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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



C1

Date: **AUG 16 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:

SELF-REPRESENTED

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 Christian missionary organization. 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 missionary pastor for two congregations in Maryland and Virginia. The director determined that the petitioner had not established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition and that the petitioning organization qualifies as a bona fide non-profit religious organization in the United States. The director also found that the petitioner had not established that the churches where the beneficiary would work share the same religious denomination as the petitioner. Additionally, the director determined that the petitioner had not established how it intends to compensate the beneficiary and had not established that the proffered position qualifies as a religious occupation.

On appeal, the petitioner submits a brief as well as copies of letters, contracts and bills from Hilton Washington DC/Rockville Executive Meeting Center, copies of lease agreements with ██████████ Properties, LLC in Falls Church, Virginia and Housing Opportunities Commission of Montgomery County, Maryland, an untranslated letter from ██████████ of ██████████ LLC, a letter from Aleta Orem of Housing Opportunities Commission, copies of utility bills and copies of processed checks from the petitioner to ██████████ Properties and ██████████. The petitioner also submitted a 2008 Agenda and charts showing the beneficiary's weekly activities during 2008, various untranslated fliers and brochures from 2008, 2009, and 2010, a September 26, 2011 letter to the petitioner from the Internal Revenue Service (IRS), and a letter from the petitioner. Additionally, the petitioner submits a letter from its accountant with an attached consolidated statement of financial position of the petitioning organization for 2010, copies of the petitioner's checking account statements, certificates from the Florida Department of State, the Commonwealth of Virginia State Corporation Commission, and the State of Maryland Department of Assessments and Taxation, copies of the beneficiary's Forms 1099-MISC and Tax Return Transcripts for the years 2008 to 2010, and a document entitled "Process to Join the International Ministry."

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 established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

The United States Citizenship and Immigration Services (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. The petition was filed on October 4, 2010. Therefore, petitioner alien must establish that the beneficiary was continuously performing qualifying religious work in lawful status throughout the two-year period immediately preceding that date.

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.

According to the Form I-360 petition and accompanying materials, the beneficiary entered the United States on May 2, 2007 in R-1 nonimmigrant status which authorized his work for the petitioning organization in Miami, Florida until May 2, 2010. The petitioner later filed a Form I-129, Petition for a Nonimmigrant Worker on behalf of the beneficiary which was approved with validity dates of November 28, 2009 to January 28, 2011. In a letter accompanying the petition, the petitioner stated that it had employed the beneficiary as a minister "for our church in different cities of Virginia and Maryland" since 2007. The petitioner submitted a document entitled "[REDACTED] Work History," which stated that the beneficiary served as "State Director of the International Center of Integral Theotherapy" in Maryland and Virginia from 2007 until the present. The petitioner also submitted copies of two Forms 1099-MISC for the year 2008, both from the petitioner in Miami, Florida, to the beneficiary, for the amounts of \$15,452.58 and \$23,355.19. Additionally, the petitioner submitted two Forms 1099-MISC for 2009, also from the petitioner to the beneficiary, one for \$9,600 and the other, which stated "HOUSING ALLOWANCE," for \$31,352.21.

On March 15, 2011, USCIS issued a Request for Evidence, in part requesting additional evidence regarding the beneficiary's prior employment and evidence regarding the petitioner's location.

In a letter responding to the notice, the petitioner stated, in part:

Our International Headquarters is the sponsor and employer for all of our U.S. based missionaries. ... These missionaries usually serve CENTI as Pastors who plant and lead new churches. They are supported by both CENTI International Headquarters and **by the local church**. ... Pastor [REDACTED] is the only employee working at the Virginia and Maryland locations [REDACTED]

(Emphasis added.) The petitioner further stated that the beneficiary "is currently receiving approximately \$48,000.00 and \$52,000.00 in support from CENTI." The petitioner resubmitted copies of the beneficiary's Forms 1099-MISC from 2008, showing a total of \$38,807.77 received from the petitioner. A copy of the beneficiary's tax return transcript for 2008 indicated a gross income of \$43,208.00 for that year. The petitioner also resubmitted copies of the beneficiary's

Forms 1099-MISC from 2009, showing a total of \$40,952.21 received from the petitioner, while a copy of his tax return transcript for that year listed his gross income as \$52,245.00. The petitioner submitted a copy of a Form 1099-MISC from 2010, showing \$23,416.53 received from the petitioner, and a copy of the beneficiary's Form 1040 tax return, listing his gross income as \$61,257. In its letter, the petitioner noted that, because of a change in accounting technology, "form 1099 for the year 2010 was not issued on time," and "[a]mendments to their Individual Income Tax Return for year 2010 will be made in accordance to the form 1099 they will receive."

