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

(b)(6)

[redacted]

Date: APR 0 1 2013 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(R)(1)

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based nonimmigrant visa petition. On further review, the director determined that the beneficiary was not eligible for the visa classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) approval of the petition and her reasons for doing so. The director subsequently exercised her discretion to revoke approval of the petition on October 29, 2012. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to extend the beneficiary's status 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 an associate pastor. Based on the results of an onsite compliance review, the director determined that the petitioner had not established that it had employed the beneficiary since 2009.

On appeal, counsel asserts that the director "lacked the good cause necessary to revoke the instant petition approval based on [her] failure to consider probative evidence explaining the alleged evidentiary inconsistencies raised in the notice." Counsel submits a brief and additional documentation in support of the appeal.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(18) provides that the director may revoke a petition at any time, even after the expiration of the petition, for the following reasons:

1. The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;
2. The statement of facts contained in the petition was not true and correct;
3. The petitioner violated terms and conditions of the approved petition;
4. The petitioner violated requirements of section 101(a)(15)(R) of the Act or paragraph (r) of this section; or
5. The approval of the petition violated paragraph (r) of this section or involved gross error.

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).

The issue presented is whether the beneficiary worked for the petitioner during the period of his previously authorized R-1 status.

The regulation at 8 C.F.R. § 214.2(r)(1) provides, in pertinent part, that to be approved for R-1 status, the alien must:

(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.

With the Form I-129, Petition for a Nonimmigrant Worker, filed on November 14, 2011, the petitioner provided a copy of a February 4, 2010 Form I-797, Notice of Action, indicating that its petition for R-1 status for the beneficiary was approved with an effective date of February 2, 2010 to November 11, 2011. In its November 9, 2011 letter submitted in support of the petition, the petitioner stated that it had employed the beneficiary as associate pastor since February 2010.

The petitioner provided an uncertified copy of the beneficiary's unsigned and undated Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return, without any supporting schedules, for the year 2010. The IRS Form 1040 identified the beneficiary's employment as pastor and reflected $23,798 from self-employment earnings. The petitioner also submitted a copy of its 2005 articles of incorporation, a copy of a February 19, 2006 letter from the IRS recognizing the petitioner as tax exempt under sections 501(c)(3) and 170(b)(1)(A)(i) of the Internal Revenue Code (IRC), a copy of a July 26, 2010 "Agreement for Facilities Use" between and a copy of an October 2011 bank statement for located at Cerritos, California, and a copy of an October 2011 bank statement for located at the same address.

In response to the director's February 21, 2012 request for evidence (RFE), the petitioner stated in a May 12, 2012 letter that it also operates under the name of the and that the "legal registered name of our religious entity [was] initiated as and subsequently changed to ' The petitioner stated that it was providing evidence of its name change; however, the documents it submitted do not support this alleged name change. The petitioner resubmitted its 2005 articles of incorporation and documentation retrieved from the website of the State of California Secretary of State on November 14, 2011. The documentation from the website reflects that the status of the name used by the petitioner in this petition, is "suspended." The status of is listed as "active." The filing date for the name of

is shown as December 19, 2005 and for as July 26, 2005. The petitioner provided photographs of a sign outside of a building written primarily in Korean but with identifiable English words of ' and ' The petitioner also submitted copies of church brochures dated in April and May 2012 that are also primarily in the Korean language but with English identifying the organization as

The petitioner also provided uncertified copies of the beneficiary's unsigned and undated IRS Forms 1040 with the Schedules C, Profit or Loss from Business, for 2010 and 2011. The beneficiary is identified as a minister on the Schedules C, with his home address listed as his business address. The petitioner did not provide any IRS Form 1099-MISC, Miscellaneous Income, or other documentation to show the source of the beneficiary's income. The petitioner also submitted copies of bank statements for at the address for the months of September and October 2011 and February, March and April of 2012.

