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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

PUBLIC COPY



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



C₁

DATE: **SEP 07 2011** OFFICE: CALIFORNIA SERVICE CENTER 

IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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 \$630. 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

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a 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 a minister. The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary.

On appeal, the petitioner submits a brief from counsel along with supporting documentation.

The AAO notes that the record contains correspondence from attorney [REDACTED] indicating that he no longer represents the beneficiary and the beneficiary's spouse in a separate proceeding. The record, however, contains no such correspondence ending his representation of the petitioning organization in the present proceeding. The AAO therefore still considers [REDACTED] to be the petitioner's attorney of record.

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).

PAST EMPLOYMENT

The first issue under consideration concerns the beneficiary's past employment. The 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 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 [Internal Revenue Service] 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 petitioner filed the Form I-360 petition on August 31, 2009. On that form, the petitioner indicated that the beneficiary had entered the United States on February 15, 2005. The petitioner listed the beneficiary's current nonimmigrant status as "R-1 pending in removal." The record shows that the beneficiary entered the United States as an R-1 nonimmigrant religious worker, and that his initial authorized period of stay expired February 15, 2008.

On December 31, 2007, the petitioner filed a Form I-129 petition, receipt number [REDACTED] [REDACTED] to extend the beneficiary's R-1 nonimmigrant status and authorized period of stay for another two years. Under the regulation at 8 C.F.R. § 274a.12(b)(20), the petitioner's timely filing of an application for extension of stay also extends the beneficiary's authorization to work for the petitioner for another 240 days, unless the director denies the extension application before that time expired. In fact, the director denied the extension application on August 1, 2008. Therefore, even under the most favorable reading of these circumstances, the beneficiary's employment authorization deriving from his R-1 nonimmigrant status ended on August 1, 2008, 13 months before the petitioner filed the Form I-360 petition.

The petitioner submitted photocopies of the beneficiary's IRS Form 1040 income tax returns for 2005 through 2007. The 2006 and 2007 returns are unsigned, and although they are federal tax returns, they are stamped "S.C. Dept. of Revenue / Apr 21 2009 / Received / Taxpayers Assistance." None of the copies are IRS-certified. The returns indicate that the beneficiary earned \$9,688 in 2005, and \$17,992 in both 2006 and 2007. The 2005 materials identify the beneficiary as a minister for the petitioning organization, but the later returns include no information about the beneficiary's occupation or source of income. Although the beneficiary's 2008 income tax return would have been due well before the petition's August 2009 filing date, the petitioner did not submit documents from that year. These documents do not establish that the petitioner or any other entity employed the beneficiary.

On February 4, 2008, agents of Immigration and Customs Enforcement (ICE) arrested the beneficiary and his spouse at a Raceway gas station in West Columbia, South Carolina. The ICE agents testified that the beneficiary was "working behind the counter of the alcoholic beverage section of the aforementioned gas station." The agents interviewed the beneficiary's spouse, who stated that she and the beneficiary both worked at the gas station. ICE placed the beneficiary and his spouse in removal proceedings, and both were ordered removed on December 29, 2010. Their pending appeals of the removal orders are separate from the proceeding now at hand.

An R-1 nonimmigrant may be employed only by the religious organization through whom the alien obtained that status. *See* 8 C.F.R. § 274a.12(b)(16). Under the USCIS regulation at 8 C.F.R. § 214.1(e), a nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status. Therefore, the beneficiary's authorization to work for the petitioner would have ended once he began working at the gas station.

In a letter dated August 18, 2009, [REDACTED] founding senior pastor of the petitioning church, claimed that the beneficiary "has been with our church since Feb 2005 and has been consistently engaged in our ministry." [REDACTED] acknowledged the beneficiary's arrest but stated that the beneficiary "denied the charge" and that, while the petitioner was "confused" about the beneficiary's immigration status, "we continued paying him a sustenance amount of approx \$700 per month in addition to a housing allowance of \$1000.00 per month."

