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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 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 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 pastor. The director determined that the petitioner failed to successfully complete a compliance review site visit and failed to establish its ability to compensate the beneficiary.

On appeal, the petitioner submits a brief from counsel, letters from pastors of other churches, the beneficiary's Internal Revenue Service (IRS) Account Transcripts for the years 2004 to 2009, and copies of documents already in the record.

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

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

(ii) seeks to enter the United States –

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

(II) before September 30, 2012, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before September 30, 2012, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

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 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.

The Form I-360 petition was filed on June 7, 2006. On the petition, the petitioner listed its address as [REDACTED], the same address provided as the beneficiary's home address. In a letter accompanying the petition, the petitioner indicated the beneficiary "has been the pastor of this church since March of 2002." The petitioner also submitted a copy of its Internal Revenue Service (IRS) Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code. As part of that application, the petitioner included a "bulletin" brochure which listed its location as "[REDACTED]" and its mailing address as "[REDACTED] 01."

Also accompanying the petition, the petitioner submitted letters from the "Living Stone" School of Ministry and [REDACTED] both written in 2004. In each letter, a representative indicated that the beneficiary was currently working as a Bible school instructor for its respective organization.

On December 11, 2006, USCIS issued a Request for Evidence, in part requesting additional information and evidence regarding the proffered position, including a daily and weekly schedule for the position. In a letter of response, the petitioner stated that the beneficiary "will continue to

work at Mision Cristiana El Calvario as a full-time pastor (that is 40 hours a week).” The petitioner also submitted the following weekly schedule, signed by the beneficiary:

Time	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Obs.
9:00 – 10:00		OFF	Office	Office	Office	Office	OFF	
10:00 – 11:00	Sunday School		Office	Office	Office	Office		
11:00 – 12:00	Worship		Office	Prayer	Office	Prayer		
13:00 – 14:00	Worship		Office	and study	Office	and study		
16:00 – 18:00	Visiting		Visiting		Visiting			
18:00 – 19:00	Visiting		Visiting		Visiting			
19:00 – 21:00				Cell Grups [sic]		Doctrine		

The AAO notes that this schedule includes a total of 32 hours of duties, and therefore conflicts with the petitioner’s assertion that the beneficiary “will continue to” work 40 hours per week. 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). Further, the regulation at 8 C.F.R. § 204.5(m)(2) requires the prospective job to be a “full time (average of at least 35 hours per week) compensated position.”

On March 4, 2010, USCIS issued a Notice of Intent to Deny the petition (NOID) based on a failed compliance review site visit. The notice stated, in pertinent part:

The USCIS is in possession of the following information: On May 23, 2007 a site check was conducted on the petitioner, Concllio MisionCristiana El Calvario [sic]. [REDACTED] The address is an apartment in a medium sized apartment complex. There were no signs around indicating a church in the immediate area. No one answered the door. A systems check of another address, which may have been the church location, [REDACTED] was done. The location is located in an industrial complex. The address indicates this location is a retail business. No church signs or an indication of religious activities could be found at this address.

Submit verifiable documentation of the location where the petitioner holds religious services. Submit with permits and lease agreements to verify [where] the location is for the petitioning organization, and the location is zoned for religious activity.

In a letter dated March 23, 2010, responding to the notice, the petitioner stated:

Since its establishment, the church has experienced sporadic growths; however, some members are truly committed and have remained loyal since its establishment. Pastor [REDACTED] has been the minister of Mision Cristiana El Calvario in the area of Dallas, TX. The Church was a growing ministry at the time, and due to lack of enough economic resources, the ministry has been renting several meeting rooms in different locations of the Metroplex in order to be able to hold their church services. Initially we rented the meeting room in the Country Inn and Suites, Dallas, Texas. Later we were permitted to use a Church building during Saturdays for our Services. However, the membership, spiritual and financial strength continues to grow every day and we hope and pray that one day we will be able to acquire our very own church building.

During all this period we have been using the Pastor's in Charge home address as the mailing address, because in actual fact that is where he has the Church Office and where he sometimes uses to counsel members and hold house fellowships. Right now we hold our weekly services in the building of another ministry, Iglesia Evangelica AlphaY Omega, Inc in 506 Lockwood Drive, Richardson, Texas 75080.

