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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: MAR 18 2008

EAC 01 172 54504

IN RE:

Petitioner:

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:

[REDACTED]

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.

*Mai Johnson*

S Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont 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 Administrative Appeals Office (AAO) remanded the matter to the director at the director's request, on technical grounds, solely to allow the director to consider timely filed evidence and review the merits of the appeal. The director issued a second notice of revocation, adding new issues without giving the petitioner the opportunity for rebuttal, and certified the decision to the AAO. The AAO will withdraw the director's decision; however, because the petition is not approvable, it is remanded for further action and consideration.

The purpose of this remand order is not to cause unnecessary delay in reaching a final decision, but rather to allow the director to address remaining deficiencies in the record at the Service Center level. If the AAO had no choice but to issue an immediate decision based on the record as it now stands, the AAO would affirm the denial because the record is insufficient to warrant approval of the petition. The petition, as it now stands, cannot properly be approved because the petitioner has not resolved questions about the beneficiary's activities during and after the statutory two-year qualifying period immediately preceding the filing date, and because of doubts regarding the purportedly religious nature of the petitioning organization. Specifically, materials in the record indicate that the beneficiary has spent at least part of the statutory two-year period not as a compensated religious worker, but as a medical patient supported by publishing royalties, and the petitioner has described itself in federal tax documents not as an institution for the promulgation of Islamic religious tenets, but rather as an "educational" entity for "children and adults of all . . . creed[s]." The petitioner has also failed to provide crucial details regarding the terms of the beneficiary's intended future employment. The AAO must remand the decision not because the petitioner has established eligibility, but because the director revoked approval of the petition based on new grounds that were not previously discussed in a notice of intent to revoke. *See Matter of Arias*, 19 I&N Dec. 568, 570 (BIA 1988).

The president of the petitioning entity has described the petitioner as a "camp and resort site" and as "a children's camp and a convention center." The petitioner 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. The director determined that the petitioner had not established that: (1) it qualifies as a *bona fide* tax-exempt religious organization; (2) the beneficiary had the requisite two years of continuous work experience as an imam immediately preceding the filing date of the petition; (3) the beneficiary belonged to the petitioner's religious denomination during the aforementioned two-year period; or (4) the petitioner had made a qualifying job offer to the beneficiary.

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 record shows that the director properly issued a notice of intent to revoke, as required by 8 C.F.R. § 205.2(b), on September 13, 2006. Subsequently, having determined that the petitioner failed to overcome the stated grounds for revocation, the director revoked the approval of the petition on August 17, 2007.

Review of the record shows that the revocation notice raises several issues that did not appear in the earlier notice of intent to revoke. First, regarding the issue of the petitioner’s tax-exempt status, in the revocation notice the

director discussed the petitioner's lack of denominational affiliation and the organization's objectives as stated on IRS Form 1023, Application for Recognition of Exemption, and IRS Form 990, Return of Organization Exempt From Income Tax. In the notice of intent to revoke, however, the director only discussed a perceived discrepancy (later resolved) relating to the petitioner's relocation from New Jersey to Pennsylvania. The issue of the *purpose* underlying the tax exemption did not surface prior to the revocation notice itself.

Second, the director, in the revocation notice, found: "[t]he Beneficiary does not have two years membership in a religious denomination as required under 8 CFR 204.5(m)(3)(ii)(A)." The notice of intent to revoke, however, did not discuss the denominational membership requirement at all. The petitioner, therefore, had no prior notice that the beneficiary's past denominational membership was even at issue.

Third, the revocation notice contains a discussion of the beneficiary's past work for a publishing house in Turkey, with the finding that such work was not religious in nature, and that intended future payments from that publishing house raised questions about the validity of the petitioner's job offer. The notice of intent to revoke did not hint that this work raised questions of eligibility.

8 C.F.R. § 205.2(b) requires that the petitioner must be given the opportunity to offer evidence in support of the petition and in opposition to the grounds alleged for revocation of the approval. The BIA held in *Matter of Arias* that a decision to revoke approval of a visa petition can only be grounded upon, and the petitioner is only obliged to respond to, the factual allegations specified in the notice of intention to revoke. *Id.* at 570.