The petitioner also submitted copies of checking account statements addressed to [REDACTED] [REDACTED] for the months of September 2010 to February 2011. The statements included copies of processed checks signed by the beneficiary, including checks made out to himself with notations for "Housing Allowance" and "Comp Pastor," among others.

As evidence of the beneficiary's work locations in Virginia and Maryland, the petitioner submitted an excerpt from its directory, listing the beneficiary's name next to the addresses in Silver Spring, Maryland and Falls Church, Virginia. The petitioner also submitted documents entitled "Directory Ministry of Virginia" and "Directory Ministry of Maryland," listing the members of the congregations. Additionally, the petitioner submitted copies of brochures which included the Silver Spring and Falls Church addresses in English, but were otherwise untranslated from Spanish. Because the petitioner failed to submit certified translations of the brochures, the AAO cannot determine whether that evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3).

On June 22, 2011, USCIS issued a second Request for Evidence. The notice instructed the petitioner to submit evidence "to prove activity at the two work locations" in Virginia and Maryland, as well as additional evidence of the beneficiary's employment during the two-year qualifying period.

In a letter responding to the notice, the petitioner stated the following regarding the beneficiary's work locations:

Pastor [REDACTED] has been working on two growing locations. Attached as Exhibit B please find a copy of the lease agreement, copies of utility bills, color photographs and business hours, weekdays and weekend for the year 2009 and advertisement indicated meeting days, and special activities for the Virginia and Maryland location. In addition, please find a schedule of services for year 2011. For the Maryland location, attached please find the lease of the first work location from 2009 to 2010 at [REDACTED] Apartments at [REDACTED]. In addition, please find pictures of this location, and schedule of services on this location for year 2009. Let me clarify that we had to move our meetings to another location since this place was been remodeled. The Maryland meetings are now been held at Pastor [REDACTED] apartment (see attached lease and copy of utility bills). In addition, there is a prayer group on one of the congregant's apartment. Let me clarify that the Maryland congregants would go to the mass

service on Saturday or Sunday at the Virginia location.

The petitioner submitted a copy of a lease for the Falls Church, Virginia location, 2009 and 2011 flyers listing the weekly schedule of worship services at that location, and photographs purportedly of the Falls Church location. The petitioner also submitted a copy of a lease agreement for Sunday use of the Holly Hall Apartments dining room and kitchen in Silver Spring, Maryland for the period from May 10, 2009 to May 10, 2010, a 2009 flyer listing a Wednesday prayer group in Rockville, Maryland, and Sunday service in Silver Spring, and photographs purportedly of the Maryland location.

The petitioner again submitted tax documentation for the beneficiary for the years 2008 to 2010, this time including two Forms 1099-MISC from the petitioner, one with the notation "HOUSING ALLOWANCE," totaling \$55,756.59 for the year.

On August 30, 2011, the director denied the petition, in part finding that the petitioner had failed to establish that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition. In addition to noting discrepancies in the record, the director stated that the petitioner failed to submit IRS wage and income transcripts or Forms W-2 to account for all of the beneficiary's income during the qualifying period. In a discussion of the petitioner's assertion regarding the change of the beneficiary's work location in Maryland, the director noted that the regulations as they existed when the beneficiary was approved as an R-1 nonimmigrant required an authorized official of the organization to provide the "name and location of the specific organizational unit of the religious organization" for which the alien would work.

On appeal, the petitioner submits additional evidence regarding its rental locations in Virginia and Maryland as well as additional evidence regarding the religious activities at those locations. The petitioner also submits copies of the beneficiary's Forms W-2 and Tax Return Transcripts for the years 2008 to 2010. The 2010 Tax Return Transcript lists the beneficiary's gross income as \$61,257.00.