The petitioner submitted a letter from [REDACTED], pastor of Iglesia Evangelica Alpha & Omega, Inc. which stated "I am giving support to Pastor [REDACTED] and his ministry: Mision Cristiana El Calvario by allowing him to carry out his services every Saturday at 2:30pm" at the 506 Lockwood Drive address. The petitioner also submitted a letter from the manager of Comfort Inn and Suites, formerly Country Inn and Suites, asserting that the petitioner used the meeting space at [REDACTED] "for a fixed rate from January 2005 to February 2008. The petitioner submitted copies of invoices from Country Inn and Suites. Additionally, the petitioner submitted letters of recommendation regarding the beneficiary from the pastors of four local churches. In one of the letters, dated March 18, 2010, a representative from Iglesia Evangelica El Tabernaculo De David stated: "For the past year [the beneficiary] has been teaching at the Bible school in our church."

The AAO notes that the date of the site visit, May 23, 2007, was a Wednesday, and the record indicates that the site visit at the beneficiary's home address was conducted at 9:45 am. The petitioner indicated that the beneficiary's home address is used as the church office, but did not provide an explanation for where the beneficiary was during the site visit, or why he was not conducting church office hours at that time according to the previously submitted schedule. 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).

On October 12, 2010, USCIS issued a second NOID, which stated, in pertinent part:

On August 17, 2010, FDNS Immigration Officer attempted to conduct an unannounced I-360 site visit at 506 Lockwood Drive, Richardson, Texas 75080. There he met [REDACTED] and she claimed to be the daughter of [REDACTED]. [REDACTED] is the Pastor of Iglesia Evangelica Alphy [sic] Y Omega Church and his church loans space to the beneficiary, [REDACTED] and his church.

When asked who [REDACTED] was [REDACTED] stated that he maintains the website for her father's church. [REDACTED] though that [REDACTED] also held worship service on Tuesday nights and Saturday afternoons.

On August 31, 2010, the Immigration Officer returned to 506 Lockwood Drive Richardson Texas 75080. There was only one employee present and he appeared to be a janitor. The beneficiary, [REDACTED] was not present.

On September 3, 2010, the Immigration Officer surveyed the beneficiary's neighbors to see if they knew what type of work he did. Three neighbors were contacted. Either they did not know his employment or believed he may be a pastor. The Immigration Officer [sic] looked into the beneficiary's backyard. A sign could be seen in the backyard, which said "Tax Services".

The Immigration Officer returned to the 506 Lockwood Drive Richardson Texas address. He again met with [REDACTED] and she stated the beneficiary was not there and that he only comes in on Mondays and Wednesdays. The Immigration Officer asked her about the sign he had seen in the beneficiary's backyard and asked her if she knew the name of his tax business. [REDACTED] stated that it was called Genesis Services.

On September 4, 2010 (Saturday), the Immigration Officer conducted surveillance on the beneficiary's church to determine if the beneficiary was holding worship services. A small poster was taped to the window outside of the Iglesia Evangelica Alpha Y Omega Church that indicated that the Concillo Mision Cristiana El Calvario Church met on Saturdays at 2:30 p.m.

The Immigration Officer sat across the street from 2:00 p.m. until 3:00 p.m. and did not see anybody enter or exit the church.

It appears from the site inspection the beneficiary is not conducting religious services at the location and time as indicated. It also appears the beneficiary is involved in secular employment involving tax preparation.

Should these facts not be true, submit independent verifiable evidence to overcome the facts obtained during the site inspection.

In a letter dated November 1, 2010, responding to the second NOID, the petitioner stated the following:

Please note that [REDACTED] is not a member of our church, so she is not expected to know the details of the church activities. She truly stated that we rent church space from their church and that we hold services on Saturdays and Tuesdays. If the Immigration Officer had asked to speak with the pastor of the host church, then he would have gotten more information on the activities of Mision Cristiana El Calvario.

Regarding the Visit on August 31, 2010, the immigration officer did not indicate the time of the visit and he did not speak to the janitor who would have given him the information he has regarding our church.

Regarding the neighbors, we really have no control on who they know an associate with, but at least one or two believed the beneficiary is a pastor.

The backyard sign which says "Tax Services" is quite apparent that the sign was not being used, if it was being used for Tax Services, it would have been in front of the yard. This sign was given to the beneficiary by the Pastor of Iglesia Evangelica Alpha & Omega Church to use as a sign for the church, Mision Cristiana El Calvario as a church sign, to be placed in front of the church during worship times. This information is confirmed by Pastor [REDACTED] and attached as evidence.

