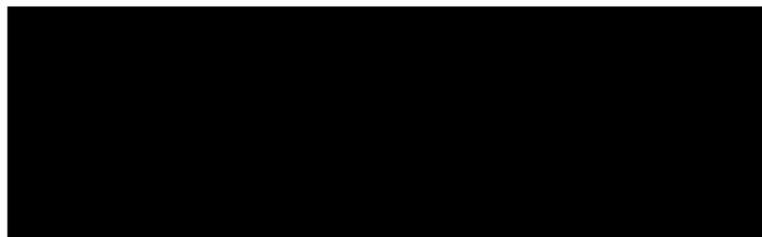


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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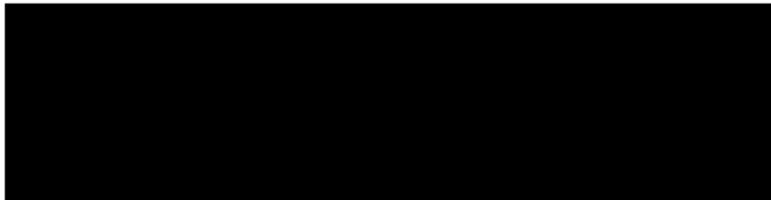
Date: **AUG 13 2012** Office: CALIFORNIA SERVICE CENTER

FILE:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 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 at a church in Irving, Texas. The director determined that the petitioner failed to complete the required employer attestation and failed to establish that the beneficiary will be working in a qualifying position. The director additionally found that the petitioner failed to establish how it intends to compensate the beneficiary and that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition.

On appeal, the petitioner submits a brief from counsel, a weekly schedule, a copy of the beneficiary's resume, a copy of the beneficiary's Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status, a letter from Dallas Baptist University, copies of financial statements for the petitioner for the years 2008 through 2010, a letter from Prince George's County Public Schools, a letter from Capital One Bank, as well as copies of processed checks, a business debit card, and account activity summaries from Bank of America. The petitioner also submits a letter from the beneficiary and two character letters written on behalf of the beneficiary.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States –

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

(II) before 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 to be discussed is whether the petitioner has completed the required employer attestation.

The United States Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(7) requires an authorized official of the prospective employer of an alien seeking religious worker status to complete, sign and date an attestation providing specific information about the employer, the alien, and the terms of proposed employment. The regulation at 8 C.F.R. § 204.5(m)(7) states that the prospective employer must specifically attest to all of the following:

(i) That the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation;

(ii) The number of members of the prospective employer's organization;

(iii) The number of employees who work at the same location where the beneficiary will be employed and a summary of the type of responsibilities of those employees. USCIS [United States Citizenship and Immigration Services] may request a list of all employees, their titles, and a brief description of their duties at its discretion;

(iv) The number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past five years by the prospective employer's organization;

(v) The number of special immigrant religious worker and nonimmigrant religious worker petitions and applications filed by or on behalf of any aliens for employment by the prospective employer in the past five years;

(vi) The title of the position offered to the alien, the complete package of salaried or non-salaried compensation being offered, and a detailed description of the alien's proposed daily duties;

(vii) That the alien will be employed at least 35 hours per week;

(viii) The specific location(s) of the proposed employment;

(ix) That the alien has worked as a religious worker for the two years immediately preceding the filing of the application and is otherwise qualified for the position offered;

- (x) That the alien has been a member of the denomination for at least two years immediately preceding the filing of the application;
- (xi) That the alien will not be engaged in secular employment, and any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer; and
- (xii) That the prospective employer has the 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.

The Form I-360 petition was filed on August 31, 2010. The Employer Attestation portion of the petition, Part 8 of the Form I-360, although signed by the petitioner, was only partially completed. In the spaces provided for the petitioner to give a detailed description of the beneficiary's proposed duties and a description of the proposed compensation, the petitioner stated "Please refer to attached contract of employment." In the space provided for a description of the beneficiary's qualifications for the position offered, the petitioner stated "Please refer to the alien's attached resume." A review of the record indicates that neither an employment contract nor the beneficiary's resume was submitted with the petition.

