

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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



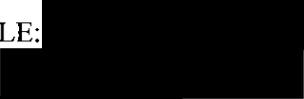
U.S. Citizenship
and Immigration
Services



C1

Date: **AUG 21 2012**

Office: CALIFORNIA SERVICE CENTER

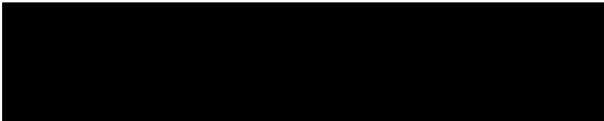
FILE: 

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 Pentecostal church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as an assistant pastor. The director determined that the petitioner failed to establish that the beneficiary will be working in a qualifying position and failed to successfully complete a site visit.

On appeal, the petitioner submits a brief from counsel, letters from officials of Iglesia Cristiana Monte de Sion and Abel Ministries, a Consumer's Certificate of Exemption from the Florida Department of Revenue, copies of lease agreements, invoices, and tenant ledgers from Stor-All Storage and Coastal Storage, Ltd., and letters from four individuals identified as elders of the petitioning church.

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 United States Citizenship and Immigration Services (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 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.

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.

The petitioner filed the Form I-360 petition on January 19, 2010. On the petition and in accompanying materials, the petitioner indicated that the beneficiary is an ordained minister of the Pentecostal church who will work for the petitioner as a full time assistant pastor. In a letter dated July 15, 2009, the petitioner described the duties of the proffered position, in part, as follows:

As an Assistant Pastor, Pastor [REDACTED] duties include: Organizing church events, officiating at all sacraments, rites and ordinances, performing wedding ceremonies, communion services, baptismal services, personal visitations and overseeing all the weekly in-house meetings. Above all, he is authorized to perform any and all functions which by common law and Christian custom constitute the responsibilities of a minister of the gospel. ... He works general office hours in our church during 8:00am until 2:00pm, where he performs church related matters such as spiritual counseling, conducting morning prayers, performing legal procedures related to the functioning of the church when necessary, and also plan, coordinate and organize the events described above. He works from 6:00pm to 10:00pm, during our regular church service hours and assists the Senior Pastor during the Service.

In the same letter, the petitioner stated that the office hours are held Monday through Friday, and are "Located at: 1390 N. Seacrest Blvd. Boynton Beach, FL. 33435." The petitioner also stated that its services are held at the same location on Thursday, Saturday and Sunday evenings. The petitioner submitted a copy of a February 13, 2009 lease agreement with the Bible Church of God, Inc., located at 1390 North Seacrest Boulevard. However, the agreement stated that it was "based on 3 (three) night services" on Thursday, Saturday and Sunday, and did not indicate that the petitioner was permitted to use the facility from 8:00am to 2:00pm, Monday through Friday. 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).

In a letter dated November 19, 2009, also submitted with the petition, the petitioner alternately referred to the beneficiary's title as "associate pastor" and described "the necessary steps to become an Ordained Minister for our ministry" as follows:

If the person wants to be a minister, needs to study in an official established Biblical Institute, to know deeply all the biblical theology and Christian foundations. I recommend the Instituto Biblico Monte de Sion, where Pastor [REDACTED] is the principal academic. While studying, the person has to be involved in any ministry within the church, and could be recognized Elder.

Gradually, the person will show signs of called by God to the ministry, and the leaders will offer all the opportunities and facilities to develop his/her abilities given by God.

Then the person will find the right place to serve God, in the Church of Jesus Christ and preaching to others who do not know God.

After five years of permanent service in the ministry like an Elder, good reputation, high-quality outcomes and evident maturity, the person will be considered Minister and we will proceed to the ordination ceremony. In this way he/she will be recognized Ordained Minister.

Once the person has been serving in the ministry as an Ordained Minister for five consecutive years, he/she may be recognized as an Associate Pastor. At this point the person may serve as Pastor at a church in need or may start a new church because he/she has shown the fruit needed to perform this honorable position.

