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**U.S. Department of Homeland Security**  
U.S. Citizenship and Immigration Services  
*Office of Administrative Appeals* MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **AUG 02 2010**  
WAC 07 264 53319

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

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**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO subsequently remanded the petition to the director for a new decision based on revised regulations. The director determined that the petitioner had failed to submit required evidence, and therefore the director again denied the petition and certified the decision to the AAO. The AAO will affirm the director's decision.

The petitioner is [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 a Hebrew and Judaic teacher. The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition.

In response to the certified decision, the petitioner submits arguments from counsel.

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--

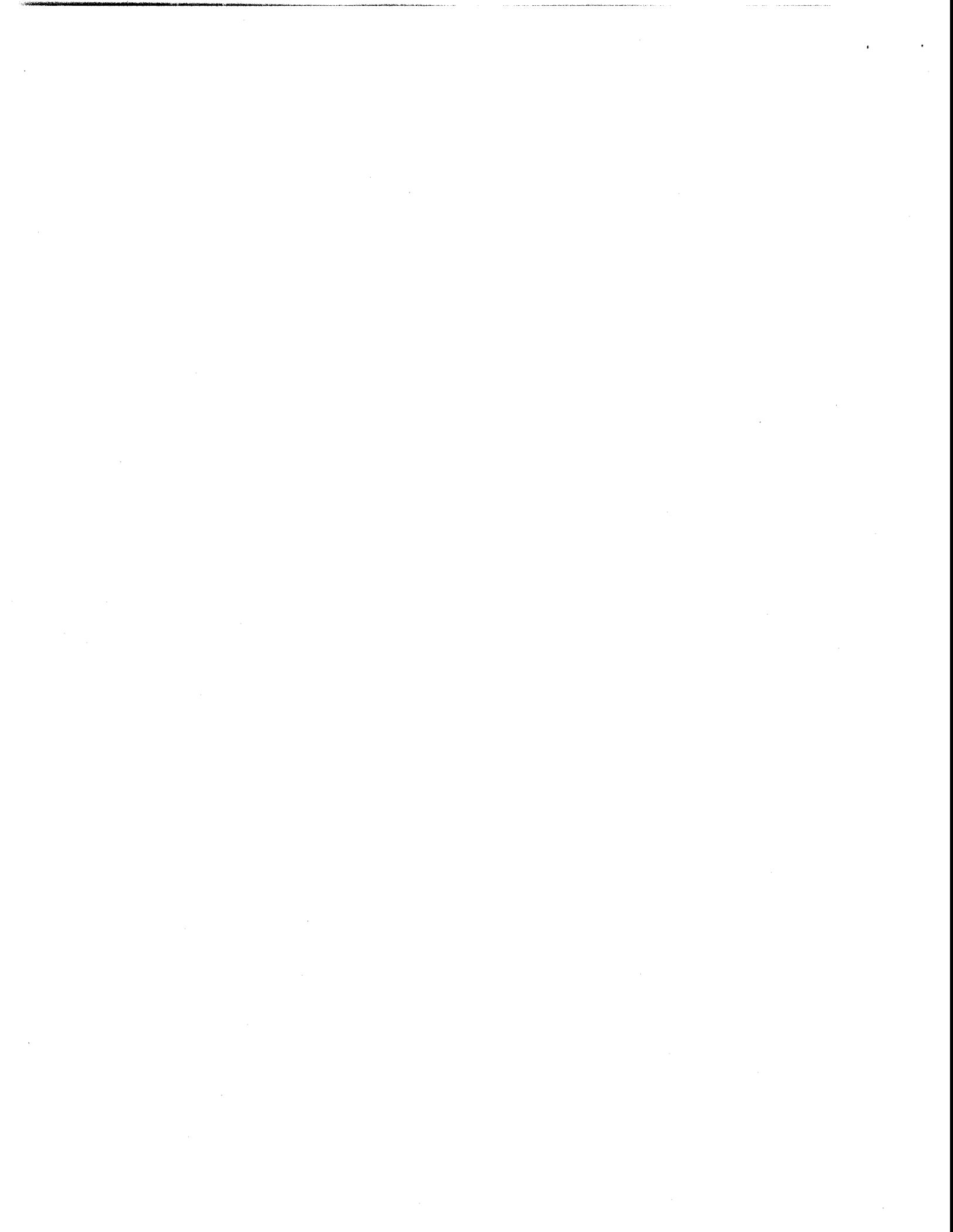
(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before September 30, 2012, 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 September 30, 2012, 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).