The AAO does not dispute the director's finding that a number of factors warrant revocation of the approval of the petition in this proceeding. The AAO affirms that the petition, as it now stands, is not approvable. Pursuant to *Arias*, however, these factors must appear in a notice of intent to revoke before they can be used as grounds for revoking approval of a petition. The director's revocation notice does not conform to *Arias* because it rests largely on substantive issues not previously raised in the notice of intent to revoke. This procedural consideration requires us to remand the matter to the director for further action consistent with this discussion.

A number of issues raised in the director's notice of revocation surfaced as a result of the petitioner's response to the notice of intent. For example, the petitioner's Form 990 returns, submitted in response to the notice of intent to revoke, identify the petitioner as an "educational" institution open to "children and adults of all . . . creed[s]." In the face of these repeated and consistent assertions by the petitioner, in a context divorced from immigration proceedings, it is difficult to believe that Islam is the central focus of the petitioner's activities. Because this evidence was not in the record until the petitioner responded to the notice of intent to revoke, the director cannot be faulted for failing to mention it at an earlier time. If the petitioner's submission of new evidence in response to a notice of intent to revoke was, itself, sufficient to force the issuance of a *new* notice, then a petitioner could delay a final decision indefinitely simply by answering each notice with new material that, itself, warranted the issuance of yet another notice. Clearly, we cannot interpret *Arias* to mean that a petitioner's new evidence in response to a notice of intent to revoke must either be ignored or trigger an infinite series of such notices.

That being said, however, the director's final decision concerns factors that are predicated on the record of proceeding as it was before the issuance of the notice of intent to revoke, and therefore that the director should have raised in the notice of intent to revoke.

Because the AAO is withdrawing rather than affirming the director's revocation notice, *Arias* does not preclude the introduction, at this stage, of information that could appear in a superseding notice of intent to revoke.

### **TAX-EXEMPT STATUS**

The first issue discussed by the director concerns the petitioner's tax-exempt status. 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization 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.

In a letter accompanying the initial submission of the petition, [REDACTED] President of the petitioning entity, described the petitioner's functions and activities:

The main activity of [the petitioning entity] is Camp Chestnut. We currently have two full time employees, a cook . . . [and] a religious worker. . . .

Our mission is to provide a peaceful, relaxed and comfortable environment where balanced education, outdoor entertainment and spiritual development can take place. We provide the following services: (1) Summer and Winter camps for both local and international children; (2) Spring, Summer, [and] Fall fundraising picnics; (3) Yearlong suite and cabin rental to families; (4) Yearlong suite and cabin rental to academicians; (5) Rental of the guest house for short term stay and meetings for groups under 50; (6) Catering of original Turkish and Mediterranean cooking to businesses and individuals; and (7) Camp Chestnut Fan Club activities. . . . Almost all of our customers are members of the Islamic faith and the prime use of the Camp is for spiritual retreats.

According to documentation from the Internal Revenue Service (IRS), the petitioner's tax-exempt status derives from classification not under section 170(b)(1)(A)(i) of the Internal Revenue Code of 1986 (the Code), which pertains to churches, but rather under section 170(b)(1)(A)(vi) of the Code, which pertains to publicly-supported organizations as described in section 170(c)(2) of the Code, "organized and operated

exclusively for religious, charitable, scientific, literary, or educational purposes,” or for other specified purposes. This section applies to some religious organizations, but also to many secular organizations.

Clearly, an organization that qualifies for tax exemption as a publicly-supported organization under section 170(b)(1)(A)(vi) of the Code can be either religious or non-religious. The burden of proof is on the petitioner to establish that its classification under section 170(b)(1)(A)(vi) of the Code derives primarily from its religious character, rather than from its status as a publicly-supported charitable and/or educational institution. *See* section 291 of the Act, 8 U.S.C. § 1361.

The Code and its implementing regulations do not specifically define “religious organization,” but IRS regulations indicate that the terms “religious organization” and “church” are not synonymous; for instance, 26 C.F.R. § 1.511-2(a)(3)(i) acknowledges the existence of “religious organizations” that are “not themselves churches.” IRS Publication 1828, *Tax Guide for Churches and Religious Organizations*, also specifically states that the term “religious organizations” is *not* strictly limited to churches: “Religious organizations that are not churches typically include nondenominational ministries, interdenominational and ecumenical organizations, and other entities whose principal purpose is the study or advancement of religion.” *Id.* at 2. The proper test, therefore, is not whether the intending employer is a church *per se*, but rather an entity whose principal purpose is the study or advancement of religion.

