's overall credibility. Because of these conflicting claims, the petitioner's revised assertions do not, as counsel contends, establish by a preponderance of evidence that the beneficiary will work, on average, 20 hours or more per week.

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). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Commr. 1998).

We agree with the director's finding that the petitioner has not established that the position offered to the beneficiary is at least part time as defined by the applicable regulations.

The third issue under consideration concerns whether the position of cantor qualifies as a religious occupation. The regulation at 8 C.F.R. § 214.2(r)(3) defines a religious occupation as 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 which 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; and
>
> (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.

The USCIS regulation at 8 C.F.R. § 214.2(r)(8)(ii) requires the petitioner to attest that the beneficiary is qualified for the position offered. In a letter accompanying the initial filing [redacted] stated:

> The role of Cantor is a major religious function in Catholic worship. This person leads the parish congregation in song, praise and worship. . . . His duties and qualifications have varied considerably according to time and place; but generally he must be ready to lead all the singing in church, to start any chant, and be watchful to prevent or correct mistakes of singers placed under him. He may be responsible for the immediate rendering of the music, showing the course of the melody by movements of the hand.

A letter from [redacted] parish priest of Santa Monica Parish in the Philippines, indicated that the beneficiary "has served as both a catechist and a cantor . . . [since] 25 March 2003." [redacted] referred to the beneficiary as "a trained cantor." He did not specify whether or not the beneficiary ever received payment for this function.

According to the report from the November 2008 site inspection, [redacted] stated that the beneficiary "is currently being taught how to perform the duties of a cantor and is getting used to doing so before the congregation. . . . [S]he has never performed the duties of a cantor before." The report also indicates: "The organization holds 3 masses each Sunday. Currently the organization has 5 cantors that perform

the cantor duties. Therefore, the beneficiary will only be the cantor at one service each week." This is consistent with [redacted] reference, in his first letter, to each cantor having an "assigned liturgy."

In the June 2009 notice, the director instructed the petitioner to specify the requirements for the position of cantor, and to explain how the beneficiary meets those requirements. The director also requested evidence that the Roman Catholic church recognizes the position of a cantor as a paid occupation relating to a traditional religious function.

In response, the petitioner repeated the prior assertion that the beneficiary served as a cantor in the Philippines. [redacted] stated:

> I do not recall saying the beneficiary is in training to be a cantor due to the fact that she is qualified in the field since she acquired that expertise in her home parish of [redacted] in the Philippines. . . .
>
> However, if I made the statement that the beneficiary is in training, the training . . . pertains to "gesturing," that is inviting the congregation to sing/participate by way of hand and arm motion. Training for this aspect of cantoring is approximately 15 to 30 minutes.

[redacted] did not explain why this training was necessary if the beneficiary already has years of experience as a cantor.

The director, in denying the petition, found that "[t]he petitioner has not shown that the beneficiary is performing duties above and beyond those of a caring member of the denomination," or that the beneficiary is qualified to work as a cantor.

On appeal, counsel asserts that the director "erred as a matter of law that the position [of] Cantor in the Roman Catholic Church is not a religious occupation" and "in requiring religious training or qualifications to perform as a Cantor." With respect to the latter assertion, the director does not have the authority to require that a given position requires a certain level of training or education. Nevertheless, the regulation at 8 C.F.R. § 214.2(r)(8)(ii) requires the petitioner to attest that the beneficiary is qualified for the position offered. The claims on the petitioner's attestation are subject to verification under the regulation at 8 C.F.R. § 214.2(r)(16).

Counsel notes that the previous version of the regulations specifically included "cantors" in a list of examples of qualifying religious occupations. *See* 8 C.F.R. § 214.2(r)(2) (2008). The old regulation (which, in any case, is no longer in effect) did not indicate that simply holding the title of "cantor" was sufficient or presumptive evidence of eligibility. The new regulation requires not only that the duties must primarily relate to a traditional religious function, but also that the position is recognized as a religious occupation within the denomination. Counsel, on appeal, relates the history of the role of the cantor in the Roman Catholic denomination, and concludes "[t]here is no question in the Roman Catholic church that a Cantor is recognized as a religious occupation." The unsupported

assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

We do not question that the role of the cantor relates to a traditional religious function in the Roman Catholic denomination, but not every traditional religious function constitutes a recognized occupation. Attending worship services and taking communion, for instance, are indisputably religious functions, but no one is paid to perform them. It is significant that the petitioner has repeatedly attempted to fold the beneficiary's choir duties into her "occupation," although there is no evidence that the petitioner pays any other choir members. More broadly, the petitioner has not submitted any evidence that it, or any other Roman Catholic congregation, has ever employed a paid cantor. It is for this reason that we cannot find that the petitioner has shown the role of cantor to be a recognized occupation within the denomination.