On the Form I-360 petition, the petitioner stated that the beneficiary became an ordained minister in 1994 "after passing the professional exam for ordained ministers required by Mexican authorities" and also "received his Certificate of Ordination from the Petitioning church on December 20, 2003, where he was ordained according to the Church's specific requirements." The petitioner also stated that the beneficiary has a degree in Biblical and theological studies "from an officially established institute." The petitioner submitted copies of the beneficiary's diplomas and certifications, a copy of an ordination certificate from the Christian Community Sion in Guadalajara, dated August 17, 1994, and a copy of an ordination certificate from the petitioner dated December 20, 2003.

According to the evidence in the record, the beneficiary entered the United States on August 25, 2003. On Form G-325, Biographic Information, submitted with Form I-485, Application to Adjust Status, which was filed concurrently with the I-360 petition, the beneficiary indicated that he had been employed by the petitioner as an assistant pastor since August 2003. The petitioner asserted that, in order to be ordained within the petitioning organization, an individual must have served in a ministry within the church for five years and, in order to become an associate pastor, the person must serve as an ordained minister within the church for another five years. The petitioner asserted on the petition that the beneficiary was ordained on December 20, 2003 "according to the Church's specific requirements." However, the evidence submitted indicates that the beneficiary had been working for the church for less than four months at the time of his ordination. Further, although the petitioner described the process for becoming an associate pastor as taking ten years of service within the petitioning organization, the beneficiary asserted on his Form G-325 that he was employed by the petitioner in that position since his entering the United States in August of 2003. Therefore, the AAO notes serious inconsistencies regarding the petitioner's requirements for the position and the beneficiary's qualifications. See *Matter of Ho*, 19 I&N Dec. at 591-92 (BIA 1988).

On May 13, 2010, USCIS received a letter from the petitioner stating that on March 22, 2010, it had moved to a new location at 1958 South Congress Avenue, West Palm Beach, Florida.

On May 5, 2011, USCIS issued a Notice of Intent to Deny the petition, based in part on a failed site visit. The notice also instructed the petitioner to submit additional information regarding the proffered position as follows:

Proffered Position: What is the beneficiary's job title? Provide a **detailed description** of the work to be done including specific job duties, level of responsibility/supervision, and number of hours per week to be spent performing each duty. Include a daily and weekly schedule for the proffered position. List the minimum education, training and experience necessary to the job and submit documentary evidence to show that the beneficiary has met such requirements. Further, explain how the duties of the position relate to a traditional religious function.

In response to the notice, the petitioner submitted a document entitled "Weekly Schedule," which identified the petitioner's address as 1958 South Congress Avenue and stated that office hours are Tuesday to Friday, 9:00am to 1:30pm, and services are held on Saturday, Sunday and Monday evenings. In a letter dated May 17, 2011, the petitioner provided a description of the beneficiary's duties similar to the description provided at the time of filing the petition, and stated that the beneficiary works at the church offices during the office hours and also works "from 6:00pm to 10:00pm during our regular church activities and assists the Senior Pastor during the Services" and conducts prayer and leadership meetings. The petitioner additionally listed the following requirements for the proffered position:

- Career in Theological Ministry
- Biblical and Theological Studies, acquired in an official established Institute
- Certified in Theological Studies
- Certified Ordinance to the ministry
- Minimal five years of experience, continuous and selfless service, good reputation and high-quality outcomes, after completing the required Studies and Ordination ceremony that show the call of God to ministry

The AAO notes that these requirements differ substantially from the requirements listed at the time of filing the Form I-360 petition.

On January 17, 2012, the director denied the petition, in part finding that the petitioner failed to establish that the beneficiary will be working in a qualifying position. The director stated, in part:

In this instance, classification of the beneficiary as a special immigrant religious worker requires that the duties of the beneficiary's prospective occupation relate to a traditional religious function. The petitioner does not state the beneficiary's specific duties and level of responsibility and supervision.

To the extent that the director discussed the petitioner's failure to show that the proffered position meets the definition of "religious occupation" under 8 C.F.R. § 204.5(m)(5), the AAO disagrees with that analysis. The

petitioner has consistently represented the proffered position to be a ministerial one, so the relevant definition in the regulations is that of a “minister.”

Under 8 C.F.R. § 204.5(m)(5), a minister is one who 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.” However, in this instance, the petitioner has made contradictory assertions regarding the requirements for the position of assistant pastor and has failed to resolve these inconsistencies through objective evidence. Therefore, petitioner has failed to establish the requirements for ordination as a minister according to the denomination.

