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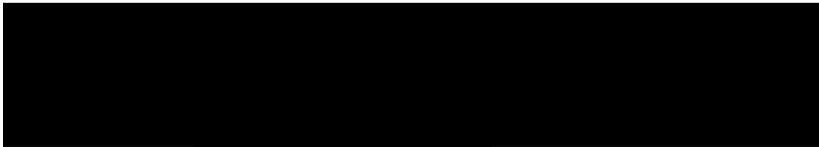
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 05 2008
WAC 06 253 50573

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal from that denial. Subsequently, the AAO reopened the proceeding on its own motion. The appeal will be dismissed and the petition will remain denied.

The petitioner identifies itself as "an entity that is part of the worldwide Ukrainian Autocephalous Orthodox Church." It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a priest. The director determined that the petitioner had not established that it qualifies as a tax-exempt religious organization. In its first decision, dated September 12, 2007, the AAO affirmed the director's finding and also found that the petitioner had failed to establish its ability to compensate the beneficiary pursuant to 8 C.F.R. § 204.5(g)(2).

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

On January 9, 2008, the AAO reopened these proceedings on its own motion, conducted a *de novo* review, and issued notice to the petitioner of all deficiencies. In addition to the two grounds of denial previously cited to in the September 12, 2007 decision, the AAO also determined that the petitioner failed to establish that the beneficiary had 2 years continuous employment as a priest. In its notice, the AAO provided the petitioner a period of 60 days in which to supplement the record. Significantly, the AAO noted that while the petitioner was permitted to submit any appropriate evidence in support of the reopened appeal, binding precedent decisions preclude the AAO from considering evidence if the petitioner previously had failed to submit the evidence in response to a specific request. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). In response to the AAO's motion, the petitioner has submitted new documents, letters, and arguments from counsel. None of the documents that the petitioner has now submitted meets the regulatory requirements at 8 C.F.R. § 204.5(m)(3)(i), establishes the petitioner's ability to compensate the beneficiary, or documents that the beneficiary has engaged in qualifying employment continuously throughout the two years immediately prior to the filing date of the petition.

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 . . . ; 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).

TAX EXEMPT STATUS

The AAO will first address the issue of the petitioner's claimed tax-exempt status. The regulation at 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization seeking to employ the beneficiary qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The petitioner initially submitted its Michigan articles of incorporation, a copy of its 2003 by-laws, and a letter dated February 23, 2004 from then- [REDACTED] in which the Bishop simply claims that the church qualifies for status as a tax-exempt religious organization in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 (IRC). Because the petitioner's initial submission did not include sufficient evidence to satisfy either of the above regulatory requirements, the director issued a request for evidence (RFE) on January 8, 2007. The director specifically instructed the petitioner to submit either an Internal Revenue Service (IRS) "501(c)(3) Tax Exempt Certification" or "at a minimum, a completed IRS Form 1023, the Schedule A supplement that applies to churches, and a copy of the organizing instrument of the church that contains a proper dissolution clause and that specifies the purpose of the organization." These materials, as described, meet the regulatory requirements of 8 C.F.R. §§ 204.5(m)(3)(i)(A) and (B). We note that the petitioner's bylaws appear to be an appropriate organizing instrument and contain a qualifying dissolution clause, and thereby satisfy part of this evidentiary requirement.

The petitioner's response to the RFE included another copy of its Michigan articles of incorporation and of its by-laws. However, the petitioner failed to provide either the IRS tax exemption letter or, in the alternate, the completed IRS Form 1023 and Schedule A supplement to accompany the copy of the organizing instrument submitted previously. 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). On this basis alone, the petition may not be approved. By failing to submit specific documents that the director had requested, the petitioner precluded a material line of inquiry into the petitioner's tax status.

The petitioner's response also included a letter from [REDACTED], who asserted "our religious organization qualifies for 501(c)(3) status," but the bishop did not explain the petitioner's failure to provide the documentation requested. [REDACTED] did claim that the RFE response "included the IRS Form 1023 Schedule A," but that document was not attached to his letter. The director, in the subsequent denial notice, noted the absence of the document.

The director denied the petition on May 19, 2007, stating that the petitioner had failed to submit the evidence that the director had specifically requested in the RFE. The director did not state that the petitioner is not a tax-exempt religious organization. Instead, the director found that because the petitioner had failed to submit the requested evidence, it had failed to establish that it was a qualifying tax-exempt organization.

