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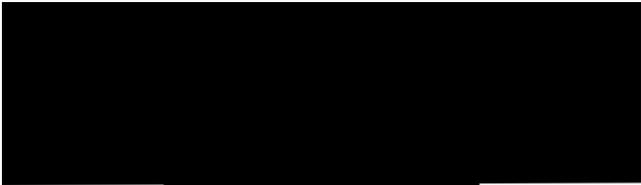
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

**PUBLIC COPY**

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **JAN 07 2010**  
WAC 05 224 53089

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:  
[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

*Perry Rhew*  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California 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 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 describes itself as a non-denominational Christian 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 an assistant pastor. Following a visit to the petitioning entity and an interview of the beneficiary, the director found that the petitioner had not established: (1) that the beneficiary possessed the required qualifying experience; (2) that the beneficiary's proposed duties relate to a traditional religious function; or (3) the petitioner's intention or ability to meet the stated terms of employment.

In response to the certified decision, the petitioner submits a brief from counsel, a letter from its pastor, and title documents relating to the 2005 purchase of a new building.

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.

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 first issue we will consider concerns the beneficiary's past experience.

## TWO YEARS

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 petition was filed on August 12, 2005. 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:

(11) *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.

The beneficiary entered the United States on June 5, 2003, and thus he spent the entire qualifying period in the United States. On the Form I-360 petition, under "current nonimmigrant status," the petitioner indicated that the beneficiary was an H-1B nonimmigrant, in a classification for "specialty workers" and certain specified occupations. USCIS records show that the beneficiary obtained his H-1B status to work for [REDACTED] in the field of "electronics & comm engineering."

The petitioner submitted a letter from [REDACTED] at the Christian Gospel Center, Manila, the Philippines, who stated that the beneficiary "served diligently in our church from 1991-2003" (before the qualifying period), in such positions as "Group Leader," "Worship Leader" and "Monthly Speaker." The letter contained no indication that the beneficiary was ever a paid employee of that church.

In a letter dated July 14, 2005, [REDACTED] of the petitioning church stated that the beneficiary "was trained by me for the past two years, from 2003 to 2005, in the areas of Bible knowledge and its application, fundamental pastoral practices and skills in reaching out to the Asian community." [REDACTED] called the beneficiary "a good candidate to be an Associate Pastor," but he did not indicate that the beneficiary was employed as a religious worker during the 2003-2005 qualifying period. When [REDACTED] listed the beneficiary's qualifications, including "knowledge, ability, and zealously," he did not list experience.

The director approved the petition on April 17, 2006. On June 30, 2006, the beneficiary filed a Form I-485 adjustment application. As part of that application, the beneficiary submitted Form G-325A, Biographic Information. The form included the following information:

**Applicant's employment last five years.**

Employer	Occupation	Dates
[The petitioning church]	[REDACTED]	Aug. 05 – Present Time
Career Mktg. [sic]	[REDACTED]	Aug. 03 – July 2000 [sic]

**Show below last occupation abroad if not shown above.**

[REDACTED] [REDACTED] Jan. 1995 – June 2003

The information relating to "Career Mktg." has been obscured with correction fluid. The beneficiary did not claim to have performed any religious work between June 2003, when he arrived in the United States, and August 2005, the month the petitioner filed the petition.

On September 10, 2008, the director notified the petitioner of the director's intent to revoke the approval of the petition, in part because the record indicated that the beneficiary worked as an engineer for Canaan Marketing, not as a religious worker, during the qualifying period.

In response, counsel stated: "nowhere in the regulations does it state that volunteer work cannot satisfy the requirement of working for the two years prior to the petition." Counsel also contended that the beneficiary's religious work need not have been full time, so long as the beneficiary was "principally" engaged in performing religious work."

[REDACTED], in a new letter dated September 5, 2008, stated that the beneficiary "was working full time with Canaan Marketing and at the same time spending all his free time in the church doing volunteer work."

In a sworn declaration dated September 8, 2008, the beneficiary stated:

During June 2003 to June 2005, I was working full time in Canaan Marketing. I worked from Monday to Friday, from 8 am to 4 pm. I spent the rest of my time in the church serving and helping my Pastor voluntarily. From Monday to Friday, from 6 pm to 10 pm I would be at the church. And both Saturday and Sunday I spent most of my time in the church. I did not put the church as my employer for those dates because I was paid by Canaan during that time, not by the Church.