On March 10, 2010, the director issued a notice of intent to deny the petition. The director stated that, because of the beneficiary's arrest and the expiration of his R-1 nonimmigrant status, the beneficiary lacked lawful status for most of the two-year qualifying period. The director instructed the petitioner to submit copies of all available payroll documents relating to the beneficiary, both from the petitioner and from the Raceway gas station.

In response, counsel noted that hearings were still in progress regarding the beneficiary's 2008 arrest. The AAO duly notes that the beneficiary contests the charges against him. Nevertheless, USCIS is not obliged to overlook ICE's findings simply because the petitioner denies them. In any event, the immigration judge ultimately found that the beneficiary violated his R-1 nonimmigrant status by working at the Raceway gas station. Even if the removal proceedings were still pending today, the present proceeding is not based on any conviction or order of removal, and the AAO is not required to suspend this proceeding while removal proceedings are pending.

The petitioner submitted an affidavit from the beneficiary's spouse, who claimed that ICE threatened and coerced her into signing her earlier confession (which she now claims she never read) regarding her and the beneficiary's employment at the Raceway gas station. This statement does not automatically discredit or outweigh the ICE officers' findings that led to the arrests, or the officers' subsequent testimony. As noted above, the immigration judge at the removal hearing found that the beneficiary worked without authorization.

The beneficiary stated that, after his arrest, the petitioner "was not sure about my status," and therefore "I did not get paid a salary but received non salaried compensation in the form of donations and love gifts for my sustenance. . . . My association with [the petitioner] continued with the same job duties as a Minister." The petitioner claimed that, as part of his duties, he had "been visiting various business establishments," and that he frequently visited the Raceway gas station to "distribute Gospel literature."

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. Therefore, the petitioner (or his spouse) cannot simply declare ICE's allegations to be mistaken or falsified.

The petitioner submits a statement from the beneficiary dated March 10, 2010 in which he claims that Midlands Mart, Inc. operates the Raceway gas station. The petitioner also submits a copy of a March 9, 2010 letter from ADP Small Business Services, which claims to handle payroll for Midlands Mart, Inc., indicating that "ADP does not show any payroll records for" the beneficiary or his spouse. This document does not prove that the beneficiary did not work at the store; it indicates only that no payroll records exist for Midlands Mart, Inc. The petitioner has not established that Midlands Mart, Inc. is the same Raceway gas station at which the ICE agents observed the

beneficiary working. While Midlands Mart, Inc. is registered with the South Carolina Secretary of State at the same address as the Raceway [REDACTED] the agent/owner for Midland's Mart, [REDACTED] has two additional and active businesses registered at the same address: [REDACTED]. Either one of these businesses could be doing business as Raceway. As the petitioner has failed to establish which, if any, of the three entities he has registered at the [REDACTED] location is doing business as Raceway, the letter from ADP Small Business Services does not establish that the beneficiary did not work at Raceway.

In addition, even if the petitioner had established that the Midlands Mart, Inc. is actually doing business as Raceway, because the beneficiary never had authorization to work at the store, it would not be surprising that the store would not maintain detailed records of unlawful employment or report that employment to a third-party payroll company. Therefore, for all of these reasons, the ADP letter does not overcome the ICE agents' direct observation that the beneficiary was engaging in unauthorized employment.

The petitioner also submitted a number of church fliers dated between 2000 and 2007. A worship service program dated March 26, 2006 lists the beneficiary's name after the phrase "Tithes & Offering." That same program, and programs dated June and September 2007, show the beneficiary's name in the context of Tuesday evening cell group meetings. Other materials that date from after the beneficiary's February 2005 arrival do not appear to mention the beneficiary.

A photocopied marriage license and certificate indicates that the beneficiary performed a wedding ceremony on October 7, 2006, well before the two-year qualifying period began in August 2007.