On appeal, the petitioner submitted what counsel described as "a draft of Schedule A of Form 1023," which the petitioner "completed to demonstrate the Petitioner's qualifications." The petitioner's appellate submission did not include the requested Form 1023. Neither the petitioner nor counsel contested the director's finding that the petitioner had previously failed to submit either the IRS tax-exempt letter or the alternate requested documentation, nor did the petitioner explain why it had not provided this information in response to the specific requests of the RFE.

The AAO dismissed the petitioner's appeal on September 12, 2007, on the grounds that the petitioner had failed to submit required evidence in response to the RFE and, therefore, failed to establish its qualifying tax-exempt status in accordance with the regulation at 8 C.F.R. § 204.5(m)(3)(i). The AAO also cited to binding precedents (*Matter of Soriano* and *Matter of Obaighbena*) indicating that, if a petitioner fails to submit required evidence in response to an RFE, that evidence will not be considered if submitted at a later time because the petitioner had already forfeited its opportunity to submit it in a timely manner. Based on these published precedent decisions, the AAO advised that it was precluded from considering even the Schedule A supplement that was submitted on appeal. Published precedent decisions are binding on the AAO pursuant to CIS regulations at 8 C.F.R. § 103.3(c).

Finally, the AAO observed that the documentation submitted on appeal, even if it had instead accompanied the response to the RFE, would not have sufficed to establish tax-exempt status. The director, in the RFE, had requested either an IRS tax-exempt certification letter or a completed IRS Form 1023 with the Schedule A supplement. The petitioner, on appeal, submitted only a draft Schedule A supplement. The AAO stated: "the petitioner is subject to the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A) and cannot meet these requirements simply by claiming that it does not have to meet them." The AAO also stated: "This is not to say that the petitioner in this proceeding is not a church; only that the petitioner has failed to meet its burden of proof by submitting the documentary evidence that the regulations require."

In response to the AAO's decision, on October 11, 2007, the petitioner filed a complaint in the United States District Court for the Eastern District of Michigan.¹ In response to the litigation, on January 9, 2008, the AAO informed the petitioner that the AAO was reopening the proceeding on its own motion. The AAO allowed the petitioner 60 days in which to supplement the record, but advised the petitioner that a new decision must still conform to the requirements of binding precedent decisions. Specifically, the AAO explained that "if the director had previously requested specific documentation in a request for evidence, and you did not submit the requested evidence at that time, the AAO will not consider that evidence if it is submitted at a later time."

In response, counsel contends that the petitioner has demonstrated that the petitioner's "sole purpose is to worship Christ, and that their mission can be found in Christ's commandments . . . and as such the Churches [*sic*] purpose is a religious one and is in agreement with IRC Sec. 501(c)(3)." The petitioner resubmits copies of its bylaws and various documents filed with or issued by the State of Michigan.

The regulation at 8 C.F.R. § 103.2(b)(2)(i) states:

The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

The petitioner failed to submit the required evidence of tax-exempt status in response to the RFE. On that basis alone, the petition cannot be approved. 8 C.F.R. § 103.2(b)(14). On appeal, the petitioner submitted a draft Schedule A supplement; however, *Matter of Soriano* and *Matter of Obaigbena* preclude the AAO from considering that document on appeal. Even if considered, however, this document is not sufficient to establish the petitioner's tax-exempt status, as the petitioner was requested to provide the Schedule A supplement and a completed IRS Form 1023. In response to the AAO's notice of reopening, the petitioner has resubmitted its by-laws and documents showing that it is recognized as tax-exempt by the State of Michigan; however, this does not establish that the petitioner is exempt or is eligible for exemption from taxation in accordance with section 501(c)(3) of the IRC of 1986 as it relates to religious organizations.

¹ *Ukrainian Autocephalous Church et al. v. Department of Homeland Security et al.*, 2:07-cv-14306 (E.D. Mich. 2007).

This finding is without prejudice to any potential future filing for classification of a special immigrant religious worker, in which the petitioner chooses to submit the documentation required by the regulation at 8 C.F.R. § 204.5(m)(3)(i).