With respect to the beneficiary's qualifications, the petitioner has offered conflicting claims, stating that she is a trained and experienced cantor who, nevertheless, requires ongoing training in that capacity. We agree with the director's findings in this regard.

The fourth and final issue under consideration relates to the beneficiary's proposed compensation. Instructed to describe the beneficiary's intended compensation on Part 5, lines 6 and 7 of Form I-129, the petitioner left blank the space intended for the beneficiary's wages. Under "Other Compensation," the petitioner stated that the beneficiary would receive "Accident/Health Insurance." In a separate letter, [redacted] stated that the petitioner "will provide compensation in two ways: $100.00/ month and insurance benefits for any accidents and/or injuries while participating in parish events and celebrations."

The regulation at 8 C.F.R. § 214.2(11)(1) requires the petitioner to submit verifiable evidence explaining how the petitioner will compensate the alien. Evidence of compensation 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. IRS documentation, such as IRS Form W-2 or certified tax returns, must be submitted, if available. If IRS documentation is unavailable, the petitioner must submit an explanation for the absence of IRS documentation, along with comparable, verifiable documentation.

A parish financial statement for the period from July 1, 2007 to March 31, 2008 indicated that the petitioner had taken in about $320,000, whereas its budget had projected income of over $445,000 for that period. All told, the report reflects a net deficit of nearly $34,000. An itemized list of expenses shows several salaries, but none for any cantor.

In the June 2009 notice, the director requested evidence regarding the beneficiary's intended compensation, including evidence of past compensation for similar work. In response, the petitioner stated that the beneficiary would receive "$100 per week plus Accident/Health Insurance. Alien will live with her mother, who fully supports her." The petitioner did not explain why the level of

compensation increased from $100 per month to $100 per week. The petitioner also submitted no evidence of any insurance policies.

The petitioner submitted a new financial statement, for the ten months from July 1, 2008 to April 30, 2009, showing that the beneficiary's operating income fell about $48,000 short of expectations, with a net operating deficit of over $169,000. As with the previous statement, the new document shows no cantor's salary. The petitioner did not submit any evidence to show that it has ever paid a salary or provided insurance coverage to any cantor.

The director's denial notice included the finding that the petitioner failed to establish how it would compensate the beneficiary. The director also commented on the beneficiary's ability to support herself by living with her mother. On the Form I-290B Notice of Appeal, while counsel lists a number of alleged errors in the director's decision, counsel did not contest the finding relating to evidence of compensation.

In the subsequent appellate brief, counsel correctly observes that the petitioner did not claim that the beneficiary would be self-supporting, and therefore her family's financial situation does not come into play. For this reason, we need not discuss the self-support regulations at 8 C.F.R. § 214.2(r)(11)(ii).

Counsel also stated that the petitioner's submissions "clearly showed they have the means to pay the salary for this part time position." As we have already noted, the financial information indicates six-figure annual deficits. Counsel does not explain how the available evidence indicates that the petitioner is able to absorb additional expenses in the form of salary and insurance premiums.

Counsel contends that the petitioner's uncontradicted testimony must be presumed to be credible evidence. The petitioner, however, has contradicted itself, by changing the terms of the job offer from five hours a week for $100 per month to 20 hours a week for $100 per week. These two sets of terms cannot possibly both be accurate, and the petitioner has not explained why it has made such substantial changes in those terms. The contradiction seriously undermines the petitioner's credibility under *Matter of Ho*. Because of these issues of credibility and consistency, we agree with the director that the petitioner has not established how it will compensate the beneficiary.

The AAO will dismiss the appeal for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.