As mentioned by the director, the regulations at 8 C.F.R. §§ 214.2(r)(3)(ii)(E), as were in effect when the beneficiary was approved as an R-1 nonimmigrant, required an authorized official of the organization to provide the "name and location of the specific organizational unit of the religious organization" for which the alien would work. The regulation at 8 C.F.R. § 214.2(r)(6) stated:

Change of employers. A different or additional organizational unit of the religious denomination seeking to employ or engage the services of a religious worker admitted under this section shall file Form I-129 with the appropriate fee ... Any unauthorized change to a new religious organizational unit will constitute a failure to maintain status..."

Further, the regulation at 8 C.F.R. § 214.1(e) provides that a nonimmigrant may engage only in such employment as has been authorized. Any unlawful employment by a nonimmigrant constitutes a failure to maintain status.

In this instance, the beneficiary's R-1 status only authorized his employment with the named employer, the International Center for Integral Theotherapy in Miami, Florida. However, the tax documentation submitted by the petitioner indicates that for each of the years 2008 through 2010, the beneficiary's gross income exceeded the amount he received from the petitioning organization. In response to the March 15, 2011 Request for Evidence, the petitioner indicated that the beneficiary receives compensation from both the petitioning organization in Miami, and from the local churches where he works as pastor. Further, the checking account statements addressed to the Falls Church location included copies of processed checks made out to the beneficiary, suggesting that he was receiving compensation from the Virginia church. The AAO notes that, regardless of the affiliation between the petitioner and the churches in Maryland and Virginia, the beneficiary was not authorized to engage in employment with any affiliated organization without first obtaining authorization through a separate Form I-129 petition.

The evidence submitted does not indicate the source of the beneficiary's extra income beyond that which was recorded on the Forms 1099-MISC from the petitioner. However, as the beneficiary was only authorized to work for the petitioner, any employment for another organization would have been unauthorized and would constitute a failure to maintain status. Therefore, the petitioner has not established that the beneficiary maintained lawful status throughout the qualifying period as required by 8 C.F.R. § 204.5(m)(4).

Further, an alien seeking classification as a special immigrant minister must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought, and must intend to be engaged solely in the work of a minister of religion in the United States. *See Matter of Faith Assembly Church*, 19 I&N 391, 393 (Commr. 1986). The Ninth Circuit Court of Appeals has upheld the AAO's interpretation of the two-year experience requirement. *See Hawaii Saeronam Presbyterian Church v. Ziglar*, 2007 WL 1747133 (9th Cir., June 14, 2007). Because the petitioner has failed to account for the beneficiary's additional income, the petitioner has not established that the beneficiary was engaged solely in the work of a minister during the qualifying period immediately preceding the filing of the petition. Additionally, although the petitioner asserted that it has employed the beneficiary as a pastor in Maryland and Virginia throughout the qualifying period, the "Work History" document submitted by the petition indicates that the beneficiary was employed as "State Director of the International Center of Integral Theotherapy" during the same period, suggesting that he also held a non-ministerial role in the petitioning organization. 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).

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, lawful,

qualifying work experience immediately preceding the filing date of the petition.

The second issue to be discussed is whether the petitioner has established that it qualifies as a bona fide non-profit religious organization in the United States. The USCIS regulation at 8 C.F.R. § 204.5(m)(3) provides that in order to be eligible for classification as a special immigrant religious worker, an alien must be coming to work for a bona fide non-profit religious organization in the United States, or a bona fide organization which is affiliated with the religious denomination in the United States. 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:

Bona fide non-profit religious organization in the United States means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the IRS confirming such exemption.

Bona fide organization which is affiliated with the religious denomination means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code and possessing a currently valid determination letter from the IRS confirming such exemption....

Tax-exempt organization means an organization that has received a determination letter from the IRS establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the Internal Revenue Code of 1986 or subsequent amendments or equivalent sections of prior enactments of the Internal Revenue Code.