The director revoked the approval of the petition on October 16, 2008, in part because the beneficiary worked only in a secular job during the qualifying period. On appeal, counsel repeated the assertion that "payment is not required in the regulations."

Section 2(b)(1) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008), required USCIS to publish new regulations for special immigrant religious worker petitions. USCIS published the required regulations on November 26, 2008. 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.” 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

Because the appeal was still pending on the effective date, the AAO remanded the petition to the director for consideration under the new regulations. On May 9, 2009, the director informed the petitioner of the new regulations and stated that the petition could not be approved unless the petitioner met all of the stated requirements.

In response to the notice, counsel stated: “the evidence in the record shows that Benefic[i]ary *did* perform his religious work continuously for at least the two-year period immediately preceding the filing or petition. He did this through his *volunteer* work outside his normal business hours while working at Canaan Marketing Inc.” (counsel’s emphasis). Counsel argued that the beneficiary’s experience falls under 8 C.F.R. § 204.5(m)(11)(iii), because the beneficiary “received no salary but provided for his . . . own support” through his secular employment at Canaan Marketing.

The director issued a certified decision on July 10, 2009, stating that the petitioner had not established that the beneficiary engaged in qualifying employment during the two years immediately preceding the filing of the petition. In response, counsel repeats prior arguments and cites case law that pertains to regulations and statutory provisions that are no longer in effect. Counsel asserts that the beneficiary was “principally” engaged in qualifying religious work, even though, by counsel’s own reckoning, the beneficiary worked 35 or 36 hours per week at the church and 40 hours per week at Canaan Marketing. Counsel did not explain why the beneficiary’s full-time paid employment should be set aside when considering the nature of the beneficiary’s “principal” activities.

We disagree with counsel’s interpretation of 8 C.F.R. § 204.5(m)(11)(iii). In supplementary information published with the proposed rule in 2007, USCIS stated:

The revised requirements for immigrant petitions and nonimmigrant status require that the alien’s work be compensated by the employer because that provides an objective means of confirming the legitimacy of and commitment to the religious work, as opposed to lay work, and of the employment relationship. Unless the alien has taken a vow of poverty or similarly made a formal lifetime commitment to a religious way of life, this rule requires that the alien be compensated in the form of a salary or in the form of a stipend, room and board, or other support so long as it can be reflected in a W-2, wage transmittal statements, income tax returns, or other verifiable IRS documents. USCIS recognizes that legitimate religious work is sometimes performed on a voluntary basis, but allowing such work to be the basis for an R-1 nonimmigrant visa or special immigrant religious worker classification opens

the door to an unacceptable amount of fraud and increased risk to the integrity of the program. In this rule, USCIS is proposing to implement bright lines that will ease the verification of petitioner's claims in the instances where documentary evidence is required.

72 Fed. Reg. 20442, 20446 (April 25, 2007). When USCIS issued the final version of the regulation, the preamble to that final rule incorporated the above assertion by reference: "The rationale for the proposed rule and the reasoning provided in the preamble to the proposed rule remain valid and USCIS adopts the reasoning in the preamble of the proposed rule in support of the promulgation of this final rule." 73 Fed. Reg. 72275, 72277 (Nov. 26, 2008).

We quote 8 C.F.R. § 204.5(m)(11)(iii) again here, along with its prefatory clause from 8 C.F.R. § 204.5(m)(11):

If the alien was employed in the United States during the two years immediately preceding the filing of the application and . . . [r]eceived 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.

When read in context as a complete sentence, the regulation clearly refers to employment rather than volunteer work. Also, with respect to self-supporting aliens, the regulation lists types of documentation that the petitioner can submit to "show how support was maintained." Evidence of secular employment is conspicuously absent from that list, and we are not of the opinion that this omission was a mere oversight.

Clauses (i) and (ii) of 8 C.F.R. § 204.5(m)(11) refer repeatedly to Internal Revenue Service documentation of compensation. We find that clause (iii) would have included such references as well, unless there was reason to exclude them. The listed documents – "audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney" – all relate to an alien's existing financial assets, and not to earned income from ongoing employment.

