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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 27 2012** Office: CALIFORNIA SERVICE CENTER



IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the 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 Administrative Appeals Office (AAO) remanded the matter to the director for consideration under new regulations. The director again denied the petition. The matter is now before the 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 had not established that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition. The director also found that the petitioner had not responded to issues raised in the Notice of Intent to Deny. Additionally, the director found that the petitioner failed to establish how it intends to compensate the beneficiary.

On appeal, the petitioner submits letters from the petitioner, a copy of an August 5, 2009 memorandum from the Acting Associate Director of United States Citizenship and Immigration Services (USCIS), a list of the petitioning organization's ordination requirements, a letter from Provident Bank, copies of bank account statements, copies of utility bills, and affidavits from the beneficiary and congregation member Edward R. Miller.

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 during the two years immediately preceding the filing of the petition.

The U.S. Citizenship and Immigration Service (USCIS) regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working as a minister or in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The petition was filed on April 23, 2007. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work in lawful immigration 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 supporting materials, the beneficiary arrived in the United States on September 21, 2006 in B-1 nonimmigrant visitor status which expired on April 30, 2007. The regulation at 8 C.F.R. § 214.1(e) states that aliens in such status "may not engage in any

employment.” The record does not indicate that the beneficiary held any lawful status in the United States that would have authorized him to work for the petitioner during the qualifying two-year period. Accordingly, any work performed by the beneficiary in the United States during the qualifying period is not considered qualifying prior experience under 8 C.F.R. §§ 204.5(m)(4) and (11).

In a letter accompanying the petition, the petitioner stated the following:

Since [REDACTED] arrival in the U.S., he is a volunteer doing the missionary works, preaching and teaching the Gospel in our church and since then, he is our regular Bible Study teacher and Sunday Service preacher.

(Emphasis in original). The petitioner submitted a letter entitled “Offer for Employment,” dated April 17, 2007, appointing the beneficiary to the position of [REDACTED] in Bergenfield Area – Bergen County,” “effective immediately.” The letter also stated “[y]ou are given a salary of \$250.00/week and this shall be subject to review annually by the Board of Directors.”

On September 10, 2007, USCIS issued a Notice of Intent to Deny the petition, based in part on the lack of evidence that the beneficiary was employed in a qualifying position for at least the two years immediately preceding the filing of the petition. The notice requested additional evidence regarding the beneficiary’s work history during the two-year qualifying period. The petitioner was specifically instructed to submit details about the beneficiary’s work schedule and duties during this period as well as evidence of compensation for work performed including certified Federal Tax Returns and Forms W-2, or evidence of self-support.

In an October 7, 2007 letter responding to the notice, the petitioner stated that the “generous and very supportive Financial Board of Bergenfield and New Jersey supported him for his daily needs like food, clothing, transportation and shelter while staying here in the U.S.” The petitioner also stated that “[t]he beneficiary will file his tax return as soon as he got his Tax Identification Number.” The petitioner submitted an undated document entitled “Affidavit of Support for Rev. Fernando Cerezo,” signed by members of the “Financial Board and Officers” of the petitioner, which stated the following, in pertinent part:

Pending to the approval of his greencard on the Special Religious category, we will be responsible to take voluntary offering religiously and we are committed to support him until the approval of his greencard.

The petitioner also submitted copies of a “Liquidation Form” and a “Check Request/Petty Cash Form,” both addressed to the petitioner’s accounting department, and both with a notation for \$250.00 for the beneficiary’s “salary.”