ABILITY TO COMPENSATE THE BENEFICIARY

We turn now to the issue of the petitioner's ability to compensate the beneficiary. In its September 12, 2007 decision, the AAO noted an additional deficiency, not cited by the director, that precluded approval of the petition:

8 C.F.R. § 204.5(m)(4) requires the prospective employer to state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration). 8 C.F.R. § 204.5(g)(2) requires the petitioner to submit evidence that the prospective United States employer has the ability to pay the proffered wage. Here, the petitioner has simply asserted that the Patriarch, in Kiev, Ukraine, controls all church funds and will ensure the beneficiary's continued support. The record does not contain anything from denominational authorities in Kiev to confirm this arrangement. Therefore, the petitioner has not established its financial ability to support the beneficiary.

The petitioner's initial submission contained no specific information about the beneficiary's proposed compensation. [REDACTED] stated only that the petitioner's denomination "will make sure that [the beneficiary] will not become a public charge and will support him as provided for by our church laws." No copy of the "church laws" was provided. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The director, in the RFE, instructed the petitioner to submit information regarding "the terms of payment for services or other remuneration." In response to the RFE, [REDACTED] stated that the petitioner's "canons (church laws) . . . require that all priests are provided for by the Church." The bishop also asserted that the beneficiary "will be given all the necessary room, board and transportation."

The AAO, in its motion to reopen, stated:

Service records show that you filed a new Form I-129 application for status as an R-1 nonimmigrant worker (receipt number WAC 07 079 52617). According to the Form I-129 application your organization filed in January 2007, the beneficiary resides at [REDACTED], Hamtramck, Michigan. Before that, a Michigan Identification Card reproduced in the record placed the beneficiary at [REDACTED] Hamtramck. If the beneficiary no longer resides at either of those two addresses, please provide documentary evidence of the street address of the property where the beneficiary currently resides. Please

provide a copy of the lease, deed, and/or mortgage for the properties where the beneficiary resides or has resided in the United States, along with direct, documentary evidence that your organization owns, rents, or otherwise is financially responsible for the properties at those addresses, either directly or by providing the beneficiary with the funds necessary to pay the rent, lease, mortgage, or other instrument entitling him to reside there. If you cannot provide such evidence, then the AAO cannot accept your claim to have been responsible for the beneficiary's housing.

The same January 2007 Form I-129 application indicates that the beneficiary is to be paid \$15,000 per year in wages, separate from room and board. Please explain why you have offered temporarily to pay the beneficiary \$15,000 annually in addition to room and board as a nonimmigrant, whereas your immigrant petition contains no comparable salary provision for the same position on a permanent basis. Please explain the terms under which you seek permanently to employ the beneficiary, and explain the differences, if any, between those terms and the terms attested in the Form I-129 application.

Counsel, in response, states:

When [the beneficiary] came to the United States, in 2004 his first mailing address was [REDACTED]. Then in 2005 he moved to [REDACTED] Hamtramck, Michigan, this home was paid for by a number of parishioners of St. Andrew Ukrainian Orthodox Church (Ex. J). And finally in 2007 [the beneficiary] moved to a home on [REDACTED] Michigan. This home is paid for by the [petitioning] Church (Ex. J). As proof of [the beneficiary's] current address included is a copy of his mortgage for the home on [REDACTED] (Ex. N). . . .

As to the \$15,000 annually the Church paid that amount for services rendered as a Priest. In addition [the beneficiary] is given free-will donations from the parishioners and paid for liturgical services such as weddings and funerals (Ex. J). These free-will donations and payment for liturgical services are evidenced by letters from church parishioners who have donated things like food, clothing, furniture, and money to the [beneficiary's] family (Ex. O).

Exhibit J, to which counsel repeatedly refers, is a 1971 "Warranty Deed" for "One acre of land, more or less," located "in Starke County, Indiana." The above references to Exhibit J as pertaining to the beneficiary's residence in Michigan are, therefore, clearly erroneous. The petitioner's submission contains no documentary evidence showing that parishioners paid for the beneficiary's previous residence on Charest Street, or that the petitioner or any other church body pays the mortgage for the beneficiary's current residence on McDougall.