The AAO notes that the beneficiary filed a Form I-485, Application to Adjust Status, on January 6, 2011. In a signed letter dated September 2, 2010, accompanying that application, the petitioner stated, in part:

[REDACTED] is an ordained minister with the River of Life Center and is the Senior Pastor of our Irving, Texas branch of the church. He is well trained and qualified for the duties and responsibilities that come with such an uncompromising position in this ministry. He holds a diploma of theology from All Nations for Christ Institute, Nigeria, and an advanced diploma in theology from Christ For The Nations Institute, USA. Since accepting employment with the River of Life Center, and was granted the Religious Worker status (R1) petitioned for by the River of Life Center, [REDACTED] is being financially compensated accordingly on a monthly basis.

On February 28, 2011, USCIS issued a Request for Evidence, which stated in part that the petitioner had not submitted and attested to all of the information requested in the Employer Attestation portion of the Form I-360 petition. USCIS noted that the petitioner had indicated that it was submitting an employment contract which would address some of the requested information, but that such a document was not submitted. The notice instructed to submit a properly signed and completed Form I-360 or, in the alternative, to submit "the referred to Employment Contract, addressing ALL of the sections required by the petitioner, to fill out, on Form I-360, including Part

8, number 5 – b, c, d, and e.” (Emphasis in original).

In response to the notice, the petitioner submitted a copy of the Form I-360 petition, with Part 8 unsigned, again referring to an attached employment contract and resume. The petitioner submitted an employment contract, signed by the beneficiary and the senior pastor of the petitioning church and dated January 15, 2008. Regarding compensation, the contract stated: “The employer agrees to compensate the Employee on a non-salary basis of \$1,500.00, excluding other amenities at the direction of the employer.” Regarding the beneficiary’s proposed duties, the contract stated:

Employee shall perform all the activities of an ordained minister of the Gospel as Stated in the employer’s bylaws. Employee acknowledges having received and read a copy of the bylaws, prior to signing this agreement.

The petitioner did not submit a copy of the bylaws which purportedly described the activities of an ordained minister.

On October 13, 2011, the director denied the petition, in part finding that the petitioner had failed to properly complete the employer attestation as required under 8 C.F.R. § 204.5(m)(7). The director noted that the submitted employment contract did not describe the duties to be performed by the beneficiary. The director further noted that, although the contract stated that the beneficiary would receive \$1,500 on “a non-salary basis,” the contract did not indicate how often this amount would be provided. The director also found that the petitioner had not attested to the beneficiary’s qualifications for the proffered position. Therefore, the director concluded that the petitioner “failed to properly address and complete the questions and issues regarding the Employee’s duties, qualification, and compensation.”

On appeal, counsel for the petitioner states the following, in part:

The Employment Contact [sic] states in number 2, that “Employee shall perform the activities of an ordained minister of the Gospel as stated in the employer’s bylaws”. However, the service states that no bylaws was attached. Petitioner claims that the document was given to its former attorney who claims that it was submitted to the service as an attachment. However, the duties of the minister in this petition is discernible from the totality of the documents submitted with the Petition, including but not limited to preaching, baptism, organizing revivals, marriage ceremonies, funeral services, administrative duties, contacts with the state of Texas and its entities, ensuring compliance with all applicable regulations, etc. (A copy of detailed job description and work schedule is attached.)

The petitioner submits a copy of the beneficiary’s resume as well as a document entitled “Pastor’s Weekly Schedule.” No separate “job description” is provided, nor is a copy of the petitioner’s bylaws. Regarding the required attestation as to the beneficiary’s qualification for the position, counsel asserts that, “while a resume may not have been attached, beneficiary’s diplomas and certifications were attached,” and that “these documents show that Beneficiary is unquestionably

qualified to be a minister with the Petitioner.” Additionally, counsel acknowledges that no indication was given as the frequency of the beneficiary’s compensation, but asserts that the petitioner submitted documentary evidence showing past compensation to the beneficiary. Counsel indicates that the non-salaried compensation is equal to \$1,500 per month.