An undated brochure for the petitioner's chaplaincy program includes testimonials from an individual identified only as "[REDACTED]" who stated: "We offer clergy services through our business," and named the beneficiary as "our pastor." "[REDACTED]" did not specify the nature of his or her business. Another testimonial, attributed to "[REDACTED]" credited the beneficiary (or someone with the same first name) with successful family counseling.

Copies of IRS Form W-2 Wage and Tax Statements indicate that the [REDACTED] paid the beneficiary \$15,428 in 2005 and \$30,212 in both 2006 and 2007. (Because clergy housing is not taxed, the beneficiary's reported taxable income did not include the value of that housing.)

The documents described above superficially suggest that the beneficiary may have performed at least some ministerial duties. Few of the materials, however, date from the August 2007-August 2009 qualifying period. Also, the few documents intended to establish that the petitioner paid wages to any employees prior to 2009 are contradictory and uncorroborated by the record. The first issue

¹ See <http://www.scsos.com/index.asp?n=18&p=4&s=14>, accessed on December 23, 2010, copy incorporated into the record of proceeding.

to be addressed is the director's finding that the beneficiary has violated his status by working outside the ministry. The submitted materials do not address that question.

The beneficiary's 2008 and 2009 income tax returns indicate that the beneficiary's income consisted of "Rental real estate, royalties, partnerships, S corporations, trusts, etc.," (\$3,198 in 2008 and \$2,305 in 2009) and "donations from [the petitioner]" (\$8,005 in 2008 and \$12,667 in 2009). The petitioner submitted no IRS documentation showing that the petitioner filed these 2008 or 2009 returns. The returns in the record are originals (not copies), with original signatures. The beneficiary dated both returns March 7, 2010, nearly a year after the filing deadline for the 2008 return.

The petitioner submitted copies of processed checks that the petitioner issued to the beneficiary, in varying amounts, in late 2009. The petitioner's issuance of these checks several months after the petition's filing date are not evidence of continuous, lawful employment before the filing date. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971); 8 C.F.R. § 103.2(b)(12).

With respect to the beneficiary's employment authorization, counsel made legal arguments concerning a district court case, *Ruiz-Diaz v. U.S.*, 2009 WL 799683 (W.D. Wash. 2009). These arguments resurface on appeal and the AAO will address them in that context.

The director denied the petition on or about May 27, 2010, based in part on evidence that the beneficiary lacked the required two years of continuous, lawful employment in qualifying religious work immediately before the petition's filing date. The director cited the beneficiary's arrest at the Raceway gas station and the lapse of the beneficiary's R-1 nonimmigrant status. With respect to the beneficiary's claim that he was distributing literature at the gas station, the director stated: "At the time of arrest the beneficiary was observed by Federal ICE Agents behind a liquor counter helping customers, and bagging purchased items, not handing out leaflets in front of a store."

The director acknowledged the petitioner's claim that the beneficiary continued working for the petitioner after his arrest, in exchange for "love offerings and donations." The director also noted, however, that the beneficiary had no authorization to work for the petitioner at that point. Therefore, the very employment that the petitioner has claimed as evidence of the beneficiary's employment as a religious worker would have been unlawful and, therefore, grounds for denial of the petition under the regulation at 8 C.F.R. § 204.5(m)(11).

On appeal, counsel contends that the *Ruiz-Diaz* decision in 2009 retroactively granted employment authorization to the beneficiary, and therefore he did not work without authorization. Counsel, however, has not shown that the beneficiary qualifies for the retroactive relief that the district court described in *Ruiz-Diaz*. The AAO notes that the Ninth Circuit Court of Appeals subsequently reversed the district court's judgment and vacated the injunction. *Ruiz-Diaz v. USA*, No. 09-35734 (9th Cir. Aug. 20, 2010).

