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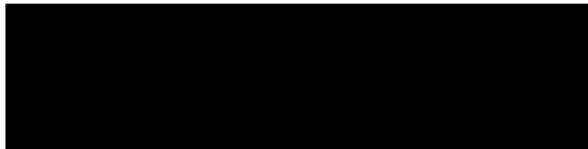
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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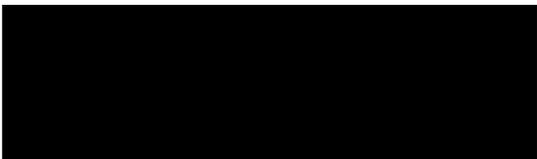
Petitioner:



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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a [REDACTED]. 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 an imam (minister). The director determined that the petitioner had not established: (1) that the beneficiary had the requisite two years of continuous work experience as an imam immediately preceding the filing date of the petition; (2) the beneficiary's authorization to perform the work of an imam; (3) the petitioner's ability to pay the beneficiary's salary; or (4) that the petitioner was qualified to file the petition.

In this decision, the term "prior counsel" shall refer to [REDACTED] who represented the petitioner at the time the petitioner filed the petition. The term "counsel" shall refer to the present attorney of record.

Before revoking the approval, on July 11, 2007 the director issued a notice of intent to revoke, as required by 8 C.F.R. § 205.2(b). The director issued a notice of revocation on August 16, 2007, stating "no response has been received." The record, however, shows that the petitioner, through counsel, did submit a response, postmarked August 10, 2007 and delivered to the Texas Service Center on August 13, 2007. Somehow, this response was not timely incorporated into the record. We note that this response contained no substantive rebuttal to the cited grounds for revocation. Instead, counsel requested an additional sixty days in which to respond to the notice of intent to revoke.

Because the director did not consider the petitioner's response to the notice of intent to revoke (which, in any case, consisted only of a request for more time), the AAO shall, in this decision, list the grounds stated in the notice of intent to revoke and then discuss the petitioner's submissions on appeal. There is nothing of substance to discuss between the director's notice and the appeal.

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 October 1, 2008, 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 October 1, 2008, 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: “The Secretary 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 un rebutted, 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 Dec. 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 approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 589.

The first issue under consideration relates to the beneficiary’s past work. The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the “religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.” 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on October 24, 2000. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an imam throughout the two years immediately prior to that date.

The Form I-360 petition indicates that the beneficiary’s last entry into the United States prior to the filing date was on August 26, 2000. The beneficiary’s passport was issued on July 24, 1999, in Qatar, showing that the

beneficiary was outside the United States at that time. Visas and stamps in the beneficiary's passport show the beneficiary leaving Qatar for the United States in September 1999, returning to Qatar a month later. From Qatar, the beneficiary traveled briefly to the United Kingdom in November 1999 and returned to Qatar. In the summer of 2000, the beneficiary traveled to Bahrain and Pakistan with short return visits to Qatar. Therefore, the beneficiary was outside the United States for most of the period between July 1999 and August 2000, and attestations from the petitioner or other witnesses in the United States cannot suffice to show that the beneficiary was carrying on qualifying work abroad.

In a letter submitted with the initial filing of the petition, [REDACTED] President of the petitioning entity, stated: "In March 1989 [the beneficiary] received certification . . . to practice Religious Guidance as an Imam," and that the beneficiary "has extensive experience working as an Imam," including "10 years as an Imam in Qatar." [REDACTED] did not provide any specific details about exactly when and where the beneficiary worked.

Copies of letters attested to the beneficiary's work prior to April 2000. The petitioner submitted copies of two separate but almost identically worded letters from [REDACTED] Trustee of [REDACTED] who stated that the beneficiary served "as [REDACTED] (i.e. Priest) at the mosque of [REDACTED] (A.S.) since August 1996 up to April 2000." One of the letters is on the letterhead of Mansoor Trading & Contracting. [REDACTED] Trading & Contracting stated that the beneficiary served [REDACTED] (i.e. Priest) at the mosque of [REDACTED] (A.S.) since June 1992 up to July 1996. [REDACTED] stated that the beneficiary has worked "[REDACTED] (i.e. an Islamic center) OF IMAM AL-MUNTAZAR (A.S.) since August 1992 up to now." [REDACTED] of al-[REDACTED] stated in a joint letter that the beneficiary worked "at [REDACTED] for two years from May 1990 to April 1992."