The organization can establish this by submitting documentation which establishes the religious nature and purpose of the organization, such as brochures or other literature describing the religious purpose and nature of the activities of the organization. The necessary documentation is described in a memorandum from William R. Yates, Associate Director of Operations, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

- (1) A properly completed IRS Form 1023;
- (2) A properly completed Schedule A supplement, if applicable;
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization;
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B).

Based on evidence in the record, the petitioner has not established that its tax exempt status derives from religious character or affiliation with a religious denomination having a religious organization in the United States.

First, the record contains an IRS Form 1023 Application for Recognition of Exemption, filed October 8, 1992 by an organization in New Jersey with the same name and EIN as the petitioning entity. At Part II, line 1, the application listed eleven “Objectives of the Corporation,” as follows:

1. To provide accommodations to [M]uslim students, both American and international, for all levels of education.
2. To rent or purchase apartments, houses or buildings for accommodations.
3. To provide scholarship[s] to [M]uslim students, both American and international. . . .
4. To organize meetings, conferences, symposiums, and other means of educational activities.
5. To publish newspapers, newsletters, magazines, books, etc.
6. To reproduce and distribute various educational materials such as audio tapes, books, video tapes, magazines, newspapers, etc.
7. To open libraries, bookstores, recreational areas, etc.
8. To participate in the meetings of Islamic organizations established in [the] US as well as outside of [the] US.
9. To support Islamic activities organized by various Islamic establishments.
10. To organize dinners, receptions, etc. for fund raising as well as for social and educational purposes.
11. To establish a Zakat fund.

Part II, line 5 of the Form 1023 asked two questions: “Does the organization control or is it controlled by any other organization?” and “Is the organization the outgrowth of (or successor to) another organization, or does it have a special relationship with another organization by reason of interlocking directorates or other factors?” The petitioner answered “no” to both questions, thus denying any link to any and all other organizations. In Part II, line 14, the petitioner also answered “no” to the questions “Is the organization a church?” and “Is the organization, or any part of it, a school?” On Schedule H, line 2, the petitioner indicated that “All Muslims are elig[i]ble recipients” of scholarship benefits from the petitioner.

In an apparently undated response to a November 6, 1992 IRS questionnaire, the petitioner stated: “For recreational activities, a camping site is being searched.” By 2001, as previously indicated, Bekir Aksoy asserted that the petitioner’s “*main activity . . . is Camp Chestnut*” (emphasis added). This substantial shift in emphasis appears to mark a significant, material change in the petitioner’s tax-exempt activities. In the 1992 correspondence, the petitioner also indicated that it “has opened a mosque in New York through its New York chapter.” Other materials identify the mosque as Masjid Sultan Murad at 58-14 (or 50-14) 39<sup>th</sup> Ave., Woodside, New York. The petitioner submitted an undated Form 1023 Schedule A with information relating to the mosque.

The Employer Identification Number (EIN) for the entity in Woodside, New York is [REDACTED]. The petitioner’s EIN, however, is [REDACTED]. This indicates that the mosque is a separate entity from the petitioner. The petitioner also discussed plans to open a mosque in Chicago, Illinois. There is no indication that the petitioner opened a mosque in Pennsylvania, or contemplated doing so, nor is there any indication in the petitioner’s 2006 documentation to suggest continuing connections to mosques outside of Pennsylvania.

The IRS Form 1023 and the documentation relating to the mosque date from the early 1990s. It is not clear how closely the descriptions in these materials conform to the situation in place from 2001 to the present. If the nature of the petitioner’s activities has changed significantly since the filing of the Form 1023, then the grounds underlying the approval of the Form 1023 may no longer apply.