Additionally, the petitioner submitted a copy of the beneficiary's resume, which stated that from 2005 to 2006, he worked 20 hours per week as [REDACTED] [REDACTED] from 2001 to 2006, he worked 35 to 38 hours per week as [REDACTED] for the [REDACTED] in Jersey City, New Jersey; and from 1999 to 2005 he worked 30 hours per week as [REDACTED]. The petitioner submitted a letter from [REDACTED] confirming that the beneficiary was a professor from June 5, 2005 to August 5, 2006. The petitioner also submitted a letter from [REDACTED] in Cabuloan, Urdaneta City Pangasinan 2428, Philippines, stating that the beneficiary served as [REDACTED] from January 1, 2001 until he left for the United States. Additionally, the petitioner submitted a "Letter of Appointment" from the petitioner, appointing the beneficiary as [REDACTED] "[e]ffective June 1, 2002." The petitioner did not explain the discrepancies in the dates provided regarding the beneficiary's role as pastor/project coordinator. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The director denied the petition on November 8, 2007, finding in part that the petitioner failed to establish that the beneficiary had performed qualifying religious work for at least the two years immediately preceding the filing of the petition. On December 10, 2007, the petitioner appealed the decision. In a letter accompanying the Form I-290B, Notice of Appeal, the petitioner reasserted that the beneficiary had been performing missionary work on a volunteer basis since arriving in the United States. The petitioner stated: "B1/B2 visa is not allowed to work in the US, that is why we don't offer him anything until we petitioned him." The petitioner submitted an unsigned, uncertified copy of the beneficiary's Form 1040NR U.S. Nonresident Alien Income Tax Return for 2006 which listed his occupation as pastor and indicated that he received \$2,000 in business income. The petitioner also submitted additional "Petty Cash Forms" addressed to its accounting department, including one for \$250.00 with the notation "Allowance of [REDACTED] during his stay at [REDACTED] November - 2006," and one for \$250.00 with notation "Honorarium for [REDACTED] during [REDACTED]" On the second form, the date was written twice, once as "Oct 14, 2006" and once as "Oct 14, 2007."

On December 18, 2008, the AAO remanded the petition for consideration under new regulations that took effect in November 2008.

On February 4, 2009, and December 16, 2009, USCIS again issued Notices of Intent to Deny the petition, requesting additional evidence in compliance with the new regulations, including certified IRS and Social Security administration documentation of the beneficiary's compensation in the United States during the qualifying period, comparable verifiable records of the beneficiary's employment abroad, and evidence that the beneficiary maintained lawful immigration status.

In response to these notices, the petitioner submitted uncertified copies of the beneficiary's Form 1040 tax returns and Forms 1099-MISC for the years 2007 and 2008, indicating that in each of those two years, the beneficiary received \$13,500 from the petitioner. In a January 13, 2010 letter, the petitioner indicated that it had requested but not yet received official IRS transcripts. However, on March 19, 2010, the petitioner submitted IRS Tax Return Transcripts for the years 2006 through 2008. The 2006 transcript indicated "No record of return filed," thus calling into question the validity of the previously submitted 2006 Form 1040NR on which the beneficiary had purportedly reported \$2,000 in income. 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* at 591. The 2007 and 2008 transcripts each indicated that the beneficiary had reported \$13,500 in income.

In a letter responding to the December 16, 2009 Notice of Intent to Deny, the petitioner stated that the beneficiary had been working [REDACTED] since September 2006 to the present."

The beneficiary filed a Form I-485, Application to Register Permanent Residence on July 30, 2009. On Form G-325A, Biographic Information, accompanying the application, the beneficiary was asked to provide information about his employment during the last five years. In response, he indicated that he had worked [REDACTED] Philippines from 1999 to September 2006 and that he worked as a pastor for the petitioner from April 2007 to the present. No other employment was listed.

On February 22, 2010, the director again denied the petition. In the decision, the director found that the petitioner had not submitted sufficient evidence to show that the beneficiary's employment during the qualifying period had been compensated. The director also found the evidence insufficient to show that the beneficiary was continuously performing qualifying religious work.

On appeal, the petitioner argues that the beneficiary is protected from the accrual of unlawful status and unauthorized employment under the *Ruiz-Diaz* litigation, referring to *Ruiz-Diaz v. United States of America*, No. C07-1881RSL (W.D. Wash. June 11, 2009).

The petitioner refers to a case in which the district court invalidated the USCIS regulation at 8 C.F.R. § 245.2(a)(2)(i)(B), which barred religious workers from concurrently filing the Form I-485, Application to Register Permanent Resident or Adjust Status, with the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. On June 11, 2009, the court ordered that the accrual of unlawful presence, unlawful status, and unauthorized employment time against the beneficiaries of pending petitions for special immigrant visas be stayed for 90 days to allow time for beneficiaries and their families to file adjustment of status applications and/or applications for employment authorization. The court specified that unlawful presence and unauthorized work would be tolled "[f]or purposes of 8 U.S.C. § 1255(c) and § 1182(a)(9)(B)." The former statutory passage relates to adjustment of status and the latter relates to unlawful presence in the context of inadmissibility.