None of the letters described above specified the locations of the above mosques, but all of the witnesses are based in Doha, Qatar. The letters, while not identical, share common wording (including common grammatical errors). For instance, the four letters from individuals named [REDACTED] the following passage, exactly or with trivial variations: "[The beneficiary] was known as a peacefully, friendly person to everyone in spite of what their religion or sect is." Three of those four letters add that the beneficiary "treated people with an excellent behavior." The letter from [REDACTED] indicates that the beneficiary "was always seen peacefully, friendly with an excellent behavior with everyone he met."

In a résumé submitted with the initial petition, the beneficiary named all of the above mosques, and added that he "[p]racticed a side part time night job [in the] medical profession of Respiratory Technician & Therapist (1988-2000) [at] Hamad General Hospital . . . Doha, Qatar." We will revisit this assertion in due course.

[REDACTED] listed the beneficiary's duties "as a full time Imam":

1. Organize and lead the congregational daily prayers.
2. Provide religious guidance
3. Lead Funeral prayers and supervise funeral service ceremonies

4. Perform Nikah (Wedding Ceremonies) and divorce contracts.
5. Provide Islamic education to children and adults
6. Provide family counseling
7. Assist in recruitment, fund-raising and expansion activities
8. Coordinate with other Islamic Organizations world-wide
9. Supervise and organize all religious activities

A "Service Contract" between the petitioner and the beneficiary indicates that the beneficiary is to serve as "the resident Aalim, or religious guide, or Imam . . . from 15th April 2000 to 14th April 2005," with automatic renewals thereafter. By itself, this letter demonstrates that the beneficiary arranged to work for the petitioner during the last six months of the two-year qualifying period, but it does not establish that the beneficiary actually performed the work. We note that the contract refers to the beneficiary's compensation as "Hadiya." The contract lists the following "Duties and Responsibilities":

1. Setting up and leading the congregational prayers.
2. Offering religious guidance.
3. Providing family counseling.
4. Performing marriages and divorce contracts.
5. Funeral services.
6. Providing Islamic education to children and adults.
7. Assist in recruitment, fundraising and expansion activities.
8. Coordinate with other Islamic organizations worldwide.
9. Supervising and organizing the religious activities.
10. Note: (Further details of the duties, functions and responsibilities are well explained in the bylaws of the association, which are acknowledged by the Aalim before signing this agreement)

Bank statements from 2000 submitted with the petition do not show monthly checks for \$1,000, or for a smaller amount consistent with \$1,000 minus taxes withheld.

On January 30, 2001, the director issued a request for evidence with the following instructions:

Submit documentary evidence of the beneficiary's employment for the two years (October 24, 1998 through October 24, 2000) preceding the filing of this petition. Submit canceled checks issued in payment of wages; W-2 for the year of 2000; tax return for 2000; employment outside the United States, tax returns, payroll records, etc. A letter from the foreign church without documentation will not suffice.

In response, prior counsel stated:

The beneficiary is currently employed as a temporary Imam (Minister) for the petitioner. This employment began in April of 2000. . . . [A]ttached are copies of the beneficiary's 2000 tax returns, W-2 and cancelled checks.

Prior to joining the petitioner, the beneficiary was employed by the [REDACTED] in Doha, Qatar. . . . Please see the attached copies of the payroll records of the petitioner showing salary payments to the beneficiary. Since there is no income tax in Qatar, no taxes are withheld.

A copy of the beneficiary's 2000 nonresident alien income tax return shows \$17,661 in salary. The petitioner reported \$9,000 of this amount on a Form W-2 Wage and Tax Statement, and the remaining \$8,661 on a Form 1099-MISC Miscellaneous Income statement. The tax return contains the following passages:

Dates you entered and left the United States during the year: Left on 17 FEB, back on 11th MARCH 2001 / [deleted] 2001

Give number of days (including vacation and nonwork days) you were present in the United States during: 1998 [blank], 1999 [blank], and 2000 from April 2000 up to now.