The regulation at 8 C.F.R. § 204.5(m)(7) requires an “authorized official of the prospective employer” to “specifically attest” to all of the information included in that regulation, and to sign and date the attestation. Therefore, the AAO disagrees with counsel’s argument that submitting copies of the beneficiary’s diplomas satisfies the requirement that the petitioner attest to the alien’s qualifications for the position, or that submitting evidence of past compensation satisfies the requirement that the petitioner attest to its intention to compensate the beneficiary. Although the signed letter from the petitioner accompanying Form I-485 includes a statement that the beneficiary is qualified for the proffered position, the record contains no statements by the petitioner attesting to the proposed compensation or the proposed duties of the beneficiary. Counsel provides a purported list of the beneficiary’s duties in a letter on appeal, but the letter is signed only by counsel. Neither the resume or the weekly schedule submitted on appeal are signed by the petitioner, therefore these documents do not establish that the petitioner attests to the duties listed on them.

For the reasons discussed above, the AAO agrees with the director’s determination that the petitioner failed to specifically attest to all of the information required under 8 C.F.R. § 204.5(m)(7).

The second issued to be discussed is whether the petitioner has established that the beneficiary will be employed in a qualifying position.

The USCIS regulation at 8 C.F.R. § 204.5(m)(2) provides that in order to be eligible for classification as a special immigrant religious worker, an alien must:

(2) Be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position in one of the following occupations as they are defined in paragraph (m)(5) of this section:

- (i) Solely in the vocation of a minister of that religious denomination;
- (ii) A religious vocation either in a professional or nonprofessional capacity; or
- (iii) A religious occupation either in a professional or nonprofessional capacity.

The regulation at 8 C.F.R. § 204.5(m)(5) states, in pertinent part:

(5) Definitions. As used in paragraph (m) of this section, the term:

Minister means an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct such religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and
- (D) Works solely as a minister in the United States, which may include administrative duties incidental to the duties of a minister. ...

Religious worker means an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister.

On the Form I-360 petition, the petitioner indicated that the beneficiary would be working as a minister at "River of Life Center, 1000 N. Beltline Road, Suite 103, Irving, Texas 75060." The petitioner attested to the statement that the beneficiary would be working in a full-time position requiring at least 35 hours of work per week. As discussed above, the petitioner did not provide a description of the beneficiary's proposed duties, instead referring to an "attached contract of employment" which was not submitted.

In the Request for Evidence issued on February 28, 2011, USCIS instructed the petitioner as follows:

Work Schedule: Sufficient information regarding specific activities carried out by the position the beneficiary will take was not submitted. Submit a weekly work schedule of the beneficiary, showing **specific hourly duties**. Please describe in full, specific duties and services, in break-down hours spent by the beneficiary, in performing such duties. Please indicate the complete address and contact information of when and where the beneficiary reports to work on weekdays and weekends.

(Bold and underline emphasis in original.) In response to the notice, the petitioner submitted an employment contract which stated that the beneficiary would perform "all the activities of an ordained minister of the Gospel as Stated in the employer's bylaws." The petitioner did not submit a copy of said bylaws or provide any other description of the beneficiary's proposed duties or schedule.

The petitioner additionally submitted a copy of a lease agreement between "The Fellowship" (lessor) and "River of Life Center" (lessee) for the rental of "Suite 203" of the building located at "1000 North Belt Line Road, Irving, Dallas, County, Texas." The document was executed on March 18, 2011, and the agreement indicated that the lease was for a three-month term beginning on January 1, 2011, that the space would be used as a "business office and ministry." An attachment to the lease, entitled "Chapel Agreement -Amendment" provided that the River of Life Center would pay for rental of "the Chapel" to be used on Sunday morning "8:30 to 12:30" and on Wednesday Evening. The chapel agreement was dated March 18, 2011 with the notation "(contract to end March 20, 2011)," and it stated: "The Chapel was not set up for a long term rental. It is only to be used until you grow and can move to a larger facility."

In her decision denying the petition, the director noted that the petitioner failed to describe the beneficiary's proposed duties and to submit a work schedule for the proffered position. The director therefore determined that the petitioner failed to establish that the beneficiary will be working full-time and performing the duties of a minister.