Further, regarding Genesis Multiservice, this was a company opened for counseling services for the members of our host church, Iglesia Evangelica Alpha Y Omega Church. The pastor [REDACTED] registered this business as a non-profit with the sole purpose of providing advice on the economy and investment to church members who had businesses or were thinking of starting one. The pastor sought the beneficiary's support for this ministry, he requested the beneficiary to provide tax advice to some of their members, and this was done voluntarily, without any payment. However, the ministry did not go as expected, hence the Pastor Jesus Orellana closed the ministry and the company. ...

Regarding the Saturday, September 4, 2010, this was the day we went for evangelism around the neighborhood. The church often chooses a day every month for outside evangelism. The evangelism was supposed to be scheduled for Saturday,

September 11, however, our host Church Iglesia Evangelica Alpha Y Omega, informed us that they needed to fumigate the church on that Saturday, hence we decided to go for evangelism a week earlier. We did not hold any service on that day, since we are not the owners of the building and have no control on what the owner wants to do.

The petitioner submitted a notarized statement from [REDACTED] in which she asserted that she does not know the details of the petitioning church's activities, but does know that the beneficiary has a church and holds services at her father's church. The petitioner also submitted notarized statement from the pastor of Iglesia Evangelica Alpha Y Omega, [REDACTED], in which he stated the following:

The purpose of this letter is to notify you that our ministry as stated on the letterhead opened the doors to Pastor [REDACTED] and his ministry Mision Cristiana El Calvario to conduct his services on Saturday from 2 pm and Tuesday a Bible Study. We are supporting Pastor [REDACTED] and his ministry therefore he can progress and establish himself appropriately.

In reference to Genesis Multiservices as part of our project for the community we open Genesis Multiservices Jan. 2009 to provide more information and orientation to our Hispanic community although it didn't go as we had hope for due to the fact that we're a non-profit organization for that reason we notified the comptroller office to close it in June 2009. Pastor Juarez like others were collaborating with no intentions to gain economically.

The petitioner submitted records from the Texas State Comptroller of Public Accounts, which indicated that Genesis Multiservices held a Texas Limited Sales, Excise and Use Tax Permit from January 1, 2009 to June 30, 2009. The records submitted did not indicate that Genesis Multiservices was a non-profit organization as claimed by [REDACTED]. The petitioner also submitted photos, DVDs and CDs of the beneficiary leading church services.

The AAO notes that, despite the petitioner's assertion, [REDACTED] letter did not confirm the petitioner's statement that he had given the "Tax Services" sign to the beneficiary to be used as a sign for his church. 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). Additionally, neither the statement by [REDACTED] or by [REDACTED] offered support for the petitioner's assertion that the church was being fumigated on September 4, 2010, nor was any documentary evidence submitted regarding the fumigation. 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 January 3, 2011, the director denied the petition, in part finding that the petitioner had not submitted sufficient evidence to overcome the negative findings of the compliance review site visits which called into question whether the beneficiary would in fact be employed in a full-time ministerial position. She stated, in part:

In regards to the petitioner's claim that the beneficiary was out evangelizing on the very same day as the site investigation is not convincing. Regular church services along with the consistency of meeting the needs of a congregation are fundamental in non-secular occupations. Merely stating "That was the day we decided not to be at the church because we were evangelizing" is not convincing. It should also be noted, the sign on the church window did not indicate the service was canceled due to evangelism.

The investigating officer failed the site inspection after several attempts to contact the petitioner. The lack of verifiable wages and the beneficiary's tax business leads the USCIS to conclude the job offer as a full time pastor has not been validated.

On appeal, counsel for the petitioner argues that "the information obtained by the FDNS Officer regarding existence of the church supports the fact that the church is more likely to be in existent and that the beneficiary a pastor than otherwise." Counsel further asserts that the petitioner has submitted independent, verifiable evidence to overcome the facts obtained during the site inspection. The petitioner submits a notarized letter from [REDACTED] dated January 25, 2011, in which he again states that Iglesia Evangelica Alpha Y Omega, Inc. allows the petitioning church to conduct services at its facility "on Saturday from 2 pm and Tuesday a Bible Study." The petitioner also submits letters and affidavits from pastors of other churches attesting to their knowledge of the beneficiary as the pastor of the petitioning church.

The director determined that the findings of the site visits were contrary to the petitioner's assertion that the beneficiary had been and would be employed in a full-time position working solely as a minister, as required by the regulation at 8 C.F.R. § 204.5(m)(2), and that the petitioner had failed to provide sufficient evidence to overcome those findings. The AAO agrees with the director's determinations on this issue.