One of the canceled checks, number 1223, in the amount of \$5,000 and dated June 19, 2000, is annotated "April 2000 Hadiya + Travel Comp. / for Sheikh." Next to the photocopied check appears the attestation "4000.- Travel Expencess [sic] + 1000.- April Salary." That check was payable not to the beneficiary, but to [REDACTED] identified elsewhere in the record as Vice President of the petitioning entity. Because this check was not payable to the beneficiary, and there is no documentary evidence to show that the \$5,000 was transferred to the beneficiary from [REDACTED] the check is not evidence of the beneficiary's employment or compensation.

Another \$5,000 check, number 1260, payable to the beneficiary and dated September 28, 2000, is annotated "Had[i]ya for five Month up 30/Sept/00 / FROM MAY TO SEP." (capitalization in original). On October 5, 2000, the petitioner paid the beneficiary check number 1269 in the amount of \$861, including "\$400 - car allowance" and "\$461 - children's school allowance." The petitioner issued \$1,400 checks to the beneficiary for salary and car allowance on October 31, 2000; November 30, 2000; and January 5, 2001.

Several trustees of [REDACTED] jointly signed a letter stating that the beneficiary "was paid a TAX FREE monthly salary of 5470.00 Qatari Riyals (US \$1500.00) in CASH" (capitalization in original). Accompanying this letter is a copy of a "Monthly Payroll register," showing that the beneficiary signed for monthly salary payments from August 1996 through April 2000. We note that the payroll register was printed mostly in English rather than in Arabic. The payroll register indicates that the beneficiary signed for his monthly pay on September 30, 1999.

The petitioner submitted a copy of the beneficiary's passport, issued July 24, 1999. Under "Profession," the passport originally stated "Private Service." Those words were crossed out and replaced with the word "BUSSINESS" (sic) and the notation "P21." An August 23, 2000 "Endorsement" on page 21 of the passport repeats the misspelled word "Bussiness."

Stamps in the beneficiary's passport show frequent international travel during and after the qualifying period, to the United States, Saudi Arabia, the United Kingdom, Pakistan and Bahrain in addition to Qatar, where he

resided. Some of the stamps show that the beneficiary left Qatar on September 15, 1999, entering the United States the same day. The next Qatar entry stamp we can identify in the record is dated October 19, 1999, which appears to indicate that the beneficiary was not in Qatar on September 30, 1999, the day he purportedly signed the payroll register to collect that month's salary. 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* at 591.

The passport shows that, between June and August of 2000, the beneficiary traveled to Bahrain, Qatar and Pakistan. This is not consistent with the beneficiary's claim on his tax return that he was "present in the United States . . . from April 2000" through the end of that year.

The director approved the petition on May 2, 2001, but subsequently issued a notice of intent to revoke on July 11, 2007. The director stated that the continuity of the beneficiary's qualifying employment was in doubt, because "[t]he evidence does not show that the petitioner employed or paid the beneficiary between April and September 2000, and this apparent five-month interruption in employment is not explained in the record." The director also noted the beneficiary's frequent international travel in 1999 and 2000.

The director also questioned the authenticity of the letters attributed to mosque trustees in Qatar, noting that the letters use similar or identical language. Finally, the director asserted that the description of the beneficiary's past duties does not match the description of his intended future duties, and that therefore the beneficiary lacked experience performing the intended duties of the position.

With respect to the lists of the beneficiary's past and future duties, the AAO does not find the two lists to be widely divergent. While the items on the lists differ in wording and in order, in substance they are virtually identical.

Relating to the beneficiary's past compensation, the director observed that the beneficiary's 2000 income tax return "reflects an income of 17,661 dollars while his Form W-2 from the petitioner shows 9,000 dollars in salary for that year. The record does not establish the source of the additional income in excess of 9,000 dollars." In the same notice, the director acknowledged "four checks the petitioner wrote to the beneficiary beginning September 28, 2000 to November 30, 2000 totaling 8,661 dollars."

On appeal, [REDACTED] states that the petitioner did pay the beneficiary for his work between April and September of 2000, but was not "officially able to compensate him" "until after [the beneficiary] obtained a social security number."

The director's findings regarding the beneficiary's compensation rest on an incomplete consideration of the available evidence. The director observed the gap between the \$9,000 shown on the beneficiary's Form W-2 and the \$17,661 reported on the beneficiary's tax return, but the director failed to acknowledge the Form 1099-MISC from the petitioner, showing compensation in the amount of \$8,661 – exactly the amount of the discrepancy. The director mentioned the checks worth \$8,661, but failed to consider how this figure matched the difference between the amounts shown on the Form W-2 and the tax return.