In a letter submitted on appeal, counsel for the petitioner purportedly describes duties to be performed by the beneficiary, but the petitioner submits no statements or evidence in support of counsel's assertions. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). The petitioner submits a document entitled "Pastor's Weekly Schedule," which contains the following chart:

| RESPONSIBILITY | DAY & DATE | START TIME | END TIME | TOTAL HOURS |
|--|------------|------------|----------|-------------|
| PRE-SERVICE COUNSELLING NORMAL CHURCH SERVICE POST-SERVICE COUNSELLING | SUNDAYS | 8:00AM | 4:00PM | 8 |
| NEW COMERS FOLLOW UP GENERAL FOLLOW UP CALLS AND PRAYER | TUESDAYS | 10:00AM | 4:00PM | 5 |
| OFFICE DUTIES PREPARE FOR BIBLE STUDIES BIBLE STUDIES | WEDNESDAYS | 1:00PM | 9:00PM | 8 |
| | | | | |

| | | | | |
|---|-----------|---------|--------|---|
| PRAYER NIGHT AND INTERCESSION | FRIDAYS | 8:00PM | 1:00AM | 6 |
| VISITATION AND EVENAGELISM [sic] PREPARE FOR SUNDAY SERVICE | SATURDAYS | 10:00AM | 6:00PM | 8 |

The letterhead on which the schedule is printed lists the address for “River of Life Center” as “201 S Beltline Rd Suite 104 Irving Texas 75061.” In a letter submitted on appeal, dated November 25, 2011, the beneficiary states, “We outgrew our formal [sic] location at [REDACTED] **March of this year** and now we’ve gotten a bigger space at **201 S Beltline Rd** not far from the former location.” Although the weekly schedule submitted on appeal indicates that the beneficiary works a total of 35 hours, the petitioner has not submitted any evidence such as a deed or lease regarding the new location to establish that it has access to the facility at the times indicated. 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)).

Regarding the issue of the beneficiary’s qualifications for the position, beyond the director’s decision the petitioner has failed to document the standards and training required of its ministers. Without such documentation, the petitioner failed to establish the requirements of the regulation at 8 C.F.R. § 204.5(m)(9).

For the reasons discussed above, the AAO agrees with the director’s determination that the petitioner has not established that the beneficiary will be employed in a qualifying full-time, ministerial position.

The third issue to be discussed is whether the petitioner has established how it intends to compensate the beneficiary.

The USCIS regulation at 8 C.F.R. § 204.5(m)(10) states:

Evidence relating to compensation. Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS

documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

At the time of filing, the petitioner did not provide a description of the proposed compensation to be provided to the beneficiary, nor did it provide evidence regarding its ability to compensate the beneficiary.

The February 28, 2011 Request for Evidence instructed the petitioner to submit additional evidence regarding compensation. The notice stated, in pertinent part:

Salaried or non-salaried compensation: Provide evidence of compensation. Evidence may include past evidence of compensation for similar position; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided. IRS documentation, such as IRS Form W-2 or certified tax returns, must be submitted, if available. If IRS documentation is unavailable, the petitioner must submit an explanation for the absence of IRS documentation, along with comparable verifiable documentation.

In response to the notice, the petitioner submitted an employment contract “made between River of Life Center Inc (hereinafter referred to as ‘Employer’), and [REDACTED] (hereinafter referred to as ‘Employee’).” The contract was dated January 15, 2008 and signed by the beneficiary as well as [REDACTED], senior pastor of the petitioning church and signatory of the I-360 petition. Regarding compensation, the contract stated the following:

The employer agrees to compensate the Employee on a non-salary basis of \$1,500.00, excluding other amenities at the direction of the employer.