Exhibit M is a new letter from now-[REDACTED] repeating several of counsel's assertions, including the claim that unidentified parishioners provided the beneficiary's "room and

board” at the Charest Street address in Michigan. This marks the first time in this proceeding that the petitioner has claimed that individual parishioners directly supported the beneficiary. Previously, the petitioner – and then- [REDACTED] in particular – had repeatedly asserted that church laws required the church to support all clergy. The petitioner does not submit documentary evidence to support these claims, or explain the failure to do so. As we have already observed, pursuant to *Matter of Soffici*, the petitioner’s unsubstantiated claims cannot meet the petitioner’s burden of proof in these proceedings. *Id.*

[REDACTED] also states: “In August of 2007 [the beneficiary] purchased a house at [REDACTED], Hamtram[c]k, Michigan and UAO Church took responsibility to pay his home loan every month in the amount of \$287.00 starting with September 2007.” The petitioner has submitted some bank documents, but these documents do not show the claimed mortgage payments.

Exhibit N is a copy of the mortgage on the residence on McDougall. The mortgage is in the name of the beneficiary and his spouse. No church official co-signed the loan, nor does the mortgage document mention the church in any way. [REDACTED] has stated that the church makes the monthly payments of \$287.00, but even if this unsupported claim is true, such payments amount to only a fraction of the mortgage. The beneficiary and his spouse borrowed \$35,000.00, to be repaid in full within five years of the date on the note. Sixty monthly payments of \$287.00 each total only \$17,220.00, which is less than half the principal without taking interest into account. The mortgage states: “The terms of this loan contain provisions which will require a balloon payment at maturity.” Under the terms of the loan, the beneficiary and his spouse, as the borrowers, are responsible for this “balloon payment,” and nothing in the record reflects any transfer of this responsibility to the petitioner or to any other party.

Pursuant to the above discussion, the documentary evidence contained in the record does not establish that the petitioner has, in fact, provided the petitioner with lodging, either by providing an actual residence or by paying for the beneficiary’s lodging elsewhere. Similarly, the record contains no documentary evidence to show that the petitioner has ever paid the beneficiary \$15,000 per year as specified in the Form I-129.

The closest the record comes to documenting the beneficiary’s income is in two letters from parishioner [REDACTED]. In a December 27, 2007 letter, she indicated that her family paid the beneficiary \$1,500 “for services and spiritual help.” Two months later, on February 28, 2008, she stated that she has been “helping [the beneficiary] . . . from Feb. 2004 to the present in kind from buying groceries to contributing furniture and household items.” These statements do not establish that the petitioner has met, or is able to meet, the terms of compensation stated on Form I-129 and other documents of record.

The director, in the January 8, 2007 RFE, requested “evidence of the petitioner’s ability to pay the beneficiary’s wage.” In response to the RFE, [REDACTED] stated: “If extra funds are needed they are sent by the Patriarch in Kiev since he is the sole administrator of all funds. . . . The Patriarch does not release his financial records and therefore we are unable to provide these.”

In its motion to reopen, the AAO noted that the regulation at 8 C.F.R. § 204.5(g)(2) specifically calls for “evidence that the prospective United States employer has the ability to pay the proffered wage.” The AAO noted that the Patriarch in Kiev is not a United States employer, and that the petitioner cannot meet its burden of proof regarding ability to pay simply by declaring that a foreign church official who refuses to release his financial information will provide the necessary funding. 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or other unavailability of required evidence creates a presumption of ineligibility.

In response, counsel states: “8 C.F.R. § 204.5(g)(2) refers to a prospective U.S. employer filing an I-140 Petition for Immigrant Worker. The beneficiary in this case is a Special Immigrant Religious Worker, not an I-140 Immigrant worker.” Counsel then cites a memorandum from William R. Yates, Associate Director for Operations, *Determination of Ability to Pay under 8 CFR 204.5(g)(2)* (May 4, 2004). Counsel notes that the memorandum refers to Form I-140 petitions, but not Form I-360 petitions.

The cited memorandum was specific to Form I-140 petitions, but this does not demonstrate or imply that the regulation at 8 C.F.R. § 204.5(g)(2) is limited to Form I-140 petitions. The basic regulations governing petitions for both immigrant workers and special immigrant religious workers are both found within 8 C.F.R. § 204.5, “Petitions for employment-based immigrants.” The regulation at 8 C.F.R. § 204.5(a) refers to petitions filed on Form I-140 and to special immigrant religious worker petitions filed on Form I-360. The regulations within 8 C.F.R. § 204.5 therefore presumptively apply to *both* types of petition, except for those sections that are expressly limited to specific classifications within that spectrum.