We find that 8 C.F.R. § 204.5(m)(11)(iii) refers to aliens who support themselves through their financial reserves, and not to aliens who volunteer at their local church while employed in secular jobs. The plain language of the regulation distinguishes between an alien who received a "salary" and an alien who "provided for his or her own support." Clearly, in this context, earning a salary is not considered self-support; otherwise, the distinction would disappear. In this light, we find that the beneficiary did not provide for his own support from 2003 to 2005. Rather, Canaan Marketing provided that support through regular salary payments.

For the reasons discussed above, we agree with the director's finding that the beneficiary lacks the required experience.

Although we agree with the director's core finding that the beneficiary lacked qualifying experience, we take issue with the director's assertion that the beneficiary must have "performed the same religious work continuously for at least the two-year period immediately preceding the filing of the petition" (director's emphasis). The new regulation at 8 C.F.R. § 204.5(m)(4) states: "The prior religious work need not correspond precisely to the type of work to be performed" in the future. This wording indicates that there must be some similarity between the past and intended future work (otherwise the regulation would simply read "correspond" rather than "correspond precisely"), but the past and future duties need not be "the same."

The reference to the nature of the beneficiary's duties leads us to the next stated ground of ineligibility.

#### RELIGIOUS OCCUPATION

*Religious occupation* means an occupation that meets all of the following requirements:

- (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.
- (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.
- (C) The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible.
- (D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

8 C.F.R. § 204.5(m)(5). In a job offer letter dated July 14, 2005, [REDACTED] offered the beneficiary the position of associate pastor, whose tasks would be to "[m]inister and reach out to the Asian community" as well as "[b]usiness tasks related to day to day operations." In a separate letter, [REDACTED] stated "we have recently purchased a 38,000 sq. ft. building."

In March 2008, a USCIS officer conducted a compliance review of the petitioning entity and interviewed [REDACTED] and the beneficiary. In the August 2008 notice of intent to revoke, the director quoted from the officer's notes:

invited/encouraged [the beneficiary] to attend a Bible College but also stated that Bible College could wait because their main concentration is “fund raising first” for the upgrade of their building. . . . The building is currently under Phase II construction. Phase III of the construction [is] to start later this year. [The beneficiary is] to assist/coordinate Phase III of the construction.

In response, [redacted] stated:

[After the beneficiary began working for the petitioner in 2005,] our construction had started and we were not able to find a suitable project manager so . . . he took on the job of overseeing the construction but at the same time he still did all the other tasks. . . . He still placed his ministry as his priority. . . .

After working for some time on the church construction, God had provided another brother to handle the tasks of overseeing the construction. By then, [the beneficiary] was relieved from his burden. However, at the time of the site interview by the immigration officer, I had informed her that [the beneficiary] was supervising the construction of Phase III which had just started. It really was a temporary duty. . . . We had him handle the task at the time while looking for another person to assume that role. At this time, God has provided us a right person so [the beneficiary] has been relieved of these duties.

The beneficiary described his duties at the petitioning church:

Beginning in 2005, I began receiving pay for my work in the church. I worked from home part of the day and at church and doing visitations the other [part of the day]. In the morning, I always have my quiet time. (Prayer and reading the word of God.) . . .

After my quiet time, I do my Bible research work like reading spiritual books and equipping myself for Preaching Gospel. . . .

I set a time to pray for the needs of the church members . . . and supervising and helping with the remodeling work . . . overseeing the construction, and volunteering to buy those needed materials and stuff for the remodeling.

Every Monday night, we have a co-workers meeting. The meeting consists of training regarding the Bible. . . .

I am currently leading the English speaking group and the second generation, and I have to prepare for Friday night Bible study. . . .

I also do visitation. . . . After my visitation, I always report everything to my Pastor, especially those special cases, so that my pastor can go visit them and have fellowship with them. I go visit them in their houses and hospitals. . . .

During Saturday, the church has prayer meeting in the morning, and the English group has prayer meeting as well. . . .

Once every six months our church would h[o]ld a Gospel Meeting, in order to reach out to non-believers.

The petitioner also submitted printouts of electronic mail messages dated between July 2005 and September 2008, showing that the beneficiary was involved in planning Friday night meetings and organizing other church activities. Some messages also refer to hospital visits.