The petitioner also submitted copies of six processed checks from “River of Life Center Inc., 1000 S. Belt Line Rd. Ste 105, Irving, TX 75060” as follows:

| Date | Amount | Recipient | Notation |
|-------------------|------------|-----------------------------|---------------------------------|
| April 30, 2010 | \$655.00 | “The Reserve” | “Pastor’s House Rent’s” |
| April 23, 2010 | \$345.00 | “Chase Auto Finance” | “Pastor’s Car Payment” |
| April 7, 2010 | \$1,500.00 | “Pastor [REDACTED]” | “Payroll March” |
| April 6, 2010 | \$1,000.00 | “Dallas Baptist University” | “Church Support for [REDACTED]” |
| April 1, 2010 | \$655.00 | “The Reserve” | “Pastor’s Rent’s April” |
| February 15, 2010 | \$1,500.00 | “Pastor [REDACTED]” | “Compensation February” |

The AAO notes that it is not clear that these payments in fact came from the petitioner rather than from the local “River of Life Center” church where the beneficiary works. The address listed on the checks is that of the local church and five of the checks appear to be signed by the

beneficiary. The petitioner also submitted a copy of a Bank of America checking account statement addressed to "River of Life Center Inc, 4231 Club House Pl Apt 2174, Irving TX 75038-9056." The statement covered the month of November, 2010 and indicated an "Average Ledger Balance" of \$750.57.

In her decision, the director found that the petitioner had not established what the beneficiary's proposed compensation would be, as it had not specified how often the purported \$1,500 non-salaried compensation would be provided. The director further found that, although the petitioner had submitted evidence of some compensation during 2010, the evidence was insufficient to establish the petitioner's ongoing ability to compensate the beneficiary. The director further noted that the petitioner had not submitted IRS documentation or provided an explanation for its absence along with comparable verifiable documentation.

On appeal, counsel for the petitioner states the following:

Description of the Proposed Salary and/or non-salaried Compensation: Compensation can either be salaried or non-salaried. Petitioner's employment contract states that "The employer agrees to compensate the Employee on non-salary basis of \$1,500.00. Excluding other amenities at the direction of the employer." The service states that the employment contract does not indicate how often this non-salary is provided to the beneficiary. Non-salary by its term means that beneficiary will be compensated in another way not inclusive to obtaining actual wages. However, Petitioner submitted checks showing payment of Pastor's house rent, Pastor's car payment, Church Support and compensation checks. The Attached form I-20, also shows that the church supports the Minister by assisting in paying his school fees. The fact that there was no clear indication as to the frequency of the payments should not be decisive, provided the aggregate non-salary compensation can reasonably be monetized to equal \$1,500.00 a month.

The petitioner submits a copy of the beneficiary's Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status, which indicates that the beneficiary received \$17,000 in support funds from "Friend and his Church." The petitioner submits an undated letter purportedly from Dallas Baptist University which lists "church matching scholarship funds" totaling \$4,050 given by River of Life Center to the beneficiary between June 17, 2008 and August 18, 2010.

The petitioner submits unaudited "Balance Sheets" and "Statements of Revenue and Expenditure" for the petitioning church for the years 2008 to 2010, compiled by Universal Mortgages & Financial Services, LLC. The statements do not include a sufficient breakdown to indicate whether any compensation to the beneficiary is included among the expenses. Further, the statements indicate that the petitioner's total expenses exceeded its total revenue in each of the three years. Additionally, the petitioner submits a letter from Capital One Bank in Laurel, Maryland, which states that the petitioner has maintained an account since February 20, 2007 with an average monthly balance of \$5,235.32.

The petitioner also submits copies of an additional five processed checks from "River of Life Center Inc., 1000 S. Belt Line Rd, Ste 105, Irving, TX 75060" to the beneficiary. They include a February, 20, 2011 check for \$1,000 with the notation "Appreciation," a May 16, 2011 for \$500 with the notation "Appreciation," a June 16, 2011 check for \$600 with the notation "Pastor's appreciation," a July 13, 2011 check for \$600 with an illegible notation, and an October 28, 2011 check for \$1,000 with the notation "Payroll." The petitioner submits a photocopy of a Bank of America Business Debit Card held by "River of Life Center [REDACTED]" as well as printouts of "Account Activity" from June 2011 to October 2011 for a Bank of America Business Economy Checking account, with various withdrawals and purchases highlighted. The printouts do not identify the account holder.