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working as a minister or in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States,



continuously for at least the two-year period immediately preceding the filing of the petition. The petitioner filed the Form I-360 petition on September 13, 2007. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work throughout the two years immediately prior to that date.

The USCIS regulation at 8 C.F.R. § 204.5(m)(11) reads:

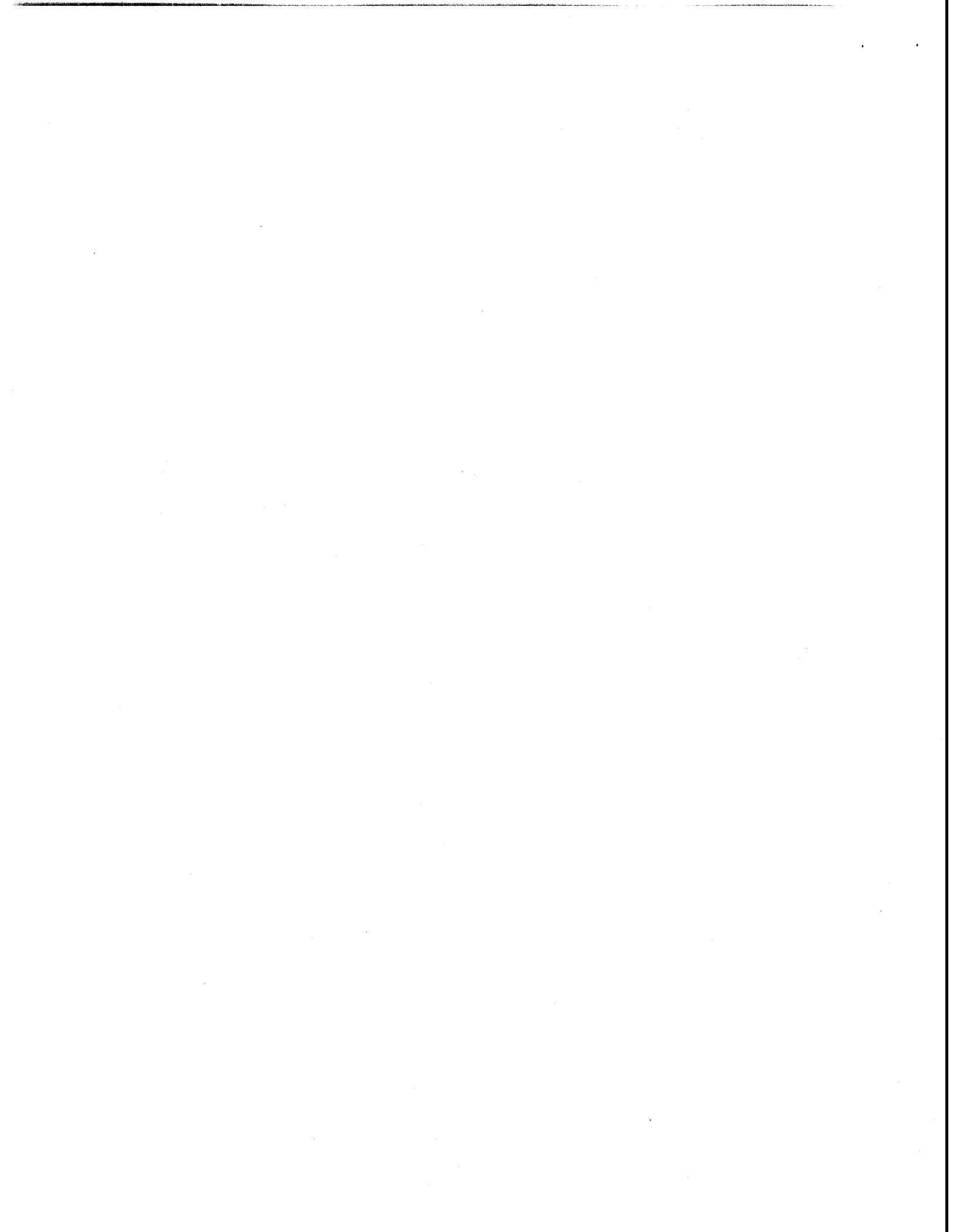
*Evidence relating to the alien's prior employment.* Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14, and if acquired in the United States, must have been authorized under United States immigration law. If the alien was employed in the United States during the two years immediately preceding the filing of the application and:

- (i) Received salaried compensation, the petitioner must submit IRS documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of income tax returns.
- (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.
- (iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.