In the October 2008 revocation notice, the director stated:

[B]ased upon the size of the construction/renovation project, its duration (over three years), and the fact that the beneficiary appears to be the only project manager assigned to the project it is not reasonable for USCIS to conclude that the beneficiary is primarily engaged in religious activities. The proffered position appears to be secular in nature and therefore nonqualifying.

On appeal, counsel stated “the majority of Beneficiary’s duties were directed towards a ‘traditional religious function.’ Here, USCIS’s analysis is too narrow because it requires that a religious occupation involve only religious functions to the exclusion of secular functions, even when those secular functions are in furtherance of a religious mission.”

The director’s May 2009 notice did not address the issue of the beneficiary’s occupation. In the July 2009 decision, the director repeated the previous finding that the beneficiary’s involvement with church construction does not relate to a traditional religious function.

In response, counsel argues that the (admittedly imprecise) information in the beneficiary’s declaration indicated that the beneficiary devoted most of his time at the church to duties other than supervising construction. Counsel adds: “the construction project is also related to a traditional religious function inasmuch as it has some religious significance. Remodeling will allow the church to worship and conduct activities as they see fit. Thus, even the construction project was undertaken in a religious manner and for a religious purpose.” We reject this argument because the connection between remodeling work and the church’s traditional religious functions is tenuous. By counsel’s logic, repaving of the church parking lot “has some religious significance” because it facilitates attendance at the church. While it may be the case that certain architectural features of a given house of worship have religious significance, we do not agree that a construction project has its own intrinsic religious significance, such that the project manager overseeing that construction is performing a religious occupation. The regulation at 8 C.F.R. § 204.5(m)(5) specifically excludes “maintenance workers”

from the definition of “religious occupation,” and construction and maintenance work are, in many ways, maintenance writ large. That same regulation also requires that the alien’s “duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.” Construction neither inculcates nor carries out the religious creed and beliefs of the petitioner’s denomination. A church building is clearly intended for religious use, but it does not follow that the construction of such a building, or the purchase and preparation of real estate on which to construct such a building, relates to a traditional religious function.

Having said the above, on balance, we find that the petitioner does not seek to employ the beneficiary first and foremost as a construction supervisor. Rather, the beneficiary’s hiring happened to coincide with the construction project. According to the credible and consistent assertions of the beneficiary and [REDACTED], construction supervision amounted to a short-term and secondary duty, rather than one of the beneficiary’s principal functions at the church. [REDACTED] has also indicated that the beneficiary is no longer involved in the construction, and there is no evidence to contradict this claim.

We find that the beneficiary’s involvement in the renovation project, which began after the petition’s filing date and which has already ended, does not amount to disqualifying secular work. We will therefore withdraw the director’s finding that the beneficiary’s intended position does not qualify as a religious occupation.

We turn, next, to the remaining ground of ineligibility.

#### JOB OFFER

The USCIS regulation at 8 C.F.R. § 204.5(m)(7)(vi) requires the prospective employer to attest to the position offered to the alien and the complete package of salaried or non-salaried compensation being offered. 8 C.F.R. § 204.5(m)(7)(xii) requires the prospective employer to attest to its ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges, and that funds to pay the alien’s compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization.

8 C.F.R. § 204.5(g)(2) requires the petitioner to demonstrate this ability at the time the priority date is established (i.e., the petition’s filing date) and continuing until the beneficiary obtains lawful permanent residence.

In a July 14, 2005 job offer letter to the beneficiary, [REDACTED] stated that the beneficiary would receive a salary of \$3,000 per month, plus medical insurance. At that time, the petitioner had not yet employed the beneficiary, and therefore there was no history of prior compensation.