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

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or

(iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, as something other than a religious organization:

(A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

On the Form I-360 petition, the petitioner, International Center of Integral Theotherapy, listed its address as [REDACTED] and its IRS tax number as [REDACTED]. The petitioner's letter in support of the petition alternately listed the name of the petitioning organization as "Centro Internacional de Teoterapia Integral" (CENTI). Accompanying the petition, the petitioner submitted a May 4, 1995 letter from the IRS addressed to Centro Internacional de Teoterapia Integral, Inc. at [REDACTED] with the same Employer Identification Number found on the petition. The letter stated that the organization was determined to be exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

In the March 15, 2011 Request for Evidence, USCIS noted that "the proof of tax exempt status submitted shows a location of [REDACTED]" and instructed the petitioner to submit additional evidence regarding the tax exempt status of the petitioning organization at its [REDACTED] address.

In response, the petitioner submitted an October 18, 2010 letter from the IRS addressed to the petitioner at its [REDACTED]. The letter stated, in part: "[t]his is in response to your request of July 16, 2010 regarding copies for your organization," and included a photocopy of the May 4, 1995 determination letter.

On June 22, 2011, USCIS again noted the difference between the address listed on the IRS determination letter and the petitioner's address. The Request for Evidence further stated: "the certification letter was also issued 16 years ago and is not current." The notice instructed the petitioner to submit a current determination letter.

In response, the petitioner submitted a July 8, 2011 letter from the IRS to the petitioner at its [REDACTED] address confirming the petitioning organization's Employer Identification Number of [REDACTED]

In the August 30, 2011 decision, the director stated that the July 8, 2011 letter confirmed the petitioner's address and its identification number, but "does not confirm the petitioner's 501(c)(3) tax exemption status." The director found that the petitioner "failed to support the nonprofit status of the organization [by] using an Internal Revenue Service (IRS) letter that has unresolved differences."

On appeal, the petitioner submits a September 26, 2011 letter from the IRS to the petitioner at its [REDACTED] address with the correct Employer Identification Number. The letter states, in pertinent part:

This is in response to your September 15, 2011, request for information regarding your tax-exempt status.

Our records indicate that you were recognized as exempt under section 501(c)(3) of the Internal Revenue Code in a determination letter issued in May 1995.

The AAO finds that the petitioner has established that it qualifies as a bona fide non-profit religious organization in the United States and will withdraw the director's findings with regard to this issue.

As an additional ground for denial, the director determined that evidence did not establish that the churches where the beneficiary would work share the same religious denomination as the petitioning organization.

The regulation at 8 C.F.R. § 204.5(m)(5) provides the following definition:

Religious denomination means a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes one or more of the following:

(A) A recognized common creed or statement of faith shared among the denomination's members;

(B) A common form of worship;

- (C) A common formal code of doctrine and discipline;
- (D) Common religious services and ceremonies;
- (E) Common established places of religious worship or religious congregations; or
- (F) Comparable indicia of a bona fide religious denomination.

In the decision denying the petition, the director asserted that, although the petitioner's evidence showed "some affiliation relationship," the petitioner had not established that the congregations in Maryland and Virginia are "under the same ecclesiastical government."

The AAO will withdraw the director's findings on this issue. In the evidence accompanying the Form I-360 petition, the petitioner indicated that it is a Christian missionary organization, affiliated with the Cruzada Estudiantil y Profesional de Colombia, whose missionary pastors are engaged in the practice of "theotherapy." The petitioner asserted that it has employed the beneficiary as a minister "for our church in different cities of Virginia and Maryland" since 2007, and submitted evidence of the beneficiary's ordination and training certificates from Cruzada Estudiantil y Profesional de Colombia. In response to the Requests for Evidence, the petitioner additionally explained that it is a "headquarters" which employs missionaries to plant new CENTI churches and act as the pastors for the planted churches. The petitioner submitted printouts from its website clarifying its philosophy, visions and strategies, a document listing CENTI's requirements for its missionary candidates, as well as copies of its directory listing the congregations in Silver Spring, Maryland, and Falls Church, Virginia as CENTI churches.

The AAO finds this evidence sufficient to demonstrate that the churches in Maryland and Virginia where the beneficiary acts as minister belong to the same denomination as the petitioning organization.

In the decision, the director also determined that the petitioner has not 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.

In a letter accompanying the petition, the petitioner asserted that it has employed the beneficiary as a minister in Virginia and Maryland since 2007, and stated:

Mr. [REDACTED] receives a non-salaried compensation package, which includes a monthly stipend of \$1,000.00 per month, and housing allowance of \$1,800 per month. The approximate valued [sic] of this support varies, but is usually between \$2,800 and \$3,000 per month. Thus the entire compensation package is valued at approximately \$33,600.00 and \$36,000.00 per year.