The petitioner asserted that the beneficiary and his congregation were conducting evangelism outside of the church at the time of the site visit on September 4, 2010, due to the fumigation of its host church, Iglesia Evangelica Alpha Y Omega. However, none of the letters from the pastor of that church or his daughter mention the fumigation and no documentary evidence has been offered in support of the petitioner's assertion. 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)). Further, the petitioner has offered no explanation as to why there was no signage regarding the canceled service, the evangelism, or the fumigation at the time of the inspector's visit.

In response to the December 11, 2006 Request for Evidence, the petitioner provided a weekly schedule which indicated that 12 hours of the beneficiary's 32 hour per week schedule are spent in office hours. In response to the NOIDs, the petitioner asserted that the beneficiary's home serves as the church office since the petitioning church does not have its own permanent facility, and that the beneficiary uses the office for counseling parishioners, among other purposes. However, the petitioner provided no explanation for why the beneficiary was not at home conducting church office hours during either of the inspecting officer's visits to his address, or why there were no signs indicating the location of the church office. During the September 3, 2010 visit to the beneficiary's home address, the officer contacted three neighbors and found that "[e]ither they did not know his employment or believed he may be a pastor." This information does not support the petitioner's claims that the beneficiary's home is an active church office used for counseling parishioners and holding "house fellowships."

In response to the second NOID, the petitioner asserted that the "Tax Services" sign found in the beneficiary's back yard was given to him by Pastor [REDACTED] to be used as a sign for the petitioning church. However, contrary to the petitioner's claim, the letter from Pastor [REDACTED] did not confirm this explanation. Additionally, although the petitioner claims that Genesis Multiservices was a tax service offered to parishioners as a voluntary service and that the beneficiary had no expectation of compensation, the documentary evidence submitted did not support the petitioner's assertion that the business was a non-profit organization. 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).

The letters submitted on appeal from neighboring pastors, while asserting knowledge that the beneficiary is the pastor of the petitioning church, do not provide any evidence regarding the full-time nature of the position. During the August 17, 2010 site visit, [REDACTED] stated that she believed the beneficiary was responsible for maintaining the website for her father's church. Additionally, at various times the petitioner submitted letters from outside churches indicating that the beneficiary has worked teaching Bible school at their institutions. Whether compensated or not, the beneficiary's participation in the tax service further calls into question whether the beneficiary is in fact employed on a full-time basis as a pastor. The petitioner has not persuasively established that the beneficiary will be working for the petitioner for at least 35 hours per week and will work solely as a minister.

The second issue to be discussed is whether the petitioner has established its ability 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 Form I-360 petition, the petitioner indicated that the beneficiary had been employed as a pastor for the petitioning church since March, 2002. The petitioner stated that the beneficiary "will be paid \$350.00 per week plus housing, health insurance, expense allowance, pension, conference and continued education funds."

Also accompanying the petition, the petitioner submitted a copy of its "Monthly Income Statement" dated May 1, 2006, which indicated a year-to-date net income of \$839.22 as of the end of April 2006. A second document, entitled "Mision Cristiana El Calvario Balance Sheet at Dec-2005" listed total assets of \$10,202.49, but provided no information regarding the church's expenses. The petitioner also submitted copies of the petitioner's checking account statements from August 11, 2005 to April 13, 2006, listing monthly balances ranging from \$18.38 to \$636.42, as well as copies of processed checks from the petitioner. These included checks to the beneficiary with the notation "Weekly Salary" showing approximately weekly payments of \$350.00 between mid-January 2006 and mid-May, 2006, and additional checks for \$200, \$300 and \$500 for various weeks in 2005 and early January 2006. Also included were "rent" checks to Fannidella Town Homes for March and April of 2005 and January, February and April of 2006. Uncertified copies of the beneficiary's Form 1040 tax return for 2004 and 2005, also submitted with the petition, listed the beneficiary's total income as \$28,300 and \$24,000 respectively, but did not identify the source(s) of the income.

In the Request for Evidence issued on December 11, 2006, the petitioner was instructed to submit evidence of its ability to pay the beneficiary's wage and copies of the beneficiary's Forms 1040 with all schedules and attachments for the years 2004 through 2006, along with Forms W-2 for each year.