As indicated in Mr. Yates' December 17, 2003 memorandum, an organization's public profile is one of the factors we must consider when determining the religious nature of a nonprofit organization. GuideStar, an online nonprofit database at <http://www.guidestar.org>, maintains an information page about the petitioning entity,<sup>1</sup> which the AAO has incorporated into the record. According to <http://www.guidestar.org/disclaimer.jsp> (visited March 18, 2008): "The descriptive information [shown in an organization's GuideStar listing] is derived from IRS Forms 990, Forms 990-EZ, and Forms 990-PF filed by the nonprofit organizations or their voluntary responses to a GuideStar questionnaire." Thus, the petitioner itself provided the information in its GuideStar listing. This information is available without charge to the general public.

The petitioner's GuideStar page classifies the petitioner under three different NTEE Codes: P40 (Family Service), P03 (Professional Societies, Associations) and B80 (Student Services and Organizations). The petitioner is not classified under O55 (Religious Leadership, Youth Development) or any of the classifications beginning with X (under the general heading "Religion, Spiritual Development") or, more specifically, X4 (relating to "Islamic" organizations).

The information in the petitioner's GuideStar listing contains no mention of Islam, Muslims, or religion. Under "Mission and Programs," the listing describes the petitioner as "a non-profit, multiracial, non-denominational organization dedicated to the development of compassion and the spirit of charity in children and adults. To that end, we provide children, families, hospitals and schools with meaningful opportunities to help others in their local and global communities." The listing includes 11 "Programs," including Camp Chestnut, which is described as "a vehicle for preschool to high school aged children to participate in community service projects" and "a center for teaching, learning, and research about social life. It catalyzes interdisciplinary thinking and understanding about cultural and economics differences. Any school, group or community center can sponsor and invite local youth to participate." Other programs include "financial aid . . . for undergraduate or graduate study at accredited colleges or universities" and "to serve the community by establishing a high spirit of love and fellowship base that can open the doors to treatment for every needy family that wants it." A list of "Objectives for Fiscal Year Beginning January 1, 2004" includes counseling, community activities, and "activities including sports, handicrafts, drama, hiking, and holiday camps."

As shown in Mr. Yates' memorandum, an organization's public face is a relevant factor in determining the extent to which the organization is religious in nature. The above descriptions do not indicate a religious focus; the statement that "[a]ny school . . . can sponsor" students at Camp Chestnut suggests a secular orientation. If, on the other hand, the petitioner is intrinsically and primarily a religious organization, then its Form 990 returns and GuideStar descriptions are grossly inaccurate and amount to a systematic misrepresentation of the organization's nature. Either way, the petitioner's seemingly conflicting descriptions of itself raise questions of credibility. 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.

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<sup>1</sup> <http://www.guidestar.org/pgShowGsReport.do?partner=guidestar&npId=667261>, visited March 18, 2008.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 591-92. The director must obtain, from the petitioner, credible and objective evidence to resolve the questions raised above and establish that the petitioner has consistently and openly operated as a religious organization from April 30, 1999 (two years before the filing date) to the present.

### **PAST EMPLOYMENT HISTORY**

The second issue in the revocation notice concerns the beneficiary's past experience. The director based the revocation, in part, on the beneficiary's activities immediately prior to the petition's filing date. 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 April 30, 2001. 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 beneficiary initially entered the United States as a B-2 nonimmigrant visitor for pleasure on March 21, 1999, for the purpose of receiving medical treatment. His passport identifies him as a "Retired Preacher." Status as a B-2 nonimmigrant visitor for pleasure does not confer employment authorization. *Cf.* 8 C.F.R. § 274a.12 (listing the classes of aliens authorized to accept employment). The beneficiary changed his status to that of an R-1 nonimmigrant religious worker on June 20, 2000. On the Form I-360 petition, asked whether the beneficiary has ever worked in the United States without permission, the petitioner answered "no." Because any work for a United States employer as a B-2 nonimmigrant would be without permission, the petitioner essentially stipulated that the beneficiary did not work for any United States employer between March 1999 and June 2000.

The petitioner's initial submission did not address the issue of the beneficiary's past work. On January 30, 2002, the director requested "evidence . . . that [the beneficiary's] religious work has been and will be full-time." The director requested tax and payroll documents to show how the beneficiary supported himself during the two-year qualifying period.