The district court's now vacated injunction waived the accrual of unlawful presence in relation to adjustment applications, but did not waive or nullify the regulations at 8 C.F.R. § 204.5(m)(4) and (11), which require an alien's qualifying experience in the United States to have been authorized under United States immigration law. Specifically, the district court held that:

For purposes of 8 U.S.C. § 1255(c) and § 1182(a)(9)(B), if a beneficiary of a petition for special immigrant visa (Form I-360) submits or has submitted an adjustment of status application (Form I-485) or employment authorization application (Form I-765) in accordance with the preceding paragraphs, no period of time from the earlier of (a) the date the I-360 petition was filed on behalf of the individual or (b) November 21, 2007, through the date on which the United States Citizenship and Immigration Services ("CIS") issues a final administrative decision denying the application(s) shall be counted as a period of time in which the applicant failed to maintain continuous lawful status, accrued unlawful presence, or engaged in unauthorized employment.

Id. at 2. The district court's order specifically referred to 8 U.S.C. § 1255(c) and § 1182(a)(9)(B). The former statutory passage relates to adjustment of status; the latter passage relates to unlawful presence in the context of inadmissibility. The district court's *Ruiz-Diaz* order did not require USCIS to approve any petition under 8 U.S.C. § 1153(b)(4), or to overlook any beneficiary's unlawful employment in the context of such a petition. Rather, the order presupposed an already-approved immigrant petition, and dealt exclusively with adjustment of status, which is the next step in the immigration process. The now vacated injunction never required USCIS to disregard unauthorized employment or lack of lawful status at the petition stage.

Counsel, again citing *Ruiz-Diaz*, states: "any unauthorized employment is unlawful employment. In other words, be it at [the petitioning church] or at Raceway gas station." Counsel fails to explain how the AAO could rationally construe employment at the Raceway gas station as qualifying religious work. Counsel's argument seems to be that, because the beneficiary's employment at the gas station was unlawful, it therefore qualifies him for relief under *Ruiz-Diaz*. Once again, this argument does not address the director's finding that the beneficiary did not continuously engage in qualifying, authorized religious work throughout the 2007-2009 qualifying period.

Counsel contends that the director based the decision "on hearsay, unproven allegations, or subjective criteria." Counsel claims that "[v]ery few" aliens claim to have been pressured into signing incriminating statements. Counsel then asks, rhetorically, "how likely is it for arresting officers to admit in court what they actually do and say in the field?" 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). The AAO gives no weight whatsoever to counsel's completely unsupported presumption that aliens rarely attempt to retract damaging admissions, or that ICE officers are predisposed to lie about their activities.

With respect to counsel's dismissal of the ICE officers' testimony as "hearsay," documentary evidence in immigration proceedings need not comport with the strict judicial rules of evidence. Instead, as in deportation proceedings, "such evidence need only be probative and its use fundamentally fair, so as not to deprive an alien of due process of law." *Matter of Velasquez*, 19 I&N Dec. 377 (BIA 1986); *see also Matter of D*, 20 I&N Dec. 827, 831 (BIA 1994).

Counsel states that the ICE officers' observation of the beneficiary "sitting behind the counter" of a liquor store did not constitute "reasonable, substantial, nor probative" grounds to suspect that the beneficiary worked at the store. Counsel, however, fails to provide any persuasive alternative explanation for what a minister would be doing behind the liquor counter of a gas station convenience store.

Even if the AAO disregarded the circumstances of the beneficiary's arrest entirely, the petitioner does not dispute that the beneficiary's R-1 nonimmigrant status, and its accompanying employment authorization, expired in 2008, long before the petition's August 2009 filing date. The petitioner asserts that, concerned about the beneficiary's immigration status, it suspended his salary, but the beneficiary continued to work for the petitioner while receiving compensation in the form of "love offerings" and "gifts." The petitioner evidently ceased to report the beneficiary's compensation on IRS Forms W-2 after 2007, which, according to the petitioner's version of events, indicates that the petitioner still continued to use the beneficiary's services, but stopped reporting those services to the IRS. At best, this shows the petitioner's awareness of the beneficiary's changed legal situation.