If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

In a letter accompanying the initial filing, [REDACTED] principal of the petitioning school, stated that the beneficiary "has been in R-1 status with the Petitioner since April 20, 2007. Prior to this, the Beneficiary was employed in a similar position in R-1 status with the [REDACTED]. The beneficiary's R-1 nonimmigrant religious worker status permitted her to work for the petitioner from April 20, 2007 to April 8, 2009.

Photocopied payroll documents indicated that [REDACTED] paid the beneficiary \$25,900.00 in 2004, \$22,932.63 in 2005 and \$15,710.41 in 2006. A photocopied pay receipt showed that the petitioner paid the beneficiary \$2,716.11 for the pay period from June 2 to June 15, 2007. That same receipt showed a year-to-date total of \$10,725.55, roughly equivalent to two months' salary. This total is consistent with the petitioner's assertion that the petitioner first employed the beneficiary in late April 2007.



On November 7, 2007, the director instructed the petitioner to submit evidence of the beneficiary's work history for the two-year period immediately preceding the petition's September 13, 2007 filing date. The director specifically requested evidence of compensation, including copies of Internal Revenue Service (IRS) documentation for wages paid to the beneficiary during the qualifying period.

In response to the notice, the petitioner submitted a letter from [REDACTED] indicating that the beneficiary "was an employee in good standing at the [REDACTED] from April 22, 2004 thru August 31, 2006." The petitioner submitted copies of payroll documents from [REDACTED] consistent with the dates in the letter. The petitioner also submitted documentation showing that the beneficiary held R-1 nonimmigrant status, permitting her to work for [REDACTED] from April 9, 2004 to April 8, 2007. The petitioner also submitted copies of IRS Form W-2 Wage and Tax Statements reflecting the beneficiary's compensation for 2005 and 2006.

[REDACTED] of the petitioner's [REDACTED] stated that the beneficiary worked in that department "as a volunteer from September 1, 2006 through April 20, 2007."

Counsel stated that the petitioner applied for a new R-1 visa for the beneficiary in September 2006, but that, due to processing delays, the beneficiary did not receive that status until April 2007. It remains that the beneficiary was authorized to work for [REDACTED] for most of that time, but did not do so. The record does not report the circumstances behind the beneficiary's change of employers.

The director denied the petition on April 15, 2008, stating that the beneficiary's unpaid volunteer work for the petitioner does not constitute qualifying employment experience. On appeal from that decision, counsel stated: "With the exception of a brief period of time due to the USCIS's failure to timely approve the I-129 R-1 Petition (which was eventually approved), the Beneficiary has been in R-1 status from April 9, 2004 until present working as a religious worker in the proffered position."

While the appeal was pending, USCIS published a rule setting forth new regulations for special immigrant religious worker petitions. Supplementary information published with the new rule specified: "All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). In keeping with these instructions, the AAO remanded the petition for a new decision on December 8, 2008.

On February 4, 2009, the director advised the petitioner of the documentary requirements of the new regulations. In response, the petitioner repeated the assertion that the beneficiary "has been a full-time employee of our school since April 2007."

The director denied the petition on May 13, 2009, and certified the decision to the AAO for review. The director stated: "The petitioner has not submitted sufficient evidence to establish the beneficiary was employed in the proffered position during the period covering September 01, 2006 to April 19, 2007." The director concluded that the beneficiary's volunteer work during that period did not constitute employment.



In response to the certified decision, counsel states:

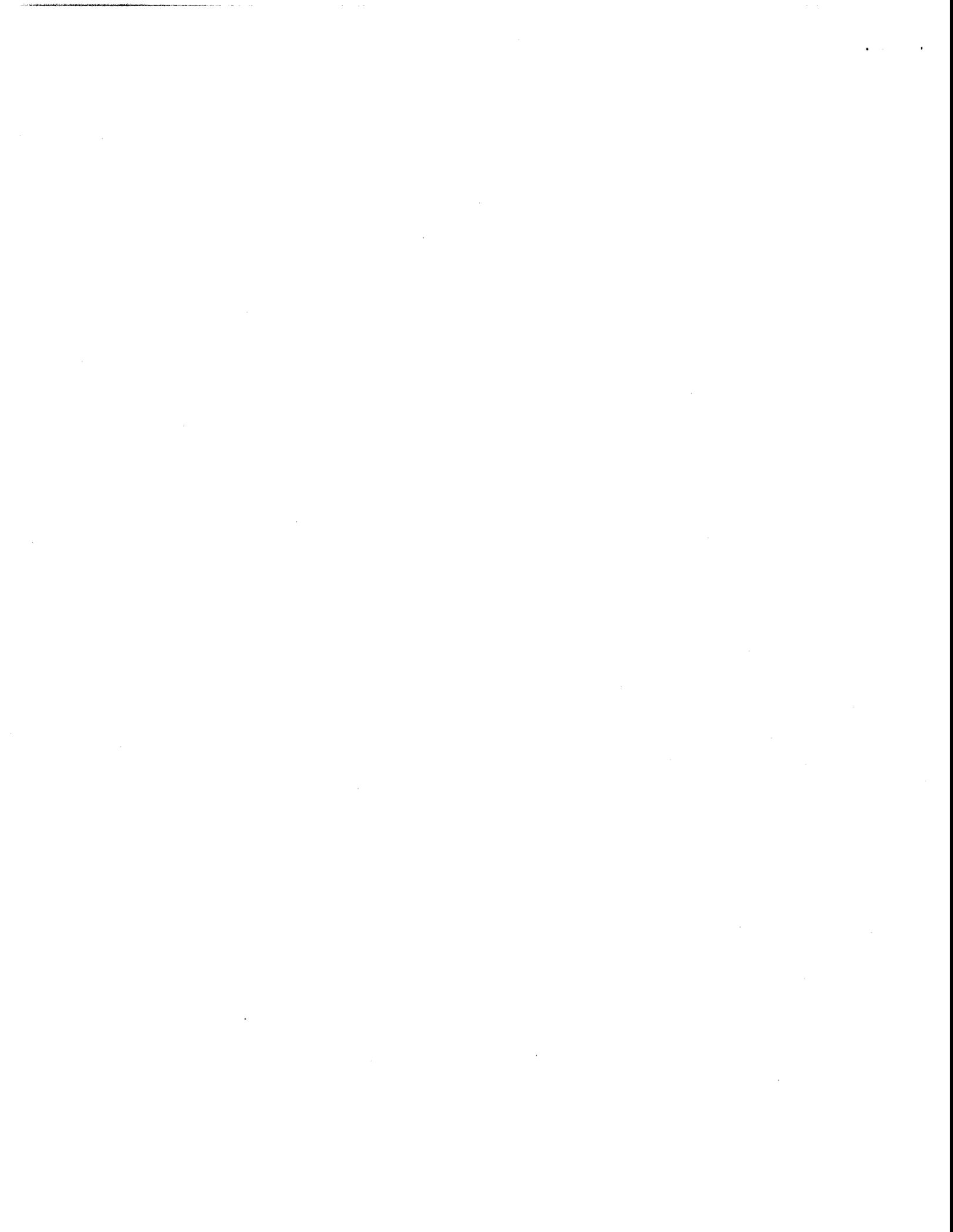
It is the Petitioner's contention that the Director did not give due consideration to the fact that the Beneficiary has been in R-1 nonimmigrant status from April 9, 2004 until April 8, 2009. . . . But for the USCIS's failure to timely adjudicate and approve the Beneficiary's I-129R-1 petition . . . , there would not have been any lapses regarding the Beneficiary working in the proffered position for the two-year period immediately preceding the filing of the I-360 Petition. . . . [T]he temporary lapse in "remunerated work" was through no fault of her own.

The fundamental issue here does not involve a few days in April 2007 between the expiration of the beneficiary's original R-1 status and the approval of the new petition. The beneficiary's compensated employment ceased for more than seven months, during a time when her R-1 status remained valid. The beneficiary stopped working [REDACTED], for reasons that had nothing to do with her nonimmigrant status (which remained valid for several months thereafter).

The petitioner does not claim that the beneficiary received any compensation, monetary or otherwise, for work that she performed at the petitioning school between September 1, 2006 and April 19, 2007, or that the beneficiary held any lawful immigration status that would have permitted her to work for the petitioner during that period. The regulation at 8 C.F.R. § 204.5(m)(11) clearly requires the position to have been compensated unless the alien was self-supporting, and clause (iii) of that regulation sets forth specific requirements that the petitioner must meet to establish self-support. The director advised the petitioner of the regulatory requirements in February 2009, but the petitioner has not submitted evidence to meet those requirements.