The petitioner gave the same description of the beneficiary's compensation on the Form I-360 petition. In support of its ability to compensate the beneficiary, the petitioner submitted copies of two Forms 1099-MISC for the year 2008, both from the petitioner in Miami, Florida, to the beneficiary, for the amounts of \$15,452.58 and \$23,355.19. Additionally, the petitioner submitted two Forms 1099-MISC for 2009, also from the petitioner to the beneficiary, one for \$9,600 and the other, which stated "HOUSING ALLOWANCE," for \$31,352.21.

The Request for Evidence issued on March 15, 2011 instructed the petitioner to submit copies of the beneficiary's 2008, 2009 and 2010 federal income tax returns with all Forms W-2 and 1099-MISC, as well as copies of the beneficiary's last six pay statements.

In response, the petitioner submitted the beneficiary's IRS Tax Return Transcripts for 2008 and 2009 and resubmitted copies of the beneficiary's Forms 1099-MISC from those years. The petitioner also submitted a signed copy of the beneficiary's 2010 Form 1040 tax return, as well as a copy of the beneficiary's 2010 Form 1099-MISC which indicated that the beneficiary received \$23,416.53 from the petitioner in nonemployee compensation. Additionally, the petitioner submitted copies of statements from a Wachovia checking account held by [REDACTED] in Falls Church, Virginia, including copies of processed checks signed by the beneficiary.

On June 22, 2011, USCIS requested additional evidence regarding the petitioner's ability to compensate the beneficiary. In response, the petitioner submitted a copy of a financial statement, including "Balance Sheet," "Income Statement," and "Statement of Cash Flows" from 2010. At the bottom of each page was printed: "See Accountants Compilation Report, [REDACTED] CPA." Additionally, the petitioner submitted copies of the beneficiary's Forms 1099-MISC and IRS Account Transcripts for the years 2008 to 2010, including a second Form 1099-MISC for 2010 for \$37,840.06, which stated "HOUSING ALLOWANCE."

In denying the petition, the director found that the 2010 financial statement was incomplete as it referred to a compilation report which was not submitted. The director further found that, although the petitioner submitted evidence of its past compensation of the beneficiary, it had not submitted evidence of "similar positions." The director concluded that the petitioner had failed to establish its continuing ability to compensate the beneficiary.

On appeal, the petitioner submits a June 9, 2011 letter from [REDACTED] Certified Public Accountants, which states, in part:

We have compiled the accompanying consolidated statement of financial position of CENTRO INTL DE TEOTERAPIA INTEGRAL and subsidiaries (a non profit organization) as of December 31, 2010, and the related consolidated statements of activities and cash flows for the year then ended, in accordance with Statements on Standards of Accounting and Review Services issued by the American Institute of Certified Public Accounts.

Copies of the previously submitted "Balance Sheet," "Income Statement," and "Statement of Cash Flows" are attached to the letter along with additional pages entitled "Statement of Financial Position," "Statement of Activities [sic]," and "Increase (Decrease) in Cash and Cash Equivalents." The petitioner additionally submitted copies of its Chase checking account statements for May, June and July of 2011 with ending balances of \$76,185.98, \$49,275.52, and \$403,027.38 respectively.

The regulation at 8 C.F.R. § 204.5(m)(10) states that the petitioner's evidence of how it intends to compensate the beneficiary may include evidence of past compensation for similar positions in the form of IRS documentation or other verifiable documentation. The petitioner has submitted IRS documentation demonstrating that it consistently paid the beneficiary more than the proffered compensation package for the years 2008 through 2010 for his work in the same position as the one proffered. The petitioner has submitted additional proof of its ability to compensate the beneficiary in the form of a financial statement from its accountant and copies of its checking account statements. The AAO finds that the petitioner has sufficiently established its ability to compensate the beneficiary, and will therefore withdraw the director's findings on the issue.

As the final ground for denial, the director found that the petitioner has not established that the proffered position qualifies as a religious occupation. 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 USCIS regulation at 8 C.F.R. § 204.5(m)(5) includes the following definitions:

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 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 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.