In its letter responding to the notice, the petitioner stated that the beneficiary "will be paid for the year of 2007 \$375.00 per week plus housing allowance, health insurance, expense allowance, pension, conference and continued education funds. The petitioner submitted copies of the beneficiary's weekly "Earnings Statements" from the petitioner for the period from January 22, 2007 to February 11, 2007, which indicated that the beneficiary was being paid at a rate of \$375 per week as salary and \$875 per month as "House Allowance." Additionally, the petitioner submitted a financial statement for the year 2006, indicating a net income of \$186.70 for the year. According to the financial statement, which lists income and expenses by month, in June 2006, the month in which the Form I-360 petition was filed, the petitioner had a net loss of \$132.86 for the month and a net loss of \$585.50 for the year. The AAO notes that the figures provided for January through April of 2006 do not correspond to the figures in the previously submitted financial statement covering those months, therefore calling into question the validity of both statements. 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).

The petitioner submitted a copy of the beneficiary's 2004 Form 1040 without an accompanying Form W-2 and a copy of the beneficiary's 2005 Form 1040 with an accompanying Form W-2 from the petitioner for \$24,000. The petitioner also submitted a copy of the beneficiary's 2006 Form 1040 indicating a total income of \$30,002, along with a Form W-2 from the petitioner for \$29,012, a Form 1099-MISC from [REDACTED] for \$750 and a Form 1099-MISC from [REDACTED] for \$800. The AAO notes that the total income listed on the beneficiary's 2006 Form W-2 and Forms 1099-MISC exceeds that listed on his Form 1040.

In the NOID issued on March 4, 2010, the petitioner was instructed to submit its certified IRS Federal tax returns for the years 2006 through 2009. In its letter responding to the notice, the petitioner stated the following:

Regarding the Certified IRS Federal Tax Returns, please note the Church is not for profit organization, hence we do not file taxes, however we submit Pastor [REDACTED] Substitute Form for W-2, Wage and Tax Statement (Form 4852) and tax returns as proof that he has been employed by the church since 2006 to present.

The petitioner submitted uncertified copies of the beneficiary's Forms 1040 for the years 2006 through 2009, along with Forms 4852, Substitute for Form W-2, Wage and Tax Statement, for 2006, 2008 and 2009, purportedly reporting income from the petitioner in the amounts of \$29,012 for 2006 and \$24,000 each for 2008 and 2009. No Form 4852 was submitted for 2007. On the Forms 4852, the beneficiary indicated "I have been unable to obtain (or have received an incorrect) Form W-2," and when instructed to "Explain your efforts to obtain Form W-2, Form 1099-R or Form W-2c, Corrected Wage and Tax Statement," the beneficiary stated "Requesting to the treasurer." It is unclear why the petitioner, purportedly the beneficiary's employer, was unable to submit the beneficiary's Forms W-2.

The petitioner also submitted a Deposit Account Balance Summary from Chase, indicating that the petitioner held a deposit account since January 19, 2007 with a current balance of \$52.33 and an average balance of \$752.00.

The NOID issued on October 12, 2010 discussed the site visits conducted in August and September of 2010 which called into question whether the beneficiary was involved in secular employment involving tax preparation. The petitioner was afforded an opportunity to submit independent verifiable evidence to overcome the findings of the site inspections.

In response, the petitioner asserted that the tax service, Genesis Multiservice, was a non-profit company founded by [REDACTED] for the purpose of providing advice to church members and that the beneficiary was involved on a volunteer basis "without any payment." The petitioner submitted a Social Security Administration certified summary of earnings for the year 2009,

which indicated that the beneficiary reported only self-employment earnings of \$3,770 for the year. This record contradicts the previously submitted 2009 Form 1040 and Form 4852, which indicated that the beneficiary reported \$24,000 in income from the petitioner, as well as an additional \$4,082 in unidentified business income.

In the January 3, 2011 decision, the director found that the petitioner failed to provide verifiable independent documentation of its employment of the beneficiary. The director concluded that the evidence was insufficient to establish the petitioner's ability to compensate the beneficiary.

On appeal, counsel for the petitioner argues that the evidence submitted, including initial evidence of prior compensation during the two years immediately preceding the petition as well as subsequently submitted evidence, establishes the petitioner's ability to compensate the beneficiary. The petitioner additionally submits IRS Account Transcripts of the beneficiary's Forms 1040 for the years 2004 to 2009.