The AAO agrees with the director's determination that the petitioner failed to establish how it intends to compensate the beneficiary. The evidence submitted, while showing some past compensation, does not establish continuous compensation equivalent to \$1,500 per month as asserted by counsel, nor do the financial statements submitted by the petitioner support its continuing ability to compensate the beneficiary at that rate. Further, although the petitioner indicated in the employment contract that it would be responsible for providing the beneficiary's compensation, it is not clear from the evidence submitted that the beneficiary's past compensation came from the petitioning church rather than from the church in Irving, Texas. Additionally, the petitioner has not provided an explanation for the absence of IRS documentation regarding its ability to compensate the beneficiary. Counsel's assertion that the beneficiary did not receive "actual wages" is not a convincing explanation for the lack of Forms W-2, as many of the checks submitted were marked either "payroll" or "compensation." It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The fourth issued to be discussed is whether the petitioner has established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition.

The USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the alien 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. Therefore, petitioner alien must establish that the beneficiary was continuously performing qualifying religious work in lawful status throughout the two-year period immediately preceding August 31, 2010.

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

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.

On the Form I-360 petition, the petitioner indicated that the beneficiary entered the United States on August 19, 2005, and that he currently held R-1 nonimmigrant religious worker status. The petitioner also indicated on the petition that it attested to the statement that the beneficiary "has been a religious worker for at least 2 years immediately before Form I-360 was filed," but the petitioner did not provide any further information regarding the beneficiary's employment history during the qualifying period. The petitioner submitted a copy of an approval notice indicating that the beneficiary held R-1 nonimmigrant status authorizing his employment with the petitioner from September 2, 2009 to January 31, 2011.

In the February 28, 2011 Request for Evidence, USCIS instructed the petitioner to submit additional evidence regarding the beneficiary's work history during the two years immediately preceding the filing of the petition, including experience letters describing the beneficiary's schedule, the duties performed, and the form and amount of compensation. The notice also instructed the petitioner to submit evidence of any compensation received, including Forms W-2 if available, and evidence that any employment in the United States was authorized and that the beneficiary maintained lawful immigration status.

In response, the petitioner submitted the January 15, 2008, employment contract. The petitioner also submitted a copy of a lease agreement with "The Fellowship" for office space at "1000 North Belt Line Road, Irving, Dallas, County, Texas," Suite 203, as well as the use of the Chapel. The

lease was for a three month term beginning January 1, 2011. The petitioner also submitted a document with the heading "The Fellowship, All Transactions for River of Life Center," showing entries for "Chapel Rent" and "Office Rent." The document indicates that in 2007, "Chapel Rent" payments were made for the months of February, March, April, May and August. In 2009, "Chapel Rent" payments were made for all months except December. In 2010, "Chapel Rent" payments were made in the months of January and May, and for July through December. "Office Rent" and "Chapel Rent" payments were made. The document does not indicate that any rent payments were made in 2008.

As evidence of past compensation, the petitioner submitted copies of six processed checks, discussed above, from the River of Live Center Inc. in Irving Texas. These included one check for \$1,500 to the beneficiary in February, 2010, and five checks dated in April, 2010, including checks to the beneficiary and checks for "Pastor's Rent's April," "Pastor's House Rent's," and "Pastor's Car Payment."

The petitioner submitted copies of two Employment Authorization Cards issued to the beneficiary, with validity dates of December 18, 2006 to December 17, 2007, and July 24, 2009 to July 23, 2010 respectively.

In her decision, the director found that the petitioner had not established the continuity of the beneficiary's qualifying religious work during the qualifying two-year period immediately preceding the filing of the petition, or that the beneficiary held employment authorization prior to July 24, 2009.