In response, \_\_\_\_\_ stated that the beneficiary worked a full-time schedule including the five required daily Islamic prayers, "Writing," "Spiritual guidance" and "conversation." \_\_\_\_\_ added:

[The beneficiary] continues to receive his salary from Nil [Publishing] for royalties from publications . . . and a small pension from the Turkish government. We provide [him] with room, board, transportation, medical and other expenses. We were advised that since [the beneficiary] was receiving his income from overseas, he did not have to pay taxes. . . .

[The beneficiary] has been an active full time Islamic cleric for the two years before coming to the U.S. and since his arrival in the U.S. until present.

The petitioner submitted documents relating to a series of seminars that the beneficiary conducted as part of a "Community Service Program" at Camp Chestnut. Seminar titles include "Man of Service," "The Balance Between Physicality and Spirituality" and "Sufism and its Origins." The seminar documents are dated by month and day, but not by year, and therefore they do not establish that the seminars occurred during the two-year qualifying period.

In a letter dated April 8, 2002, [REDACTED], Director General of Nil Publishing, stated that the beneficiary "has been doing redaction work for our company," receiving compensation in 2000-2002 as shown by Nil payroll documents. [REDACTED] did not describe the nature of the beneficiary's "redaction work," but the term "redaction" generally involves editing and/or compiling existing writings.<sup>2</sup> This letter does not establish that the beneficiary was engaged in religious work in 2000-2002. The petitioner submitted another copy of the list of the beneficiary's books published between 1997 and 1999. [REDACTED] stated that the petitioner "wishes to employ [the beneficiary] in the full time permanent position of Clergy (Islamic Imam) at the salary of \$30,000 plus room, board, and transportation for him. [The beneficiary's] salary will come from the annual royalty fees for his books he receives from Nil Publishing, Istanbul, Turkey. [The petitioner] will provide him [with] room, board, and transportation."

An April 30, 2000 letter from [REDACTED], Chief Executive Officer of Nil Publishing's Istanbul Branch reads, in part:

Nil Publishing has been associated with [the beneficiary] for over twenty years. . . . As a successful prolific writer [the beneficiary] has written 41 books. . . .

Alongside his books, [the beneficiary] has also been writing the editorial of our monthly *Sizinti* journal, which has a circulation of 240,000, since the first issue in 1979.

We are paying [the beneficiary] \$30,000.00 as his annual royalty fee for his works. . . . Should he be in need of more funding during his stay in the United States, we are ready to sponsor . . . his accommodation and other personal expenses.

A January 25, 2001 letter from [REDACTED], Chairman of Nil Publishing, is worded almost identically to the letter quoted above. The publisher provided a list of the beneficiary's 41 books, 25 of which Nil published between 1997 and 1999. Translated book titles include *Infinite Light*, *Under Shadow of Faith*, *Predestination from Perspective of Qur'an and Sunna* and *Raising the Name of God or Jihad*.

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<sup>2</sup> *The Random House Unabridged Dictionary*, cited at <http://dictionary.reference.com/browse/redaction>, offers this definition of the verb "redact": "to put into suitable literary form; revise; edit."

The director, in the notice of intent to revoke, noted the “Retired Preacher” notation in the beneficiary’s passport, and stated that the petitioner “must establish that the beneficiary was employed in the same capacity as the proffered position for at least two years prior to filing the instant I-360 petition.”

Regarding the beneficiary’s prior work, counsel stated: “It is clear from the administrative record that Beneficiary . . . had been pursuing a religious vocation continuously for forty (40) years prior to the filing of the instant petition.” Counsel asserted that the petitioner had “provided a detailed pamphlet which chronicled [the beneficiary’s] life, beliefs and religious work over the last four decades.” The document which most closely matches this description is undated and does not contain specific details sufficient to establish continuous religious work from April 1999 through April 2001. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

We note that, on October 10, 2002, the beneficiary executed Form G-325A, Biographical Information, in conjunction with his I-485 adjustment application. On that form, asked to list his employment over the preceding five years, the beneficiary stated that he worked for the petitioner from June 2000 onward (consistent with his R-1 visa), and had previously been “self-employed” as a “Preacher & religious author” from 1982 to June 2000. The beneficiary’s claim to have been “self-employed” in this way is not sufficient evidence of continuous experience. 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 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972).