The AAO also finds that the petitioner has not established that the beneficiary will be working in a full time position, as required under 8 C.F.R. § 204.5(m)(2). At the time of filing, the petitioner operated at the North Seacrest Boulevard location and claimed the beneficiary was working full time. However, the petitioner's assertion that the beneficiary spent 30 hours per week working office hours at the church was directly contradicted by the lease agreement for that location. In response to the Notice of Intent to Deny, the petitioner provided a schedule for its current South Congress Avenue location which indicated that the beneficiary works in excess of the 35 hours per week required by the regulations. However, the petitioner did not submit any documentary evidence such as a deed or lease 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)).

For the reasons discussed above, the AAO agrees that the petitioner has failed to establish that the proffered position is a qualifying one.

Furthermore, on appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); see also *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

As the second ground for denial, the director found that the petitioner failed to satisfactorily complete a compliance review site visit.

The USCIS regulation at 8 C.F.R. § 204.5(m)(12) reads:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An

inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

At the time of filing, the petitioner identified its location as 1390 North Seacrest Boulevard, Boynton Beach, Florida, and submitted a copy of a lease for the facility at that address, dated February 13, 2009. As discussed above, the petitioner indicated that the beneficiary's schedule included daily "office hours" from 8:00am to 2:00pm. Accompanying the petition, the petitioner submitted a "List of Non-Salaried Church Members" which included a "Secretary" who "helps voluntarily with general administrative work."

On May 5, 2011, USCIS issued a Notice of Intent to Deny the petition, based in part on a failed site visit conducted at the petitioner's previous location of record, 6295 Lake Worth Road, Suite 20, Greenacres, Florida. The notice stated, in part:

The site check was conducted on February 10, 2009 by West Palm Beach (WPB)/FDNS Immigration Officer, however, the facility was closed at the time of site visit. The facility is located within a shopping plaza and includes several offices within the plaza are connected internally but has multiple doors to the outside making it difficult to identify the actual location of the organization and all the windows are blacked out which does not allow visibility to the inside facility. Contact was made with an individual coming out of another office space within the complex, however, when questioned about the organization he was vague and could not remember the last time he saw anyone inside the facility. In the months of February, March and April 2009, telephonic contact was attempted at various times of the day, but there was no response. The Immigration officer left a message on the answering machine of the petitioner but no return calls were ever received.

In response to the notice, the petitioner asserted that, although the lease for its new location was dated February 13, 2009, the petitioner was in the process of moving beginning on February 9, 2009, and "during that week were hardly there, because we were very busy in the transportation and accommodation of our furniture." The petitioner submitted a letter from its landlord at the North Seacrest Boulevard location, the Bible Church of God, Inc., stating that the petitioner "began moving the equipment prior to February 9-13, 2009." In another letter, the senior pastor of the petitioning church stated the following:

I, [REDACTED] of the Church Ministerios Restauracion "El Monte de los Olivos", do hereby want to clear up the issue with the telephone numbers and missed calls. When the Church submitted the Petition on behalf of Pastor [REDACTED] in August of 2006, we wrote on this petition the telephones which we [sic] functioning back then: (561) 966-3471 for our office and (561) 202-6826, a residential telephone number for the Pastor (just in case the office number was not working). The residential telephone line was turned off on December 2008, however, the Church's office telephone continued working until it was "unplugged" on February 9, 2009, for the move to a new location. Even though it was "unplugged" the telephone continued to be

active or on “hold” while we were installing ourselves at the new office location since we wanted to conserve the same telephone number and no one was able to check the messages left on the office telephone line for a while. When our new office location was ready, the telephone company AT&T informed us that due to regional or geographic issues it was impossible to conserve the same telephone number, so we had to switch to a new telephone number late April of 2009.