Furthermore, the September 28, 2000 check for \$5,000 is plainly marked as covering five months of compensation, from May through September. The director did not mention this check when concluding that the petitioner did not establish any compensation for the beneficiary during that period.

The canceled checks reproduced in the record indicate that the petitioner paid the beneficiary for the last six months of the qualifying period; there is no gap in those payments. Nevertheless, we cannot ignore that much of that payment was in the form of a \$5,000 lump sum paid in September. The beneficiary's passport shows multiple entry and exit stamps from Bahrain, Qatar and Pakistan between June 21, 2000 and August 25, 2000. [REDACTED] on appeal, asserts that the beneficiary spent this time obtaining the necessary documents to travel to the United States with his family to begin working for the petitioner as an R-1 religious worker, and that during this time, the beneficiary "continued to guide his community through telephone and email."

We will affirm the director's basic conclusion that the petitioner has failed to show that the beneficiary meets the two-year continuous employment requirement. An expanded version of the beneficiary's 2000 income tax return, submitted on appeal, identifies the beneficiary's overseas employer as Mansoor Trading and Contracting, which is the company name on the letterhead of a previously submitted employment letter. The name of the employer does not immediately suggest a mosque or other religious institution. It was while employed by this entity that the beneficiary received his passport identifying his profession first as "Private Service," then as "Bussiness" as late as August 2000.

As noted previously, the beneficiary's own résumé indicates that he "[p]racted a side part time night job [in the] medical profession of Respiratory Technician & Therapist (1988-2000) [at] Hamad General Hospital . . . [REDACTED] An alien seeking classification as a special immigrant minister must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought, and must intend to be engaged solely in the work of a minister of religion in the United States. *See Matter of Faith Assembly Church*, 19 I&N 391, 393 (Commr. 1986). The director cited *Faith Assembly Church* in the notice of intent to revoke and in the revocation notice. If the beneficiary worked as a respiratory technician and therapist as late as 2000, then he was not solely engaged as an imam during the qualifying period.

Lending circumstantial support to the beneficiary's description of himself as a respiratory technician and therapist is an annotation in the beneficiary's passport showing that he entered the United Kingdom in November 1999 "escorting [a] patient." This reference to a "patient" suggests that the beneficiary was traveling as a medical worker, rather than as a member of the clergy.

Credibility questions pursuant to *Ho* also arise, as the director observed, from the petitioner's submission of employment letters from different individuals that are so similar as to preclude mere coincidence. That at least two of these witnesses are from "trading" companies raises additional questions. In a new letter submitted on appeal, [REDACTED] al-Sharshani states that he previously used his company's "Mansoor Trading & Contracting" letterhead because "the [REDACTED] had no official letterhead" and in order to provide an assurance of his identity, "to prevent forgery." This does not explain why the beneficiary himself named Mansoor Trading & Contracting as his employer on his 2000 income tax return.

The petitioner submits the original [REDACTED] payroll register from which the previously submitted copy was made, along with a statement jointly signed by twelve witnesses, asserting that the beneficiary led that mosque "for almost more than three years." As noted previously, the document (repeatedly stamped, in purple ink, with the name "Mansoor Trading & Contracting") shows the beneficiary signing for his pay on September 30, 1999 even though his passport seems to place him outside the country that day. The questions relating to the submission of numerous nearly identical letters have not been resolved. 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. *Matter of Ho* at 591-92.

Based on the above discussion, we find that the petitioner's evidence regarding the beneficiary's prior employment in Qatar and the United States does not establish the beneficiary's eligibility. Also, the beneficiary's assertion (corroborated by his passport) that he worked as a respiratory therapist until 2000 is disqualifying on its face because the beneficiary must have worked *solely* as a minister throughout the qualifying period. The AAO therefore affirms the director's finding that the petitioner has not established that the beneficiary continuously worked as an imam throughout the two-year qualifying period.

The next issue concerns the beneficiary's credentials. 8 C.F.R. § 204.5(m)(2) defines a "minister" as an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion.