The AAO agrees with the director that the petitioner has not submitted sufficient verifiable documentation of its ability to compensate the beneficiary. The only IRS documentation submitted regarding compensation of the beneficiary during the two-year qualifying period consisted of uncertified copies of the beneficiary's tax returns from 2004 and 2005 as well as a Form W-2 for 2005 only. The financial statements submitted by the petitioner were not audited and, further, directly contradicted each other. Although the petitioner submitted copies of the beneficiary's Forms 1040 and, on appeal, IRS Account Transcripts for the years 2004 through 2009, these forms do not identify the source of the beneficiary's income and therefore do not confirm the petitioner's ability to pay. As discussed above, no explanation was provided for why Forms 4852 were submitted by the petitioner rather than Forms W-2 to show the source of the beneficiary's income.

Counsel for the petitioner also argues as follows:

The issue of how the Petitioner intends to compensate the beneficiary was raised for the first time in the denial notice. The director failed to provide the petitioner with adequate notice and sufficient information of the deficiencies in its petition, but giving them an opportunity to rebut the information before taking an adverse decision in contraventions of 8 C.F.R. 103.2(b)(16)(i).

The regulation at 8 C.F.R. § 103.2(b)(8) provides in pertinent part:

(ii) Initial evidence. If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.

(iii) Other evidence. If all required initial evidence has been submitted but the evidence submitted does not establish eligibility, USCIS may: deny the application or petition for ineligibility; request more information or evidence from the applicant or petitioner, to be submitted within a specified period of time as determined by USCIS; or notify the applicant or petitioner of its intent to deny the application or petition and the basis for the proposed denial, and require that the applicant or petitioner submit a response within a specified period of time as determined by USCIS.

The AAO finds that in denying the petition, the director complied with 8 C.F.R. §§ 103.2(b)(8)(ii) and (iii), which provide for discretionary authority to request additional evidence, provide notice of the director's intent to deny the application or petition, or deny the petition or application. Further, the AAO notes that in this case, the director issued a Request for Evidence on December 11, 2006, specifically instructing the petitioner to submit additional evidence regarding the petitioner's ability to compensate the beneficiary. Additionally, the NOID issued on March 4, 2010 requested certified copies of the petitioner's tax returns for the years 2006 through 2009. The director subsequently denied the petition because the submitted evidence failed to establish eligibility for the benefit sought. For these reasons, the AAO is not persuaded by counsel's argument that the director erred in her decision regarding this matter.

The AAO finds that there are additional obstacles to the approval 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).

First, 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.

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 June 7, 2006.

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 arrived in the United States on March 19, 2002 and that he currently held R-1 nonimmigrant status expiring on March 17, 2007. At the time of filing the petition, the petitioner also indicated that the beneficiary had served as the pastor of the petitioning church since March 2002.

In the December 11, 2006 Request for Evidence, the petitioner was instructed to submit evidence relating to the beneficiary's immigration status. In response, the petitioner submitted copies of the beneficiary's Form I-94 Departure Record and a visa page from his passport, which show that the beneficiary entered the United States on March 19, 2002 in R-1 nonimmigrant status which authorized his employment with Iglesia Evangelica Bethania, Inc. in Farmers Branch, Texas until March 18, 2004. No evidence was submitted to indicate that the beneficiary held any lawful status which would authorize his employment with the petitioning church.

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.

According to the evidence submitted by the petitioner, the beneficiary's R-1 status only authorized his employment with the named employer, Iglesia Evangelica Bethania, Inc. in Farmers Branch, Texas. Unless and until he received separate approval to work for the petitioning church, any such employment would constitute unauthorized employment and a violation of status.

On November 26, 2008, as required under section 2(b)(1) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008), U.S. Citizenship and Immigration Services (USCIS) published new regulations for special immigrant religious worker petitions. Supplementary information published with the new rule specified:

All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information.

73 Fed. Reg. 72276 (Nov. 26, 2008). Unlike the previous regulations for special immigrant religious worker petitions, the new regulations require that the beneficiary maintained lawful immigration status throughout the two-year qualifying period immediately preceding the filing of the petition and that any qualifying work performed during that period must have been authorized under immigration law.

The AAO acknowledges that the director did not instruct the petitioner to submit evidence in compliance with the new regulations, but finds that the record as it currently stands does not meet the regulatory requirements of 8 C.F.R. §§ 204.5(m)(4) and (11).

Finally, the AAO finds that the petitioner failed to submit the required employer attestation.

Under the regulations published on November 26, 2008, the 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.

Again, the AAO notes that the director did not instruct the petitioner to submit evidence in compliance with the new regulations, but finds that the record as it currently stands does not meet the regulatory requirements of 8 C.F.R. § 204.5(m)(7).

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.