On appeal, counsel for the petitioner states the following:

Petitioner asserts that beneficiary was in lawful immigration status for the two years prior to filing the Petition on August 31, 2010. Beneficiary was a student in lawful F-1 status. See attached Form I-120 [sic] covering the period from 02/06/2008 to 08/31/2010. Further same document shows in part 8, line c. titled "Funds from another source, specify type.: Friends and his church \$17,000." For the time frame in question, August 31, 2008 to August 31, 2010, beneficiary was a volunteer minister for the Petitioner. However, Petitioner helped with paying school fees for beneficiary at the Dallas Baptist University, Dallas. The school had a program where it matched dollar for dollar any contribution towards school fees by a church such as petitioner. It was only after the R status was approved for beneficiary what he entered into an employment contract referred to above on a non-salaried basis. Thus, Petitioner has maintained and stayed in lawful immigration status for all the relevant period of time.

The petitioner submits a copy of the beneficiary's Form I-20 as well as a letter purportedly from Dallas Baptist University regarding "matching scholarship funds" provided by River of Life Center between June 17, 2008 and August 18, 2010. The petitioner submits two letters from two

individuals in Texas, both of whom state that they have known the beneficiary for years and are familiar with his work as a pastor. Additionally, the petitioner submits a letter from the beneficiary, in which he states that he “voluntarily started serving in the newly created branch of the RLC in Texas on Feb 2007,” and has been serving as a minister for the petitioner since his ordination in October 2007.

On appeal, counsel and the beneficiary both assert that the beneficiary served as a minister for the petitioner throughout the qualifying period. Also, the employment contract submitted by the petitioner is dated January 15, 2008, suggesting that the beneficiary was employed by the petitioner since that time. However, the records submitted showing rental payments for office and chapel use indicate that no space was rented during all of 2008, and for some portions of 2009 and 2010, thus calling into question whether the beneficiary was continuously working as a minister for the petitioner during those periods. Doubt cast on any aspect of the petitioner's proof may, of course, 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). Further, the petitioner has not sufficiently established the nature of the beneficiary's duties during the qualifying period in order to establish that such work was qualifying religious work. Additionally, the petitioner has not established that the beneficiary was authorized to engage in employment from the beginning of the qualifying period to July 24, 2009. Accordingly, any work performed prior to that date would not be considered qualifying under 8 C.F.R. § 204.5(m)(11).

Furthermore, the regulation at 8 C.F.R. § 204.5(m)(11) requires compensated employment. The petitioner must submit evidence of prior compensation in the form of IRS documentation, or evidence of qualifying self-support. Permissible circumstances for self-support, outlined in the USCIS regulations at 8 C.F.R. § 214.2(r)(11)(ii), involve the beneficiary's participation in an established program for temporary, uncompensated missionary work. The petitioner has not shown or claimed that the beneficiary participated in such a program, and has offered no evidence that the beneficiary provided for his own support. The petitioner has submitted conflicting evidence regarding the issue of the beneficiary's compensation. The petitioner submitted an employment contract indicating that, beginning on January 15, 2008, it provided the beneficiary with non-salaried compensation of \$1,500, and in the letter submitted with the beneficiary's Form I-485, the petitioner indicated that the beneficiary was “being financial compensated ... on a monthly basis,” since being granted R-1 nonimmigrant status. The petitioner submitted copies of cancelled checks as evidence of compensation provided during portions of the qualifying period, as well as evidence of scholarship funds provided by the petitioner. However, counsel for the petitioner asserts on appeal that, from “August 31, 2008 to August 31, 2010, beneficiary was a volunteer minister for the Petitioner.” Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, at 591-92.

Regarding counsel's claim that the beneficiary's volunteer work within the United States is qualifying experience, any work performed by the beneficiary as a volunteer is not qualifying. In the preamble to the proposed rule, USCIS recognized that although "legitimate religious work is sometimes performed on a voluntary basis . . . allowing such work to be the basis for . . . special immigrant religious worker classification opens the door to an unacceptable amount of fraud and increased risk to the integrity of the program." *See* 72 Fed. Reg. 20442, 20446 (April 25, 2007). Accordingly, any time the beneficiary may have spent in the United States "working" as a volunteer for the petitioner cannot be considered qualifying employment.

For the reasons discussed above, the AAO agrees with the director's determination that the petitioner has not established that the beneficiary has the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition.

The petition will be denied 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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.