Counsel stated:

In *Matter of Z--*, 5 I&N Dec. 700, 703 (BIA 1954), the Board of Immigration Appeals held that the fact that a priest engaged in a course of study in furtherance of his vocation did not lead to the conclusion that he had abandoned his calling. Similarly, the Beneficiary here has devoted himself to a life of study and scholarship relating to the religious principles of Sufi Islam. These pursuits are not only consistent with his calling, but are mandated by it.

The alien in *Z—* was actively studying during the two-year period, but he was also bound by canon law to perform mass and other functions on a daily basis. *Id.* At 703. The petitioner has not shown that the beneficiary in the present proceeding was similarly engaged in daily religious duties. In late 1999 and early 2000, he was not yet working for the petitioner, and the list of the beneficiary’s publications does not indicate that he was producing new works during that time. We note that, on February 17, 2000, the beneficiary wrote a letter in conjunction with a request to extend his B-2 nonimmigrant status as a visitor for pleasure. In that letter, the beneficiary did not state or imply that he was actively working as an *imam* at that time. Rather, he identified himself as a “retired preacher and a writer” who was “living [on] retire[ment] income and book [r]oyalties.”

Rather than provide evidence that the beneficiary continuously received compensation during the qualifying period, counsel argued that the petitioner need not provide such evidence, citing *Camphill Soltane v. DOJ*,

381 F.3d 143, 150 (3d Cir. 2004). Contrary to counsel's assertion, the Third Circuit Court of Appeals did not "reject" the finding that religious worker petitions traditionally must involve a salaried position. Instead, the court found the AAO's decision to be "questionable." In support of its reasoning, the court cited to the supplemental language in the promulgating rule at 8 C.F.R. § 214.2(r)(3)(ii)(D) that applies to an unrelated class of aliens: R-1 nonimmigrant religious workers. 56 Fed. Reg. 66965, 66966 (Dec. 27, 1991). Contrary to the special immigrant classification under review here, the R-1 nonimmigrant religious worker classification does not require any previous experience, whether compensated or not. It is unclear why the court cited to language from an unrelated regulation rather than one that applied to the special immigrant religious worker petition under review. In any event, while the court found that the AAO "failed to show why the position offered by Camphill . . . does not qualify," it also determined that it "need not set forth here a definitive test regarding when a job may or may not be characterized as a 'religious occupation.'" Instead, the court vacated and remanded the case to allow the AAO to develop its position (as well as its position on three other determinations) because the court could not "sustain the decision of the AAO on this ground without further evidence or explanation."

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). If an individual receives no compensation for religious work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712, 713-14 (Reg. Commr. 1963) and *Matter of Sinha*, 10 I&N Dec. 758, 760 (Reg. Commr. 1964). 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 (9<sup>th</sup> Cir., June 14, 2007). If the petitioner did not support the beneficiary during part or all of the two-year qualifying period, the burden is on the petitioner to demonstrate that the beneficiary did not have to rely on outside employment to support himself during that time.

Counsel argued that the beneficiary's work falls under the regulatory definition of "religious vocation" at 8 C.F.R. § 204.5(m)(2): "a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters." Counsel conceded that the beneficiary had taken no "vows" as such, but counsel maintained that the beneficiary had nevertheless exhibited a comparable degree of dedication to the religious life.

In revoking the approval of the petition, the director stated that the beneficiary worked for only the last ten months of the qualifying period. On appeal, counsel repeats the assertion that the beneficiary's work falls under the regulatory definition of "religious vocation." That definition, at 8 C.F.R. § 204.5(m)(2), states that "[e]xamples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters." The examples reside in communal settings, often receiving material support from their communities in lieu of a cash salary. As counsel states on appeal, "Religious Vocations Do Not Involve Paid Labor . . . [they] traditionally involve a renunciation of worldly possessions." This, however, is not the case with the beneficiary, who has received salaries from a publishing company and, later, from the petitioner (as shown by canceled checks in the record issued in 2003 and in subsequent years) while also claiming to live

off retirement income and book royalties. The assertion that the beneficiary “has devoted himself to religious study and scholarly pursuits” does not place him within a religious vocation, particularly in light of counsel’s own stipulation that religious vocations do not involve the very kind of salaried employment in which the petitioner claims the beneficiary has and will continue to engage.