8 C.F.R. § 204.5(m)(4) requires religious entities to “state. . . how the alien will be paid or remunerated,” but this does not establish a separate standard of evidence for religious employers; the regulation merely requires the employer to describe the terms of the job offer (including the rate of pay). 8 C.F.R. § 204.5(g)(2), by its plain wording, applies to “any petition filed by or for an employment-based immigrant which requires an offer of employment.” Because the special immigrant religious worker classification requires an offer of employment, it falls within the compass of that regulation. Furthermore, pursuant to 8 C.F.R. § 204.5(c), for most employment-based immigrant classifications that require an offer of employment, only the employer may file the petition. An alien cannot, for example, self-petition as an outstanding professor or researcher. The only employment-based immigrant classification that requires a job offer, and for which current regulations permit an alien to self-petition, is the special immigrant religious worker classification. Thus, the reference at 8 C.F.R. § 204.5(g)(2) to “any petition filed by . . . an employment-based immigrant which requires an offer of employment” can only refer to special immigrant religious worker petitions.

The petitioner submits a copy of a letter from KeyBank in Knox, Indiana, indicating that the petitioner has \$1,103.67 on deposit in a savings account. Documents from 1st Source Bank show a savings balance of \$20,590.85 and another \$12,258.36 in a certificate of deposit as of February 15,

2008. The record does not show whether the beneficiary was paid from any of these accounts, or the number of other employees (such as Archbishop Bykowitz) who must also draw salary from those funds. Another document, relating to an escrow account, shows \$71,096 in “equity” consisting of shares of General Motors and other companies.

Counsel states that the petitioner’s assets include land holdings. These holdings consist of a single acre in Starke County, Indiana, as mentioned above, and a second tract of indeterminate size, also in Indiana, which is said to be the site of the petitioner’s headquarters (and which, therefore, the petitioner seems unlikely to sell in order to pay the beneficiary’s salary, room and board).

The documents described above present a fragmentary picture of the petitioner’s assets (including non-liquid assets not readily convertible to cash), but they offer no corresponding information about the petitioner’s liabilities. To establish ability to pay, the petitioner must not merely establish that it has cash on hand; it must also demonstrate that its expenses will not consume that cash before it can be transferred to the beneficiary.

Further complicating matters is that we cannot consider the petitioner’s financial figures in a vacuum; we must also take into account the petitioner’s overall circumstances, including the total number of people who derive their living from those finances. The petitioner’s responses to lines 10 through 14 under Part 5, “Basic Information about the proposed employment and employer,” of Form I-129 petition read as follows:

- | | | |
|-----|------------------------------|---|
| 10. | Type of Business: | Ukrainian Autocephalous Orthodox Church |
| 11. | Year Established: | 4 A.D. |
| 12. | Current Number of Employees: | Undeterminable |
| 13. | Gross Annual Income: | Undeterminable |
| 14. | Net Annual Income: | Undeterminable |

The petitioner’s response under line 11 appears to refer to the dawn of Christianity; we do not believe that the petitioner intended to claim that the Ukrainian Autocephalous Orthodox Church specifically was established or organized at the beginning of the first century. The purpose of Part 5 of Form I-129, however, is to obtain “Basic information about the . . . employer,” rather than general background information about the global movement that ultimately spawned the petitioning entity. The employer is not Christianity as a whole, but rather (as the petitioner indicated on line 10) the Ukrainian Autocephalous Orthodox Church – more precisely, the subdivision thereof that is based in Detroit, Michigan. The petitioner’s refusal or inability to specify its number of employees impedes any calculation of the petitioner’s ability to compensate those workers, including but not limited to the beneficiary.

In its motion to reopen, the AAO stated: “If the patriarchate in Kiev is directly responsible for the beneficiary’s material support, please provide information to that effect *from the patriarchate in Kiev*” (emphasis in original). The petitioner’s response includes a letter from [REDACTED] in Detroit with the words “Kiev Patriarchate” added to the letterhead, but there is nothing from the

patriarchate in Kiev. We are left, therefore, with the unsubstantiated claim that the patriarchate will, if necessary, assume responsibility for the beneficiary's compensation, drawn from resources that the patriarchate refuses to disclose. Pursuant to *Matter of Soffici*, the petitioner's unsubstantiated claims cannot and will not suffice in this regard.