On the Form I-360 petition, the petition indicated that the beneficiary will be working as a minister. The petitioner listed the position title as "Missionary – Pastor" and gave the following description of the beneficiary's proposed duties:

Preaching at the main services, planning and lecturing for bible studies, leading evangelical works to reach out to non-Christians in the area. In addition, he will engage in leading worship services and activities, evangelistic ministry, baptizing, officiating weddings and funerals, and conducting home visitations.

In the letter accompanying the petition, the petitioner described the beneficiary's qualifications as follows:

Mr. [REDACTED] has received the unique training and education provided by the International Center of Integral Theotherapy – CENTI and the Cruzada Estudiantil y Profesional de Colombia. He has several certificates that corroborate this information. He received a certificate in Religious and Theological Sciences from an approved institute for Education at the Technical Level, SER (“Be”) International Institute; an Ordination Certificate from the International Center of Integral Theotherapy, a certificate from the International Center of Integral Theotherapy for the completion of the course number four (4) giving him the title of Master Coordinator; a certificate for the completion of the actualization of his courses of studies in the International Center of Integral Theotherapy of Cruzada Estudiantil y Profesional de Colombia; and a certificate giving the title of Senior Coordinator from the Cruzada Estudiantil y Profesional de Colombia. In addition, he is a well-experienced Theotherapist with 11 years of experience.

The petitioner submitted a copy of the beneficiary's ordination certificate as well as copies of the other diplomas and certificates described in the petitioner's letter.

On March 13, 2011, USCIS requested additional evidence regarding the proffered position, including a detailed explanation of the requirements for becoming a pastor and evidence that the beneficiary met such requirements. The Request for Evidence also instructed the petitioner to clarify whether the beneficiary is ordained and has authorization to conduct religious worship and perform other services usually performed by members of the clergy.

In its letter responding to the notice, the petitioner asserted that it frequently uses the terms missionary and pastor interchangeably because “[o]ur ministers are missionaries in that they reach into new places where CENTI does not already have a presence to plant a new church for CENTI.” The petitioner stated that the requirements to become a CENTI missionary are therefore the same as the requirements to become a pastor of a planted church, and the requirements include completing at least two “Cursos de Formacion” (CF) courses, of which it asserted the beneficiary has completed four. The petitioner stated that the beneficiary has been ordained. The petitioner submitted a detailed weekly schedule for the beneficiary, as well as document entitled “Requirements for candidates to be missionaries of CENTI” which included “Fulfillment of the Academic Curriculum, to have graduated at least of CF2.” The petitioner also resubmitted copies

of the beneficiary's certificate of ordination and other certificates, including a certificate of completion for "CF4" from the Colombian Center of Integral Teoterapia.

In the June 22, 2011 Request for Evidence, USCIS requested evidence "to establish that the missionary Pastor position is recognized as an occupation related to religious traditional function(s) in this petitioning organization or the denomination."

In response to the notice, the petitioner again asserted that, as a missionary pastor, the beneficiary serves in the role of minister for a newly planted church. The petitioner repeated its description of its requirements for the position and resubmitted the beneficiary's certificates and weekly schedule. The petitioner also resubmitted the "Requirements for candidates to be missionaries of CENTI" page as part of a larger "Pastoral Guide Lines" packet.

In her decision, the director stated that "the petitioner has not shown that the petitioner establishes and provides formal training for missionary pastors" and "[t]herefore, the petitioner failed to establish that the position is a traditional function in the organization."

On appeal, the petitioner asserts that the evidence previously submitted establishes that the petitioning organization does have a formal training process for its missionary pastors, which the beneficiary has completed, and submits copies of previously submitted evidence.

The requirement that the proffered position must relate to a traditional religious function, as mentioned by the director, is part of the definition of "religious occupation" and is not applicable in this matter. The petitioner has consistently asserted that the beneficiary's duties will be those of a minister, and it has shown through documentary evidence that the beneficiary's position meets the definition of "minister" under 8 C.F.R. § 204.5(m)(5). The AAO will therefore withdraw the director's findings on this issue.

As the AAO agrees with the director's determination that the petitioner has not established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition, the AAO will affirm the director's decision and dismiss the appeal.

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.