The petitioner submits a printout from <http://news.bbc.co.uk/1/hi/world/europe/905262>, dated August 31, 2000. It is not clear how this news story, dating from the two-year qualifying period, supports counsel’s claim that the beneficiary “had been pursuing a religious vocation continuously for forty (40) years prior to the filing of the instant petition.” The article states that the beneficiary “is perhaps best known for his role in setting up hundreds of schools,” which the beneficiary’s “supporters insist . . . are *not religious in outlook*” (emphasis added). This assertion, attributed to the beneficiary’s own followers and provided by the petitioner, seems to contradict rather than support the claim that the beneficiary has immersed himself in religious work of the kind usually associated with religious vocations.

The main issue that remains to be resolved, in terms of the beneficiary’s work during the qualifying period, concerns the beneficiary’s “redaction work” for Nil Publishing. The petitioner has claimed that the beneficiary received regular payments for this work during the qualifying period. The petitioner must provide first-hand evidence of these payments (rather than simply a list of claimed payments, compiled after the fact) and documented evidence to establish more precisely the nature of this “redaction work” and show how that work relates to his claimed prior work for the petitioner in a religious capacity.

If it is the petitioner’s position that the beneficiary’s intended work as an imam is ministerial in nature, then the beneficiary must seek to enter the United States solely to work as a minister, and (pursuant to *Matter of Faith Assembly Church*) he must have worked exclusively in that capacity during the two-year qualifying period. Nil Publishing appears to be a secular, for-profit company in Turkey, rather than a non-profit religious organization in the United States. Therefore, any job offer that requires the beneficiary to perform any active work for Nil Publishing would disqualify the beneficiary from consideration as a minister. The petitioner must demonstrate that the beneficiary’s income from Nil Publishing from 1999 onward has derived passively from royalties or pensions, rather than new activities such as “redacting.” Receiving publishing royalties on books written or published after April 30, 1999 would not inherently disqualify the beneficiary, because such royalties would not make him an employee of Nil Publishing.

The beneficiary is known to have been in the United States undergoing medical treatment for much of the qualifying period. The petitioner must show that the beneficiary was actively performing qualifying religious duties during his time in the United States.

### **JOB OFFER AND DENOMINATIONAL MEMBERSHIP**

The third and fourth issues surface only at the end of the director’s decision. Section 101(a)(27)(C)(i) of the Act requires the beneficiary to have been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States throughout the two-year period immediately preceding the filing date; the regulation at 8 C.F.R. § 204.5(m)(3)(ii)(A) mirrors this requirement. 8 C.F.R. § 204.5(m)(4) requires the petitioner to set forth the terms of employment.

The director did not touch on either of the above issues in the body of the decision, except in the “Conclusion” paragraph, in which the director simply asserted, without explanation: “The Beneficiary does not have two years membership in a religious denomination as required under 8 CFR 204.5(m)(3)(ii)(A). Finally, the Beneficiary has not been given a valid job offer as required by 8 CFR 204.5(m)(4).” These unsupported and conclusory findings require elaboration and explanation based on the evidence of record before the AAO will be able to weigh their merits. The director must, therefore, cite evidence and/or arguments to support these findings.

The AAO notes that the alien is the beneficiary of at least one approved application for change of status to R-1 nonimmigrant, valid from June 20, 2000 to June 19, 2003. The director’s decision does not indicate whether he reviewed the prior approval of the other nonimmigrant petition. If the previous nonimmigrant petition was approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Commr. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6<sup>th</sup> Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO’s authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff’d*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

For the reasons discussed above, the petitioner has not established the beneficiary’s eligibility for the classification sought, nor has the petitioner established that it is a qualifying tax-exempt religious organization. These grounds, however, must be fully discussed in a notice of intent to revoke. Therefore, this matter will be remanded. Any information that the director seeks to use as a basis for revocation must first be set forth in a notice of intent to revoke, as required by *Matter of Arias*, unless such information was provided by the petitioner in response to a notice of intent to revoke. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director’s decision is withdrawn. The record, however, does not currently establish that the petition is approvable. The petition is therefore remanded to the director for further action in accordance with the foregoing and entry of a new decision which, regardless of the outcome, is to be certified to the Administrative Appeals Office for review.