8 C.F.R. § 204.5(m)(3)(ii)(B) requires an authorized official of the religious organization in the United States to establish that, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

As noted previously, [REDACTED] initially stated: "In March 1989 [the beneficiary] received certification in [REDACTED] Islamic Studies from the [REDACTED] to practice Religious Guidance as an Imam." The initial submission included a copy of an undated certificate from the named entity, stating that the beneficiary possesses "the qualification of a RELEGIOUS [*sic*] GUIDE (AALIM) / therefore he is authorized to practice his duties as an IMAM." An accompanying undated letter from a Trustee of [REDACTED] (the signature on the letter is in Arabic characters with no transliteration) also uses the term "religious guide (IMAM/AALIM)."

The director did not revisit this issue before approving the petition. In the notice of intent to revoke, the director stated:

The record contains a native language letter from [REDACTED] containing an illegible signature and stating that the beneficiary "completed and passed a number of studies. . . . However, the English translation has not been certified as accurate, and the translator certified as competent as required by 8 C.F.R. § 103.2(b)(3). In addition, a certificate to the beneficiary authorizing practice as an Imam is undated, it refers to certification as a

“Religious Guide (Aalim),” not an Imam and the record contains nothing to establish that this title is synonymous with “Imam.”

The record does not support the director’s latter finding in this regard. Numerous initial documents clearly referred to the beneficiary as both an “Imam” and an “Aalim.” Even the certificate quoted by the director states that the beneficiary “is authorized to practice his duties as an IMAM.”

Furthermore, the letter from [REDACTED] was never identified as a translation from a foreign-language original, nor was any foreign-language version of the letter submitted. Rather, the letter has portions in both English and Arabic. A translation submitted on appeal indicates that the Arabic portion of the letter simply repeats the English passages. The translation submitted on appeal does not carry the full attestation required by 8 C.F.R. § 103.2(b)(3). Nevertheless, the translation issue is moot because the original letter contained all the relevant information in English, and therefore required no translation. The English and Arabic portions appeared on the same document, indicating that the English portion was not an after-the-fact translation of an already-existing Arabic document.

Because the director’s conclusions rested on misinterpretations of the available evidence, the AAO withdraws the director’s finding regarding the beneficiary’s ministerial credentials.

The next issue concerns the petitioner’s ability to pay the beneficiary’s monthly salary of \$1,000 plus housing, medical coverage and a \$600 allowance for transportation and utilities. The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The only financial documentation included in the petitioner’s initial submission is a series of bank statements. Bank statements do not conform to the evidentiary requirements of 8 C.F.R. § 204.5(g)(2).

Following the approval of the petition, the beneficiary applied for adjustment of status. With that application, the beneficiary included a June 2, 2001 letter from [REDACTED] Vice President of the petitioning entity, offering the beneficiary “a starting annual salary of Twenty Five Thousand Dollars (\$25,000.00). . . . The terms and conditions of this offer are [the] same as provided in our job offer letter submitted with the original I-360 petition. This offer [is] contingent upon [the beneficiary’s] receiving appropriate work authorization.”

In the notice of intent to revoke, the director stated: “The record contains nothing to show that the petitioner compensated the beneficiary in an amount equal to or greater than 25,000 dollars during 2001 or any

subsequent year.” The director stated that the petitioner failed to submit financial documentation in compliance with 8 C.F.R. § 204.5(g)(2).

On appeal, the petitioner submits copies of processed checks dated between June 2000 and July 2007. Although there are exceptions, the general pattern of payment was \$1,400 per month from October 2000 to March 2004, increasing thereafter, with the most recent monthly payments in the amount of \$2,119. With respect to the \$25,000 per year figure cited in the denial decision, that figure was not introduced until the beneficiary’s 2001 adjustment application, and (though ambiguously worded) it was arguably contingent on approval of the beneficiary’s adjustment application. We cannot, therefore, hold the petitioner to the \$25,000 per year mentioned in 2001. The compensation cited at the time of filing, in [REDACTED] letter, was “a monthly salary of \$1000. In addition, he will be provided with full medical coverage, housing and will receive transportation and utilities allowance of \$600.” Thus, the proffered compensation was \$1,600 per month, or \$19,200 per year, plus the never-specified costs of the beneficiary’s housing and medical care.