The AAO notes that on August 20, 2010, the Ninth Circuit of Appeals reversed and remanded the district court's decision. *Ruiz-Diaz v. U.S.*, 618 F.3d 1055 (9th Cir. 2010). Nonetheless, in accordance with the district court's decision, USCIS implemented a policy tolling the accrual of unlawful status and unauthorized employment until September 9, 2009. Like the district court's ruling, the USCIS policy waives the accrual of unlawful presence in relation to adjustment applications. It does not waive or nullify the regulations at 8 C.F.R.(m)(4) and (11), which require an alien's qualifying experience in the United States to have been authorized under United States immigration law. The beneficiary lacked employment authorization and lawful immigration status during the two-year qualifying period immediately preceding the filing of the petition.

Furthermore, the AAO agrees with the director's determination that the petitioner has not submitted sufficient evidence of prior compensation. The regulation at 8 C.F.R. § 204.5(m)(11) requires compensated employment. The petitioner must submit evidence of prior compensation in the form of IRS documentation, or evidence of qualifying self-support. Permissible circumstances for self-support, outlined in the USCIS regulations at 8 C.F.R. § 214.2(r)(11)(ii), involve the beneficiary's participation in an established program for temporary, uncompensated missionary work. The petitioner has not shown or claimed that the beneficiary participated in such a program, and has offered no evidence that the beneficiary provided for his own support. The petitioner has submitted conflicting evidence regarding the issue of the beneficiary's compensation. The petitioner states that the beneficiary worked on a volunteer basis in the United States prior to filing. However, the petitioner also submitted copies of petty cash forms with notations for the beneficiary's "salary" during the qualifying period. On appeal, the petitioner also submits an affidavit from a member of its congregation, [REDACTED] asserting that he provides free room and board to the petitioner's ministers including the beneficiary as a non-cash donation to the church. However, he does not indicate that he provided such room and board to the beneficiary during the qualifying period, nor does the address of his property match the address listed for the beneficiary in any of the evidence relating to the qualifying period.

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

The regulation at 8 C.F.R. § 204.5(m)(11) also requires verifiable evidence of compensation for any work performed abroad during the qualifying period. Although the petitioner has indicated that the beneficiary worked in the Philippines during a portion of the two-year period preceding the filing of the petition, it has submitted no evidence regarding the beneficiary's compensation for that employment.

Regardless, the issue of whether or not the beneficiary was compensated has no effect on the beneficiary's lack of lawful immigration status during the portion of the two-year qualifying period in which he was in the United States.

Furthermore, the AAO agrees with the director's finding that the petitioner has not established that the beneficiary was continuously performing qualifying religious work during the two years immediately preceding the filing of the petition. The petitioner asserted at the time of filing that the beneficiary was performing missionary work from his arrival in the United States on September 21, 2006 until appointment as pastor on April 17, 2007. However, despite repeated requests, the petitioner has not provided sufficient information or documentation about the beneficiary's specific duties and work schedule during this period. Further, the beneficiary indicated on Form G-325A that he was not employed between September 2006 and April 2007, and he did not mention his purported employment as a professor during 2005 and 2006, included in other evidence submitted by the petitioner. The petitioner has failed to resolve inconsistencies in the evidence regarding the beneficiary's employers and dates of employment.

For the reasons discussed above, the AAO agrees with the director's finding 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.

As an additional ground for denying the petition, the director found that the petitioner had failed to respond to issues raised in the December 16, 2009 Notice of Intent to Deny. These issues included the beneficiary's unauthorized employment in the United States and the request for official IRS transcripts, both of which have been discussed above. Additionally, the director found that the petitioner had not sufficiently resolved discrepancies raised in the notice regarding the beneficiary's ordination.

The USCIS regulation at 8 C.F.R. § 204.5(m)(5) contains 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 a rational relationship to the religious calling of the minister; and

(D) Works solely as a minister in the United States, which may include administrative duties incidental to the duties of a minister.