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. As previously noted, 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or other unavailability of required evidence creates a presumption of ineligibility. Accordingly, the petitioner has not demonstrated its ability to pay the beneficiary. To avoid confusion, we emphasize that this is not an affirmative finding of *inability* to pay, but rather a procedural finding that the petitioner has not met its burden of proof in this respect.

TWO YEARS OF QUALIFYING EXPERIENCE

The final issue under consideration concerns the beneficiary's past experience. 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 August 15, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a priest throughout the two-year period of August 15, 2004 to August 15, 2006.

In a 1980 decision, the Board of Immigration Appeals determined that an alien was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to unpaid religious duties. See *Matter of Varughese*, 17 I&N Dec. 399, 402 (BIA 1980). 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). In line with case law and the intent of Congress, it is clear, therefore, that to be continuously carrying on the vocation of a minister means to do so on an exclusive, full-time, and compensated basis. (Such compensation need not be in the form of a fixed wage or salary.) We note that the Ninth Circuit Court of Appeals has upheld the AAO's interpretation of the two-year experience requirement. See *Hawaii Saeronam Presbyterian Church v. Ziglar*, 2007 WL 1747133 (9th Cir., June 14, 2007).

We first note that as the documentation regarding the beneficiary's training and work in Ukraine falls outside the two-year qualifying period, it has not been considered in this proceeding.

Regarding the beneficiary's employment in the United States during the two-year qualifying period, [REDACTED] states:

The Ukrainian Autocephalous Orthodox Church in the USA invited [the beneficiary] to serve in our St. Anthony Monastery in Knox, Indiana after his arrival in the USA on February 15, 2004. In this position he served until July 15, 2005 when he was transferred to St. Andrews Parish in Detroit, Michigan. . . . During his service as a monastery priest [the beneficiary] had room and board at the Monastery facilities. . . .

At the time of his service to the monastery in Knox, Indiana his mailing address in Detroit was [REDACTED] in December 2004.

Archbishop Bykowitz does not explain why the beneficiary would use a "mailing address in Detroit"² if the beneficiary actually lived about 200 miles away in Knox, Indiana. Furthermore, the petitioner's initial submission included a photocopy of an Identification Card issued by the State of Michigan, which lists the beneficiary's address as [REDACTED], Hamtramck, Michigan. The State of Michigan does not issue identification cards without at least two documents showing proof of Michigan residence.³ The beneficiary, therefore, could not legitimately have obtained a Michigan identification card if his actual place of residence was in Indiana. In light of this information, the assertion that the beneficiary resided in Knox, Indiana, while using the Botsford Street address as a "mailing address" lacks credibility. This necessarily undermines the credibility of the petitioner's timeline for the beneficiary's claimed employment in Indiana during the two-year qualifying period.

Section 204(b) of the Act, 8 U.S.C. § 1154(b), provides for the approval of immigrant petitions only upon a determination that "the facts stated in the petition are true." False, contradictory, or unverifiable claims inherently prevent a finding that the petitioner's claims are true. *See Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Systronics Corp. v. I.N.S.*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988). 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).

Matter of Ho indicates that a petitioner can overcome credibility questions by submitting competent objective evidence pointing to where the truth, in fact, lies. *Id.* at 582, 591-92. Here, however, the petitioner has not submitted competent objective evidence of the beneficiary's claimed employment that would overcome the issues set forth above. The most reliable documentary evidence in the record appears to be a copy of a government-issued identification card that places the beneficiary in Michigan at a time when the petitioner claims that the beneficiary resided and worked at a monastery in Indiana.

² Hamtramck is a suburb of Detroit.

³ Source: Michigan Secretary of State web site at http://michigan.gov/sos/0,1607,7-127-1627_8668-25513--,00.html and http://michigan.gov/documents/DE40_032001_20459_7.pdf, visited March 21, 2008.

The petitioner's statements regarding the beneficiary's residence and employment in Indiana during the qualifying period are contradicted by other evidence provided by the petitioner indicating that the beneficiary actually resided 200 miles away in Michigan. Accordingly, the petitioner has not established that the petitioner employed the beneficiary as a priest on an exclusive, full-time, compensated basis throughout the August 2004-August 2006 qualifying period.

The appeal is dismissed 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 sustained that burden.

ORDER: The appeal is dismissed. The petition remains denied.