Copies of the petitioner’s unaudited monthly “offering & expense reports” from January 2003 to April 2006 list itemized expenses. A few reports are missing. One line item, “Supply for ministers,” is shown as \$6,500 per month on nearly every statement. The amount is slightly lower on some

statements that date from before the beneficiary's employment. There is no September 2005 statement. The statements from October 2005 through January 2006 show \$8,500 for "Supply for 2 families of ministers," with the amount returning to \$6,500 for "Supply for ministers" in the statements for February through April 2006. The reports do not show significant changes in monthly expenses either in early 2005, when the petitioner bought a large new property, or in mid-2005 when the petitioner began compensating the beneficiary, as these examples show:

Month	Amount
January 2003	\$20,595.82
June 2003	21,563.71
January 2004	20,105.84
July 2004	18,610.90
January 2005	19,649.88
February 2005	19,692.09
July 2005	19,553.30
October 2005	21,738.85
January 2006	23,305.99 (includes \$1,200 "Transfer to Building Fund")
February 2006	21,580.65
March 2006	20,485.12
April 2006	20,817.80

Notes from the 2008 site inspection include the following information:

On or about February 2005 the organization purchased a 38,000 square foot building on three acres of land. . . .

According to . . . [REDACTED] the organization purchased the building for the amount of \$3,000,000.00. . . .

Because of the current remodeling construction, [the beneficiary's] salary was cut to \$1,500 a month. . . .

[The beneficiary] stated . . . that he has agreed to the salary of \$1,500 a month because of the current reconstruction of their newly purchased building.

The director cited this information in the August 2008 notice of intent to revoke. The director noted: "Unaudited financial statements for February 2005-April 2006 do not list any expenses associated with the petitioner's recently acquired property (mortgage, property tax, maintenance, renovation costs. . . . Nor do the financial statements list wages paid to employees."

In response, the petitioner submitted a copy of a June 15, 2005 letter in which the beneficiary offered to "donate \$1,500.00 per month from my pay until the completion of the church remodeling." The beneficiary also asked "to be part of the construction team."

In a response dated August 1, 2005, [REDACTED] of the petitioning church, stated: “we have decided that the money which you offer to the church will be paid back to you as a deferred payment when the entire project is completed.”

In his September 5, 2008 letter, [REDACTED] confirmed the above arrangement and stated:

I was touched by [the beneficiary’s] desire to donate a portion of his earnings for the church construction work. . . . [W]e came to an agreement to start deducting a small amount which as \$800.00. . . . [After the beneficiary’s spouse began working, the beneficiary began] to give \$1,500.00 to the church construction until the project is finished.

The petitioner submitted copies of unprocessed checks, showing \$1,500 payments to the beneficiary from March to June 2008, and \$3,000 payments to the beneficiary in July and August 2008. The petitioner also submitted copies of bank statements showing that one of the petitioner’s money market accounts held a bank balance in excess of \$400,000 from mid-2005 onward. Statements from other money market accounts and certificates of deposit reflected additional assets. Because the petitioner submitted only the first page of each statement, rather than complete statements, the evidence does not show whether or not the checks issued to the beneficiary were ever processed for payment.

The bank statements do not agree with the “offering & expense reports.” For instance, one bank statement shows an \$85,000 deposit on October 12, 2005. The corresponding “offering & expense report,” however, shows total income of only \$21,767.00 for the month of October 2005.

As another example, the January 2006 “offering & expense report” shows a “beginning balance” of \$8.95, with \$24,587.00 in income and \$23,305.99 in expenses for the month. According to the bank statements, the petitioner’s money market account held \$510,313.51 at the beginning of January 2006. The January 2006 statement for the petitioner’s business checking account shows \$96,832.00 in deposits and \$130,651.90 in withdrawals for the month.

Counsel pointed to these bank statements to show that the petitioner’s financial situation did not force the petitioner to reduce the beneficiary’s salary. Counsel, however, did not explain why these financial documents were so thoroughly at odds with the petitioner’s previously submitted financial documents.

In the October 2008 revocation notice, the director noted the inadequacy of the petitioner’s “[u]naudited financial statements.” On appeal, counsel repeated the assertion that the petitioner had hundreds of thousands of dollars in the bank, and therefore there should be no doubt of the petitioner’s ability to pay the beneficiary the full rate of compensation. Counsel did not explain the discrepancy between the bank statements and the “offering & expense reports.”

The director also noted that the petitioner had failed to provide evidence that the petitioner had provided insurance for the beneficiary, as was promised in the original job offer letter. The petitioner submitted

no evidence of such coverage. Counsel stated that the director's observation violated the petitioner's right to due process because, while the director had previously expressed concerns about the beneficiary's low compensation, the director had never specifically raised the issue of insurance. Counsel did not go so far as to claim that the petitioner had actually provided the promised insurance.