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

As stated above, the petition was filed on April 23, 2007. In a letter accompanying the petition, the petitioner stated:

I would like to request a change of status from B1/B2 to "Special Immigrant – Religious Worker" of [REDACTED] a member of Faith Restoration Center – Philippines since 2003. He is an Ordained Minister/Pastor in the Philippines and a graduate of Bachelor of Theology in Luzon Nazarene Bible College and Mastor of Divinity course in Philippine Baptist Theological Seminary in 2003.

(Bold and italics emphasis in original). The petitioner submitted an "Offer for Employment" letter, dated April 17, 2007, which indicated that, "effective immediately, the beneficiary was appointed to the position of pastor. The petitioner also submitted copies of the beneficiary's transcripts and diplomas from Luzon Nazarene Bible College and Philippine Baptist Theological Seminary, as well as a "Certificate of Ordination" from "Central Pangasinan Association of Southern Baptist Church[es]" dated September 29, 2002.

In the September 10, 2007 Notice of Intent to Deny, USCIS instructed the petitioner to clarify whether the beneficiary would be working in a ministerial capacity, and if so, to submit evidence that the beneficiary is ordained and authorized to act as a minister. In a letter responding to the notice, the petitioner stated the following:

Ordination. The beneficiary will be working in a ministerial capacity. A minister is in the leadership capacity in our organization because he is the one who is taking care of the congregation. He has an authorization to conduct religious worship and perform other services usually performed by members of the clergy. Please refer to Attachment as evidence that he was ordained as a minister/clergy of our organization. List of requirements for ordination/authorization is provided.

The petitioner also submitted two certificates issued by the petitioning church on April 29, 2007. The first stated that the beneficiary "is hereby appointed as [REDACTED]" The second certificate stated "Ministerial Credential is given to [REDACTED] (Ordained Minister). Additionally, the petitioner submitted a list of "Ordination Requirements" with a blank space for signature and date at the bottom. Among the listed requirements was the completion of ordination training classes and the submission of a completed ordination application. A blank copy of an "Ordination Application" was also submitted.

In the November 8, 2007 decision denying the petition, the director stated the following:

As evidence of the beneficiary's ordination, the petitioner submitted two ordination certificates. The first dated September 29th, 2002 is from the Philippines..., and the second certificate is dated April 29th, 2007 (a date after the filing of the petition)]. It is unclear why the beneficiary would have to be ordained on two separate occasions unless the ordination routinely expires and must be renewed. In this case, the petitioner has failed to explain the need for two ordinations.

In a letter accompanying the appeal from that decision, the petitioner stated:

In 2001, Rev. ██████ attended our rally/seminar in Urdaneta, Philippines and because of that he was considered as our member I apologize for the typo-error that we committed it should be 2001 not 2003. In April 8, 2001, we ordained him as ██████-(see Attachment C).

... There is no limit of ordination for ministers – as long as he does his duties religiously.

The petitioner submitted an additional "Certificate of Ordination" from the petitioning church, dated April 8, 2001. The AAO notes that this certificate was not submitted with the Form I-360 petition or in response to the September 10, 2007 Notice of Intent to Deny which requested evidence of the beneficiary's ordination.

In the December 16, 2009 Notice of Intent to Deny, following the AAO's decision to remand the matter for consideration under the new regulations, USCIS noted discrepancies in the petitioners evidence:

For instance, submitted ordination certificates show that the beneficiary was ordained several times at different times. The erroneous Philippine certificate (now being corrected as mentioned above) shows he was ordained in September 2002. In response to USCIS' intent to deny notice, the petitioner submitted an ordination certificate (issued by Faith Restoration Center) [which] shows that the beneficiary was given minister credential (ordained minister) in April 2007. However, in the appeal, the petitioner submitted an ordination certificate (issued by Faith Restoration Center) [which] shows that he was ordained in April 2001.

Discrepancies encountered in the evidence call into question the petitioner's ability to document the requirements under the statute and regulations. The discrepancies in the petitioner's submissions have not been explained satisfactorily.