The Board of Immigration Appeals ruled that an alien who "receives compensation in return for his efforts on behalf of the Church" is "employed" for immigration purposes, even if that compensation takes the form of material support rather than a cash wage. *Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982). The petitioner and the beneficiary both maintain that the beneficiary continued working for the petitioner after USCIS denied the extension of his R-1 nonimmigrant status. This continued, unauthorized employment is disqualifying on its face. 8 C.F.R. § 204.5(m)(11).

The petitioner submits a photocopy of a USCIS employment authorization card issued to the beneficiary. The card, valid from December 2, 2009 to December 1, 2011, has no bearing on the beneficiary's employment authorization or immigration status from August 2007 to August 2009.

The AAO affirms the director's finding that the beneficiary engaged in unlawful employment, both by working at the Raceway gas station and by continuing to work for the petitioner when he no longer had any authorization to do so. This finding is grounds for denial of the petition under 8 C.F.R. § 204.5(m)(11) and for dismissal of the appeal.

VALID JOB OFFER

The second and final stated basis for the denial of the petition concerns the validity of the petitioner's job offer to the beneficiary. The USCIS regulation at 8 C.F.R. § 204.5(m)(12) advises

that USCIS officers may verify the petitioner's claims through various means, including visits to the site(s) of proposed employment. The same regulation provides that failure to complete this compliance review shall be grounds for denial of the petition.

In a letter dated August 20, 2009, [REDACTED] stated that the petitioner intends to continue to employ the beneficiary as a full-time minister for \$30,212 per year (a figure that includes housing and benefits).

The Form I-360 petition was filed on August 31, 2009. At Part 8, Employer Attestation, the petitioner declared that it has seven employees working at the same location where the beneficiary would be employed. The petitioner also declared that it had filed only 11 Form I-360 special immigrant worker petitions and 15 Form I-129 nonimmigrant religious worker petitions in the preceding five years (*i.e.*, from August 2004 to August 2009).

The petitioner's initial filing also included a photocopied 2008 IRS Form 990 return, which included the following information:

Part I

5. Total number of employees	[blank]
6. Total number of volunteers	14
15. Salaries, other compensation, employee benefits	\$579,685

Part V

2a. ...[N]umber of employees reported on Form W-3	[blank]
2b. [D]id the organization file . . . employment tax returns?	Yes

Some of the tax documents submitted with the petition gave an address for the petitioner on [REDACTED]. When a USCIS officer visited that address, the officer found it to be "a group of residential trailer homes" on property owned by [REDACTED] with no signs or other indications of an operating church on the site.

In the notice of intent to deny the petition, the director noted that the petitioner had claimed no employees, but had claimed to have paid salaries. The director also noted that there is no evidence of a church at the [REDACTED]. The director also claimed that the petitioner "filed approximately 111 petitions for immigration benefits involving approximately 296 individuals as of January 2009." The director instructed the petitioner to account for these findings.

In response, the petitioner submitted a letter attributed to [REDACTED] indicating that, due to an "oversight," the 2008 IRS Form 990 return showed the petitioner's 14 employees as volunteers. The Form 990 was signed by [REDACTED] the church administrator, and prepared by [REDACTED]. The petitioner has failed to submit a corroborating statement from [REDACTED] or from [REDACTED] explaining that the statement that the 14 employees are "volunteers" was an oversight. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the

burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). In addition, as discussed, although the 2008 Form 990 indicates that the petitioner paid \$579,685 in salaries, other compensation and employee benefits, an "Accountant's Review Report" for the calendar year 2008 shows that the petitioner paid \$629,511 in salary expenses. The beneficiary does not appear to have filed Form 1040 income tax returns for any year prior to 2009; therefore, based on the limited and contradictory information in the record, the petitioner has failed to establish that it paid the beneficiary or anyone else prior to 2009. *Matter of Ho*, 19 I&N Dec. at 591.

