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: SEP 19 2013 OFFICE: CALIFORNIA SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

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

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 nonimmigrant visa petition. The matter is now before the AAO on appeal. The AAO will dismiss the appeal.

The petitioner is a Buddhist temple and monastery. It seeks to classify the beneficiary as a nonimmigrant religious worker under section 101(a)(15)(R) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R), to perform services as a head monk. The director determined that the petitioner had not successfully completed compliance review.

On appeal, the petitioner submits a brief from counsel, a new witness declaration, and a copy of a previously submitted letter.

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).

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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(16) states:

> *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.

The petitioner filed the Form I-129 petition on August 29, 2012. president of the petitioning entity, signed Part 7 the petition form, thereby certifying under penalty of perjury that the petition and the evidence submitted with it were true and correct to the best of his knowledge. Part 8 of the form, "Signature of Person Preparing Form," is blank, thereby implying that prepared the petition form without assistance. On Part 3 of the form, asked to provide the beneficiary's "Current U.S. Address," the petitioner stated that the beneficiary resided at That address belongs to also known as the

The petitioner submitted USCIS documentation showing the January 20, 2010 approval of a Form I-129 petition that filed on the beneficiary's behalf on September 16, 2009. In a May 21, 2010 letter, vice president of stated that the petitioner had worked for "since his arrival to the United States on February 6, 2010." The petitioner submitted copies of photographs showing the beneficiary at dated between April 13 and June 5, 2010. Despite claiming that the beneficiary still resided at as of August 2012, all of the submitted evidence of the beneficiary's work at dated from the first half of 2010.

On November 5, 2012, the director issued a notice of intent to deny the petition, stating: "USCIS received a letter from on July 19, 2010 that states the beneficiary's employment was terminated effective July 12, 2010. Therefore, the beneficiary's status ceased on that date." The director stated that, therefore, the petition contained information that was "not true and correct."

In response, denied making any intentionally false statement, but added:

> I did not have a lawyer who is knowledgeable in immigration laws to help me when I filled out the application form. I had my temple's members, who have a better grasp of the English language, reviewed [*sic*] the form with me. . . . The mistake was innocently made because we based our information on the papers that the monk still has in his possession. According to the paper that we had, the monk's status is still valid . . . and everything he had [was] based on the address at location. . . . Please don't deny our application because of my innocent mistake.

Whether or not was aware of the beneficiary's circumstances, the beneficiary's immigration status is material to the proceeding and affects his eligibility for the extension of status that the petitioner seeks in conjunction with the petition. *See* 8 C.F.R. §§ 214.1(c)(4) and 214.2(r)(12).

A USCIS officer interviewed the beneficiary, and the petitioner's bookkeeper and a member of its board of directors on February 1, 2013. (The director's notice misstated the date as February 2, but the interviewing officer specified that the interview occurred on a Friday, which would make February 1 the correct date.) The interview revealed that, while signed the Form I-129 petition, he himself did not complete the form or have personal knowledge of the information on the form.

The director denied the petition on March 18, 2013, stating the interview confirmed the information in the notice of intent to deny the petition, and that "was unaware of the contents of the petition . . . , which he had certified to be true and correct."

On appeal, counsel states: "Beneficiary's status as a non-immigrant religious worker never expired, and USCIS never notified beneficiary or petitioners that beneficiary's status expired or was terminated." However, in her decision, the director did not claim that the beneficiary's R-1 nonimmigrant status had "expired" through the passage of time. Rather, that status ceased once notified USCIS that the beneficiary no longer worked at The beneficiary's R-1 nonimmigrant status from 2010 to 2012 was contingent on his continued work for the petitioning employer and when that employment ceased in July 2010, the sole basis for the beneficiary's continued status disappeared. The petitioner's withdrawal of a petition results in the automatic revocation of the approval of that petition. *See* 8 C.F.R. § 214.2(r)(18)(ii). in its July 9, 2010 letter to USCIS, reported the termination of the beneficiary's employment and indicated that it no longer sought immigration benefits for the beneficiary.

Regarding the claimed lack of notification, as the present petitioner had not yet filed any petition on the petitioner's behalf, USCIS would have had no reason to notify the present petitioner when terminated the beneficiary's employment. In addition, the beneficiary acknowledged during the February 2013 interview that USCIS sent him a notice after terminated his employment. In that notice, USCIS advised the petitioner that the beneficiary had to depart the United States within 30 days unless another employer filed a petition for him. The beneficiary did not depart and remained in the United States for more than two years between termination and the filing of the new petition.

Counsel states:

> Beneficiary continued to perform his services as a monk since his entry to the United States. Whether some of these services occurred away from monastery is irrelevant. As has been stated before, monks [may] "lend" themselves to perform services in other monasteries of the same religious denomination. Such services did not constitute a change in employment, or a violation of beneficiary's R-1 status. In essence, beneficiary remained an employee of Buddhism because he continued to perform his religious duties according to the doctrine of Buddhism.

The record contains no evidence that the petitioner "continued to perform his religious duties" after terminated his employment in July 2010. 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). All the evidence of the beneficiary's work as a monk dates from before the July 2010 termination. The petitioner initially claimed that the beneficiary resided at at the time of filing in August 2012, but the petitioner has since acknowledged that this information came from the beneficiary rather than the petitioner's own knowledge.

Counsel also asserts that "monks [may] 'lend' themselves to perform services in other monasteries of the same religious denomination. Such services did not constitute a change in employment, or a violation of beneficiary's R-1 status." The petitioner submits a copy of May 21, 2010 letter, which stated: "It is common practice to lend monks from one Buddhist temple to another." did not state that had, in fact, lent the beneficiary to any other temple.

In describing the end of the beneficiary's association with the monastery, July 2010 letter did not use the word "lend," it used the word "terminate." Therefore, if the beneficiary worked at other monasteries after July 2010, any such work would constitute an unauthorized change of employers and, therefore, a violation of status. *See* 8 C.F.R. § 214.2(r)(13).

Counsel contends that information from the February 2013 interview "is highly suspect, and inaccurate" because that interview "was conducted without an interpreter." To support this claim, the petitioner submits a notarized affidavit from , who stated that the interview took place even after USCIS was unable to locate an interpreter. stated: "It was clear from the beginning of the interview to the end that, without an interpreter, did not fully understand the questions posed by USCIS and his answers, therefore, would be unreliable."

himself offers no corroboration for this claim. 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)). earlier assertion that other members of the monastery "have a better grasp of the English language" does not establish that was unable to communicate during the interview.

Furthermore, the beneficiary and herself were both present at the same interview, and does not claim that she or the beneficiary had any difficulty understanding or speaking to the interviewer, or that they themselves were unable to communicate with or otherwise assist him. In her affidavit, does not dispute or even mention the assertions that she, herself, made during the interview.

Most importantly, the denial of the petition did not rest on statements during the February 2013 interview. The director, in the denial notice, observed only that the information from that

interview "confirmed information presented in the NOID" (notice of intent to deny). The director did not single out [redacted] statements during that interview, or indicate that those statements were in any way at odds with the beneficiary's and [redacted] statements during the same interview.

Even setting aside the February 2013 interview altogether, the available evidence shows that the Form I-129 contained material assertions regarding the beneficiary which proved not to be true. The petitioner, on appeal, has not shown or even claimed that the information on the petition form was true. The compliance review process failed to confirm the petitioner's material claims of fact.

The AAO will dismiss the appeal for the above stated reasons. 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.