In a January 13, 2010 letter responding to the notice, the petitioner stated the following:

On the issue of the exact date of his ordination into the [REDACTED], it is our church's practice to require ordination of our religious workers in the pastoral level for each territory or jurisdiction AND ministries in which they will serve. As he had served in the Philippines and in the U.S., he was ordained twice. Thus Pastor Cerezo's ordination in April 2001 was intended for his service to the [REDACTED] in the Philippines with which he was affiliated at the time, and his ordination in April 2007 was for his service in the New Jersey territory following his return in 2006.

(Emphasis in original). In her February 22, 2010 decision, the director found that the petitioner had not resolved the discrepancies regarding the beneficiary's date of ordination or the petitioner's ordination procedures. On appeal, the petitioner asserts that the January 13, 2010 letter "explains the point."

The AAO agrees with the director that the petitioner has not resolved the inconsistencies regarding its requirements for ordination and has not established that the beneficiary qualified as a minister at the time of filing. The "Ordination Requirements" submitted by the petitioner included completion of ordination training classes and the submission of a completed ordination application. The petitioner has not submitted evidence that the beneficiary met those requirements. Additionally, the petitioner asserted in the January 13, 2010 letter that it requires ordination for each jurisdiction as well as each ministry in which a pastor will serve, and that the April 2007 ordination authorized him to serve "in the New Jersey territory." That ordination certificate was issued on April 29, 2007. Accordingly, on April 23, 2007 when the petition was filed, the beneficiary was not yet fully qualified according to the petitioner's standards as required under 8 C.F.R. §204.5(m)(5). The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971).

The remaining issue to be discussed is whether the petitioner has established how it intends to compensate the beneficiary. The USCIS regulation at 8 C.F.R. § 204.5(m)(10) states:

Evidence relating to compensation. Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

In a letter accompanying the Form I-360 petition, the petitioner indicated that it would provide the beneficiary with a salary of \$250.00 per week (or \$13,000 per year). The petitioner has asserted that it paid the beneficiary \$13,500 in both 2007 and 2008, and has submitted evidence in support of that assertion in the form of Forms 1099-MISC and official IRS Tax Return Transcripts.

However, the letter accompanying the petition also stated that the petitioner would be "fully responsible for your board and lodging as well as your transportation." On appeal, the petitioner submits an affidavit dated March 30, 2010, from [REDACTED] in which he states the following:

1. I am a member of the congregation of the [REDACTED] located at [REDACTED]
2. As a member of the congregation, I make periodic financial contributions towards its support, by way of cash donations directly to the church, and donations of valuable service or facilities (in kind) to spare the church of financial obligations regarding such services or facilities.
3. One of the ways I make non-cash donations towards the settlement of the financial obligations of the [REDACTED] is by providing free room and board to its religious ministers.
4. I am the owner of the residential premises known as and located at [REDACTED]
5. One of the ministers of the [REDACTED] who lives in my property rent-free and to whom I provide free meals is [REDACTED];
6. I had been providing such services or facilities to the [REDACTED] since 2002 continuously to the present.
7. I am executing this Affidavit to attest to the truth of the foregoing facts, and to explain the arrangements I have made with [REDACTED] regarding my donation of free room and board to [REDACTED] religious ministers, including Pastor [REDACTED]

The petitioner does not submit documentary evidence of [REDACTED] ownership of the property at [REDACTED]. Further, on the beneficiary's Form G-325A, dated July 14, 2009, he indicated that he had resided at [REDACTED] from September 2006 until the present. According to the record, on November 16, 2009 the beneficiary notified USCIS that his address has changed to [REDACTED]. No further change of address has been reported and none of the evidence submitted demonstrates that the beneficiary has ever resided at [REDACTED]. Therefore, the claim by [REDACTED] that he has provided room and board to the beneficiary as a contribution to the petitioner is not credible. If

USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Even if resolved, the regulations require verifiable evidence of the petitioner's intent and ability to compensate the beneficiary. 8 C.F.R. §§ 204.5(m)(7) (xi), (xii) and (10). In this instance, compensation provided to the beneficiary by a member of the petitioner's congregation does not meet these requirements. Accordingly, the petitioner has not submitted verifiable documentation of its intent and ability to provide room, board and transportation to the beneficiary. The AAO therefore agrees with the director's determination that the petitioner failed to establish its intent and ability to compensate the beneficiary as asserted.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.