In the January 17, 2012 decision denying the petition, the director found that the petitioner had failed to satisfactorily complete a compliance review site inspection. The director stated that the petitioner had not provided a sufficient explanation of why it had not returned the calls of the investigating officer (IO), stating, in part:

First, the petitioner stated that its move occurred during the week of February 9 to 13, 2009. The IO stated that she left the messages for the petitioner on numerous occasions from February to April 2009. Although the petitioner stated that its phones were not working, the IO did not receive a “not in service” message, rather she received no answer on one line and left messages on an answering machine on the other. The petitioner offers no explanation as to why the calls were not returned over a three-month period. Despite counsel’s argument to the contrary, the evidence does not show that “it is more likely (than) not[”] that the petitioner failed to return the calls because of the size and complexity of the move. The record does not indicate that the petitioner’s move extended past February and, again there is no evidence that the petitioner’s phone[s] were not working. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

On appeal, counsel for the petitioner argues as follows:

In the instant case, the Petitioner not only offered objective independent evidence to corroborate the fact that the Church underwent through a moving process during the month of February, which included changing locations, the organization’s name and telephone numbers. ... Contrary to what the Director concluded, the evidence presented shows that it is more likely that [sic] not that the phone calls were not returned because of the magnitude and complication of said move to a different location, especially taking into consideration the size of this Church.

The petitioner submits documentation related to storage units held by the petitioner in 2007 and from February 23, 2009 to February 9, 2012. The petitioner submits letters from “Elders” of the petitioning church asserting that the beneficiary has worked for the church continuously since 2003. The petitioner also submits letters from two individuals with businesses in the shopping center at 6295 Lakeworth Road in Greenacres, Florida, attesting that the petitioning church was located in Suite 20 of the shopping center from November 2005 to February 2009. Additionally, the petitioner submits letters from [REDACTED] and [REDACTED] of Abel Ministries in Boynton Beach, Florida. In her letter, [REDACTED]

Abel asserts that the petitioner “has been in continuous existence as a church since November, 1997,” and lists the dates during which the petitioner was located at its various addresses. She additionally states:

Although Monte De Los Olivos has always had a telephone number, rarely is there someone present to answer a call. For some reason, even messages left are often ignored. I know this because this has been my personal experience. Regardless of the above, this has always been an active, viable church reaching the Hispanic community.

The AAO agrees with the director that the petitioner has not overcome the negative findings of the site visit and therefore has not successfully completed a compliance review.

The petitioner asserted in a letter responding to the Notice of Intent to Deny that its office phone was unplugged but still active during its move, but that “AT&T informed us that due to regional or geographic issues it was impossible to conserve the same telephone number, so we had to switch to a new telephone number late April of 2009.” However, the petitioner did not explain why “one was able to check the messages left on the office telephone line for a while” if the voicemail remained active. Neither did the petitioner provide any documentary evidence, such as a letter from the phone company, in support of its explanation. 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)). On appeal, the letter from Rev. Abel asserts that “there is rarely someone present to answer a call” at the petitioning church and “even messages left are often ignored.” The AAO notes that this explanation for the petitioner’s failure to return the investigating officer’s calls is inconsistent with the previous explanation regarding the unplugged phone. Further, this explanation is inconsistent with the petitioner’s assertions at the time of filing the petition that the beneficiary works daily “office hours” and that the petitioner additionally has a volunteer “secretary.” 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).

Furthermore, the AAO disagrees with counsel’s assertion that the petitioner has submitted sufficient documentary evidence to establish that the petitioner continuously operated in the capacity of an active religious organization throughout the period in question. In support of the assertions made in the letters submitted on appeal, the petitioner submits documentation which, while showing the petitioner’s continuous rental of storage space, is not sufficient to show continuous religious activity as an actively operating church.

As an additional matter, the AAO finds 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. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

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, the petitioner must establish that the beneficiary was continuously performing qualifying religious work in lawful status throughout the two-year period immediately preceding January 19, 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.

According to the Form I-360 petition and accompanying materials, the beneficiary arrived in the United States on August 23, 2003 in R-1 nonimmigrant status which authorized his employment as a religious worker until August 24, 2006. On the petition, the petitioner indicated that an extension of this status was "pending." However, the record indicates that the relevant Form I-129 petition with application to extend the beneficiary's R-1 status was denied on January 4, 2010, and that the AAO denied a subsequent appeal on October 21, 2010 and subsequent motions to reopen and reconsider on December 29, 2011. The record does not indicate that the beneficiary held any lawful status in the United States which would authorize his employment with the petitioner during the two-year period immediately preceding the filing of the petition. Accordingly, any work performed during this period is not considered qualifying experience.

Therefore, the AAO finds 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 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.