When USCIS published its new regulations in 2008, the supplementary information published with the new regulations made it clear that USCIS placed strict limits on acceptable forms of non-compensated religious work: "USCIS will . . . to preserve its ability to prevent fraud, permit self-supporting religious workers only under very limited circumstances." 73 Fed. Reg. 72276, 72278 (Nov. 26, 2008). These efforts to prevent fraud, required by Congress under section 2(b)(1) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008), would clearly be undermined if USCIS adopted the position that an alien can avoid the regulations' strict and specific documentary requirements simply by claiming to have been an unpaid volunteer, whose work, by nature, left no documentary record.

With limited exceptions, the beneficiary of an initial petition for R-1 nonimmigrant status must be compensated either by salaried or nonsalaried compensation, and the petitioner must provide verifiable evidence of such compensation. If there is to be no compensation, the petitioner must provide verifiable evidence that such non-compensated religious workers will be participating in an established, traditionally noncompensated, missionary program within the denomination, which is part of a broader international program of missionary work sponsored by the denomination.



The petitioner must also provide verifiable evidence of how the aliens will be supported while participating in that program.

*Id.* at 72278. The regulation at 8 C.F.R. § 214.2(r)(11)(ii) spells out the nature of acceptable self-supported work:

(A) If the alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.

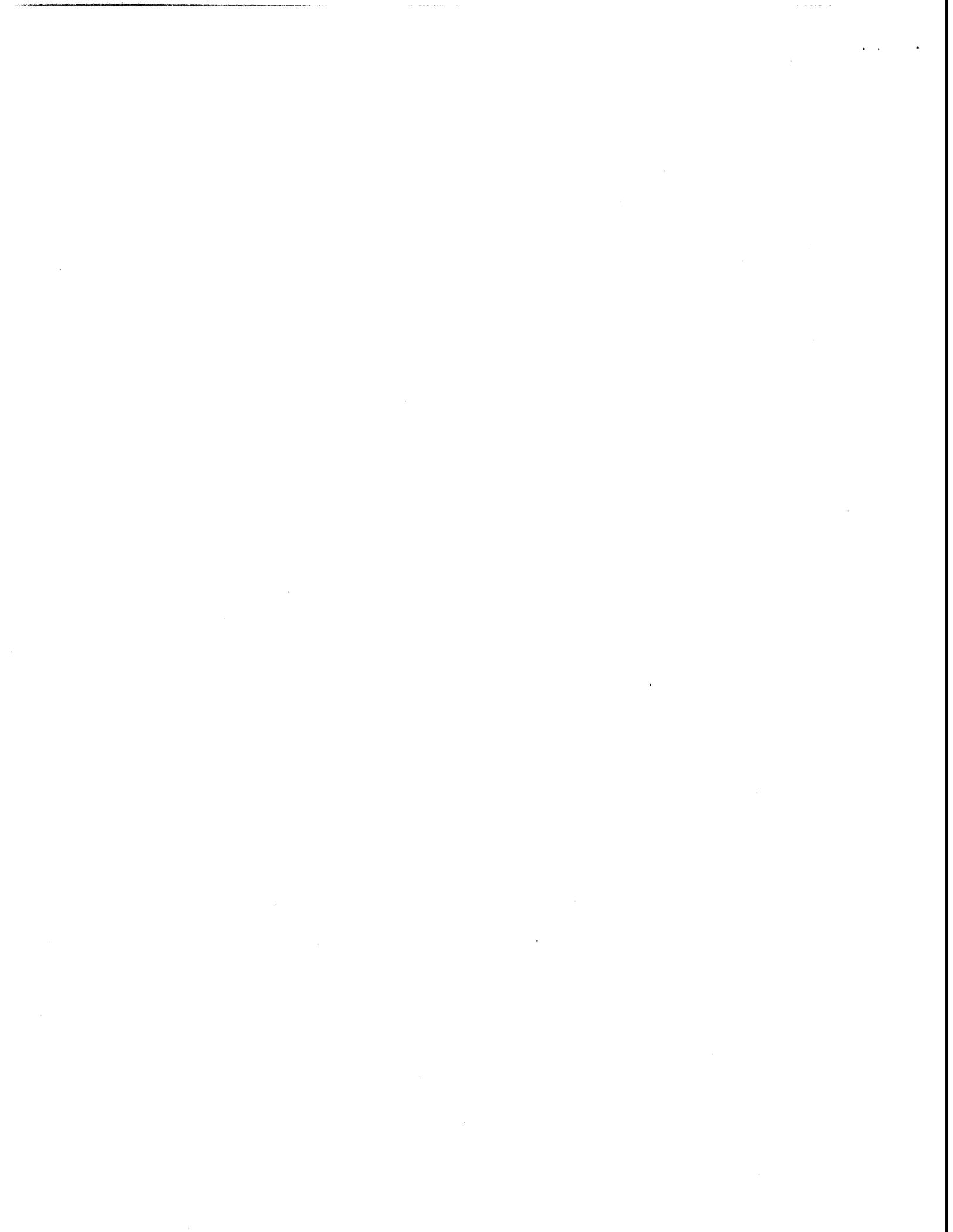
(B) An established program for temporary, uncompensated work is defined to be a missionary program in which:

- (1) Foreign workers, whether compensated or uncompensated, have previously participated in R-1 status;
- (2) Missionary workers are traditionally uncompensated;
- (3) The organization provides formal training for missionaries; and
- (4) Participation in such missionary work is an established element of religious development in that denomination.

(C) The petitioner must submit evidence demonstrating:

- (1) That the organization has an established program for temporary, uncompensated missionary work;
- (2) That the denomination maintains missionary programs both in the United States and abroad;
- (3) The religious worker's acceptance into the missionary program;
- (4) The religious duties and responsibilities associated with the traditionally uncompensated missionary work; and
- (5) Copies of the alien's bank records, budgets documenting the sources of self-support (including personal or family savings, room and board with host families in the United States, donations from the denomination's churches), or other verifiable evidence acceptable to USCIS.

The petitioner has not established, or even claimed, that the beneficiary's 2006-2007 work meets the above requirements. Furthermore, the regulations do not simply require that the beneficiary must have



refrained from actively violating United States immigration law. Rather, under 8 C.F.R. § 204.5(m)(11), qualifying prior experience, if acquired in the United States, must have been authorized under United States immigration law. The phrase “must have been authorized” indicates that USCIS must have taken active steps to authorize the beneficiary to perform qualifying religious work. USCIS did not authorize the beneficiary to work for the petitioner prior to April 2007, and therefore we cannot conclude that the beneficiary’s earlier work for the petitioner, whether paid or unpaid, was authorized under United States immigration law.

On a related note, while counsel argues that the beneficiary was under R-1 status for most of the qualifying period, the petitioner fails to acknowledge that the beneficiary’s initial R-1 admission was for the specific and sole purpose of employment [REDACTED]. The beneficiary’s continuing nonimmigrant status was contingent on that employment. An R-1 nonimmigrant is one coming to the United States to perform services as a religious worker for a specific petitioning employer. Section 101(a)(15)(R) of the Act. The regulation at 8 C.F.R. § 214.1(c)(3)(ii) requires a nonimmigrant to agree to depart the United States upon abandonment of his or her authorized nonimmigrant status. Here, the beneficiary abandoned her R-1 status when she stopped working for [REDACTED] in August 2006. Failure to comply with the departure requirement constitutes a failure to maintain status and renders the alien subject to removal under section 237(a)(1)(C)(i) of the Act. There is no statutory or regulatory provision that allows an R-1 nonimmigrant to leave his or her authorized R-1 employment and remain in the United States as a volunteer for another organization, whether or not a new petition is pending. Accordingly, the beneficiary was not entitled to R-1 status after August 31, 2006, when she [REDACTED] employ, and she was effectively out of status, and subject to removal, after that date.

We cannot find that the beneficiary’s volunteer work for the petitioner was authorized under United States immigration law, or that the beneficiary remained in lawful immigration status after she abandoned that status by leaving the employment [REDACTED] that formed the only basis for that status. Therefore, the petitioner has not shown that the beneficiary engaged in two years of continuous, authorized religious work immediately preceding the filing of the petition. We agree with the director’s finding to that effect.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the AAO will affirm the certified denial of the petition.

**ORDER:** The director’s decision of May 13, 2009 is affirmed. The petition is denied.

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