With respect to the [REDACTED] the petitioner submitted several witness statements to the effect that the address is that of [REDACTED] "parsonage," rather than the church address, and that its occasional use as a mailing address does not indicate a claim that church functions occur at that location. The witnesses assert that the church's principal functions occur at the address shown on Form I-360, on [REDACTED]. One witness, [REDACTED] [REDACTED] claimed to reside at the church's [REDACTED]. [REDACTED] did not claim to be an officer or employee of the church; he claimed only to "have been a member of this church since July of 2002." This anomaly raises questions about the origin and preparation of [REDACTED] letter. Nevertheless, a USCIS site visit to the [REDACTED] in 2007 confirmed that an active church operates at that site, and the AAO finds that the petitioner has explained the use of the [REDACTED].

Regarding the claimed number of petitions filed, counsel stated that the petitioner's congregation included speakers of "more than 20 languages from all over the world," and that employee turnover has resulted in a high filing rate. Counsel stated that, given these factors, "visa issues are more probable than not a recurrent issue." Counsel did not contest that the petitioner has filed approximately 111 petitions. His statement failed to account for the fact that the petitioner stated on Part 8 of the Form I-360 petition that it had filed only 26 immigrant and nonimmigrant petitions in the past five years. It should be noted that the petitioner signed the Form I-360 under penalty of perjury, certifying that "this petition and the evidence submitted with it is all true and correct." 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. at 591

In denying the petition, the director found that the petitioner had not established a legitimate need for the beneficiary's services, and that therefore there did not appear to be a *bona fide* full-time job offer for the beneficiary. The director noted that some of the church's fliers mention the beneficiary's involvement with group meetings one night a week, but that these duties did not amount to full-time church work. The director noted numerous discrepancies in the petitioner's claims, as already discussed, and the finding that the beneficiary engaged in secular employment at a gas station. The director stated that the petitioner had not explained why its recent petition filings on behalf of aliens that it seeks to employ outnumber the usual attendance of parishioners at its worship services.

On appeal, counsel states: “the gross exaggeration of 296 petitions filed by [the petitioner] is erroneous.” Counsel now asserts that the petitioner had filed “about 37” immigrant worker petitions and the same number of nonimmigrant religious worker petitions, and that the petitioner has no idea how USCIS came up with that figure of 111 petitions.” The petitioner, on appeal, echoed counsel’s claim that the petitioner had filed 74 petitions since 1999, including an overlap of 20 aliens who were beneficiaries of both nonimmigrant and immigrant petitions. Previously, in response to the notice of intent to deny the petition, counsel repeated but did not contest the figures provided by the director. Either set of figures reflects a high volume of filings. A list of the petitioner’s filings, provided by the petitioner, shows two petitions filed in 2004; ten in 2005; nine in 2006; 11 in 2007; seven in 2008 and eight in 2009, for a total of 47 petitions filed from 2004 to 2009. Again, the petitioner initially declared to USCIS on the Form I-360, signed under penalty of perjury, that it had filed only 26 petitions during those years. 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. at 591 (BIA 1988). Based on the petitioner’s repeated revised claims, none of the petitioner’s statements in this respect are credible.

Reflecting the statutory requirement at section 101(a)(27)(C)(ii)(I) of the Act, the regulation at 8 C.F.R. § 204.5(m)(2)(i) requires that the beneficiary must be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position solely in the vocation of a minister. Given the fact that other documents intended to establish the petitioner’s payroll are contradictory, the petitioner has failed to credibly document the beneficiary’s receipt of compensation. The record also leads us to believe that the beneficiary has also engaged in secular employment. The petitioner’s attempts to account for the beneficiary’s presence behind the counter at a gas station liquor store have not been persuasive. The petitioner has failed to explain why it first advised USCIS that it had filed 26 immigrant and nonimmigrant petitions from 2004 to 2009, then listed 47 from those years when confronted with USCIS information that it had filed approximately 111 such petitions. Therefore, the AAO affirms the director’s finding that the petitioner has not established the existence of a qualifying offer of employment.

The AAO will dismiss the appeal for the above stated reasons, with each considered as an independent and alternative basis for dismissal. 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. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.