The director initially approved the petition on May 30, 2012. On August 6, 2012 and again on August 7, 2012, an immigration officer (IO) visited the petitioner's premises to verify the petitioner's claims in the petition. The IO reported that he was unable to make contact with any of the petitioner's representatives and that the petitioner failed to respond to his written questions sent via e-mail. On September 18, 2012, the director notified the petitioner of the results of the onsite inspection and of her intent to revoke approval of the petition, citing the regulation at 8 C.F.R. § 214.2(r)(16) which provides:

> *Inspections, evaluations, verifications, and compliance reviews.* The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

In response, the petitioner submitted an October 16, 2012 letter responding to the IO's questions, stating that the beneficiary had worked for the petitioning organization since May 2009 and that his work was performed at the petitioner's address of record. The petitioner provided copies of pay stubs for the beneficiary for June through August 2012 as requested by the IO.

In denying the petition, the director stated that the petitioner had been informed that the IO reported that: "The facility at [the petitioner's] indicated address is a 3-building complex with different distinct signage: , and

' The AAO notes, however, that this language was not included in the director's NOIR. The director found that the petitioner's response to the IO's questions, as repeated in the NOIR, did not include "evidentiary documentation to support the claims of continuing employment with the petitioner." The director then questioned the lease which shows the name of stating that the petitioner had claimed the "alternate name" but had "provided no clarification to support[] the discrepancies." The director found that the names on the signs to the building did not reflect the petitioner's name as shown on the petition and found that the petitioner had provided insufficient documentation to establish that the beneficiary worked for the organization since May 2009, as claimed.

On appeal, counsel asserts that the petitioner's "prior evidentiary submissions have sufficiently addressed the USCIS's contentions of inconsistency in the Notice regarding its name and physical location" and that the finding "neglects the extensive explanation in regards to the multiple names utilized by the Petitioner which reference the same church body." Counsel further asserts:

> As such, the posted name observed by the USCIS during its on site visitation represents Petitioner's name, albeit with alternate character spacing which is attributable to the Korean alliterative pronunciation of ' in order for its Korean constituents to understand the signage. In addition, prior to the USCIS's visitations, the Petitioner had submitted photographs of the business premises . . . displaying the signage with which the USCIS took issue with. Thereby, had the USCIS noted these previously submitted photographs as Petitioner's church locale, much confusion would have been avoided, and the alleged discrepancy explained.

Counsel additionally stated that the petitioner had explained that it used the name in order to appeal to a wider range of people, and that before the name on the sign represents the petitioner's denomination.

Counsel's assertions are not persuasive. First, the director did not question the spelling of the petitioner's name or the use of before the name of Rather, she questioned the omission of the petitioner's name on the sign. The petitioner alleged that it had changed its name to however, it provided no documentation to support the alleged name change. The petitioner's articles of incorporation and the IRS letter both reflect the petitioner's name as Additionally, the documentation submitted from the website of the California Secretary of State indicates that the name ' was registered before the name of ' More importantly, despite the alleged name change, the petitioner used the name on the instant Form I-129 that it filed with USCIS on November 14, 2011. The petitioner did not notify USCIS of the name change. Furthermore, the petitioner has submitted no documentation authorizing its use of the name as an alias or as an also known as (AKA) moniker. The petitioner submitted no verifiable documentation to establish that the the and the

are the same organization. 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)).

Counsel states on appeal that the petitioner's statement that the beneficiary began working for the petitioner in February 2009 was in error and that the "genuine date of February 2010" was the beneficiary's actual start date. The petitioner provides copies of the beneficiary's IRS tax transcripts for 2010 and 2011. However, these documents only serve to establish that the beneficiary filed his tax returns with the IRS and does not prove that he worked for the petitioning organization. The petitioner did not submit any IRS Forms 1099-MISC or other documentary evidence to establish that it compensated the beneficiary for services performed. The petitioner submitted copies of check stubs indicating that the beneficiary was paid by the and, on appeal, submits copies of processed checks made to the beneficiary by the in November 2010 and November 2011. However, as discussed above, the petitioner has submitted no documentation to establish that it is the same organization as the The AAO notes that while the checks appear to bear the petitioner's address of record, the address is not the same as reflected on bank statements and the beneficiary's pay stubs. The petitioner does not explain this discrepancy in the 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).

The petitioner has failed to establish that it employed the beneficiary, and continues to employ the beneficiary, during the period of the approved R-1 visa.

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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.