In a newly-executed attestation, required by 8 C.F.R. § 204.5(m)(7), ██████████ asserted that the beneficiary's "proposed salaried and/or non-salaried compensation" would amount to "\$3000 per month." There was no mention of insurance. The available evidence, therefore, indicates that the petitioner never provided the beneficiary with insurance, and has no intention of doing so in the future, even though the initial job offer letter specified that the petitioner would provide insurance.

In the May 2009 notice, the director instructed the petitioner to submit evidence of the beneficiary's past compensation. The petitioner's response included copies of IRS Form 1099-MISC Miscellaneous Income statements, showing that the petitioner paid the beneficiary \$16,700 in 2005, \$26,600 in 2006, \$18,500 in 2007 and \$27,000 in 2008. None of these amounts matched the offered salary of \$36,000 per year.

In the July 2009 certified decision, the director stated that the petitioner had never provided adequate documentation of "the petitioner's assets and liabilities," and repeated the prior finding that "the beneficiary was never paid the proffered wage of \$3000 per month" and "no evidence was submitted to show that the beneficiary was provided with medical insurance . . . [that] is part of the beneficiary's compensation."

In response to the certified decision, the petitioner submits copies of title documents as evidence of the petitioner's liabilities. Counsel repeats the assertion that, given the petitioner's bank balances, the petitioner was able to pay the beneficiary's full wage, even though the petitioner did not in fact do so. Counsel also refers to the monthly "offering & expense reports," without resolving or even mentioning the significant discrepancies between those reports and the bank statements.

We find that the unaudited "offering & expense reports" are unreliable and incomplete records of the petitioner's financial activity during the period that they cover. As noted previously, the reports do not show an increase in expenses that coincided with the beneficiary's hiring, and they show almost nothing relating to the purchase and remodeling of the new building in 2005.

Counsel has asserted that the bank documents in the record show that the petitioner "was able to pay the bills for [the] construction project." The record does not include copies "the bills for [the] construction project," and therefore it is not clear what the petitioner's obligations were in that area. Given the demonstrable difference between the "offering & expense reports" and the high-balance bank statements, it appears that the funds in the high-balance accounts were for the petitioner's building fund. This would explain their omission from documentation of the petitioner's routine church activities. This would also mean, however, that the funds were obligated for purposes other than the beneficiary's salary.

In his most recent letter, [REDACTED] stated that the construction project was “completed in November 2008 and we had no need of borrowing money from the bank. All the money needed for both the purchase and the construction was covered by the donation and an interest free loan from our church members.” [REDACTED] stated: “Within the past three years, we’ve spent over 5 million dollars,” but he did not explain why these expenses were absent from the “offering & expense reports” submitted earlier in the proceeding.

The petitioner’s submission of inconsistent financial documents raises questions about the petitioner’s actual financial situation from the filing date onward. 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). 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 582, 591-92.

When considering these credibility issues, we note that, when the director noted the petitioner’s apparent failure to provide the beneficiary with the promised medical insurance, the petitioner’s response was to remove references to that insurance when describing the terms of employment.

The available evidence proves that the petitioner did not pay the beneficiary the proffered rate of \$3,000 per month for the three years immediately following his hiring and the near-simultaneous filing of the petition. The petitioner claims that there was an agreement to defer part of the beneficiary’s salary payments until after the construction was completed. The requirement, however, is that the petitioner must be able to pay the proffered salary from the date of filing onward; it cannot suffice for the petitioner to pay a reduced rate and promise to make up the difference later. Even then, there is no evidence that the petitioner actually made any deferred payments. The record indicates that the petitioner pays the beneficiary at the end of each month, and therefore the beneficiary received two salary payments after construction ended in November 2008. The IRS Form 1099-MISC for that year, however, is consistent with the beneficiary receiving a half-salary from January to June, as claimed previously, and a full salary (and no more) from July through December.

We agree with the director that the record lacks credible, consistent evidence that the petitioner had both the ability and the intention to pay the beneficiary \$3,000 per month, plus health insurance, from the filing date onward.

The AAO will affirm the director’s decision 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 director’s decision of July 10, 2009 is affirmed. The revocation of the approval of the petition remains in effect.