Counsel, on appeal, does not address the director’s finding that the petitioner did not submit the documentation required by 8 C.F.R. § 204.5(g)(2). Instead, counsel emphasizes the petitioner’s submission of payroll and tax records reflecting the petitioner’s compensation of the beneficiary. Counsel fails to address the level of compensation paid. According to a list of totals provided by the petitioner on appeal, the beneficiary’s total compensation was \$20,651.50 in 2000 (including, allegedly, \$4,500 for the beneficiary’s relocation expenses, much of which was paid to [REDACTED] but the annual figure did not again exceed \$19,200 until 2004. Therefore, the checks do not demonstrate consistent payment at a rate equal to or exceeding the \$1,600 monthly proffered compensation described at the time of filing.

Copies of the beneficiary’s income tax returns, including copies of Forms W-2 and/or 1099-MISC, show that the beneficiary reported wages and salaries of \$17,661 in 2000; \$20,138 in 2001 (including \$15,800 in compensation and \$4,338 in medical benefits); \$16,800 in 2002 (plus a separate \$4,800 housing allowance); and \$16,800 in 2003 (plus a separate \$4,800 medical allowance).

In 2004, the beneficiary began reporting his income as business income rather than wages and salaries. That year, he claimed gross receipts of \$20,800 before expenses. Among his expenses, the beneficiary claimed \$4,081 for transportation, indicating that his transportation costs were included in the \$20,800, rather than in addition to that amount. The beneficiary’s Form W-2 shows \$16,800 from the petitioner.

In 2005, the beneficiary claimed \$27,500 in gross receipts and reported \$7,275 in transportation expenses. There is no Form W-2 or 1099-MISC for 2005 in the record. In 2006, the beneficiary claimed both business income and wages and salaries. As business income, the beneficiary claimed gross receipts of \$46,600, with \$2,893 in transportation expenses. The beneficiary also claimed \$3,000 in wages and salaries. A Form W-2 identifies the source of this \$3,000 as the IMAM Mahdi Association of Marjaeya, Inc., in Anaheim, California.

The tax returns and canceled checks do not establish that the petitioner has consistently paid the beneficiary at least \$1,600 per month (\$19,200 per year) plus housing and medical benefits, since the filing date.

The above-cited regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay “shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.” The petitioner is free to submit other kinds of documentation, but only *in addition to*, rather than *in place of*, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence. (The “federal tax returns” mentioned in the regulation are the employer’s tax returns, not those of the employee.) The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Furthermore, as demonstrated above, the petitioner paid the beneficiary well below the proffered wage for years after the filing date, and therefore those payments cannot support a finding that the petitioner was able to pay the full wage. The AAO affirms the director’s finding in this regard.

The final issue raised in the notice of intent to revoke concerns the petitioner’s physical premises. The director alleged that the petitioner’s initial submission “reveals nothing about the petitioner’s physical premises, membership numbers or the existence of religious services” that would justify a *bona fide* job offer. The director’s references to physical premises, membership numbers and religious services derive from the regulatory definition of “religious denomination” at 8 C.F.R. § 204.5(m)(2). The director found: “The petitioner has . . . not established its eligibility to petition for [special immigrant religious worker] classification.”

On appeal, the petitioner submits copies of deeds and related documents showing that the petitioner owns properties where religious services could take place. With regard to the petitioner’s standing as a religious organization, the petitioner’s initial submission included a 1998 letter from the Internal Revenue Service, confirming the petitioner’s status as a tax-exempt non-profit religious organization, classified under section 170(b)(1)(A)(i) of the Internal Revenue Code (which pertains to churches). This is *prima facie* evidence that the United States government recognizes the petitioner’s status as a religious institution, and the director did not cite any evidence that would call that recognition into question.

Furthermore, pursuant to 8 C.F.R. § 204.5(m)(1), “any person” may file a special immigrant religious worker petition on behalf of an alien. The regulations, as they are currently worded, provide no basis for the director’s finding that the petitioner had to “establish[] its eligibility to petition” on the beneficiary’s behalf. The AAO therefore withdraws the director’s finding in this regard.

The petitioner has overcome some of the director’s stated grounds for revocation, but other compelling grounds relating to the beneficiary’s past work and the petitioner’s ability to pay the beneficiary remain. Either of these grounds, by itself, would have been a legitimate basis for denial of the petition, thus establishing that the petition was approved in error. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for revocation. 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 sustained that burden.

ORDER: The appeal is dismissed.