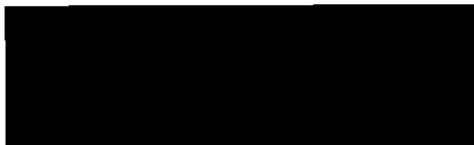


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



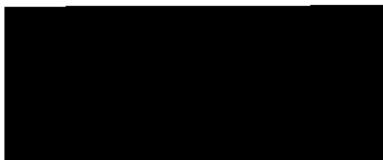
C1

Date: **AUG 31 2012** Office: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

PETITION: 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:

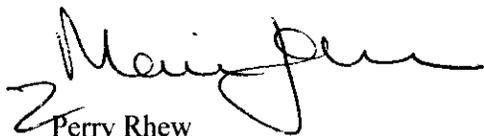


**INSTRUCTIONS:**

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) dismissed a subsequent appeal. The petitioner's April 8, 2011 motions to reopen and reconsider the decision were erroneously dismissed by the director. The AAO reopened the matter on service motion on March 5, 2012. The AAO reaffirms its previous decision and the petition remains denied.

The petitioner is a Hindu temple. 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 resident priest. The AAO affirmed the director's decision finding that the petitioner had not established that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the petition and how it intends to compensate the beneficiary.

Counsel submits a brief in response to the service motion.

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 presented is whether the petitioner has established that the beneficiary worked continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the visa petition.

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

(4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed. A break in the continuity of the work during the preceding two years will not affect eligibility so long as:

(i) The alien was still employed as a religious worker;

(ii) The break did not exceed two years; and

(iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

Based on the above regulations, the petitioner must show that the beneficiary worked 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 February 4, 2008. Accordingly, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

The 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 [Internal Revenue Service] documentation that the alien received a salary, such as an IRS Form W-2 [Wage and Tax Statement] 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.

The petitioner stated that the beneficiary "is a priest currently working as volunteer priest" with the petitioning organization and that "During his stay at our temple from February 14, 2007 to present we provided him food and clothing. During this period he lived with his brother . . . who is also a priest at this temple." To establish the beneficiary's qualifying work experience, the petitioner submitted a July 19, 2008 statement from the petitioner's brother, [REDACTED], who is a priest with the petitioning organization and who stated that the beneficiary has been living with him since February 14, 2007. He further stated that he supports the beneficiary "with all the needs of residence. I also support him with other expenses if he needed [sic]." The petitioner also submitted a June 1, 2008 letter from [REDACTED] who stated that the beneficiary had been a volunteer priest with the organization from February 4, 2006 to February 14, 2007. The petitioner submitted several photographs but made no representations as to what they depicted.

The petitioner provided an uncertified copy of the beneficiary's 2006 IRS Form 1040EZ, Income Tax Return for Single and Joint Filers with No Dependents, on which he reported wages of \$8,310. A copy of the beneficiary's 2006 IRS Form W-2 indicates these wages were paid by [REDACTED] Services, Inc. The petitioner also provided an uncertified copy of the beneficiary's 2007 IRS Form 1040, U.S. Individual Income Tax Return, on which he reported wages of \$2,168 and miscellaneous gifts of \$1,150. The 2007 IRS Form W-2 indicates that the beneficiary received \$2,167.66 in wages from [REDACTED] Services, Inc. The petitioner submitted no documentation of the food and clothing that it stated that it provided to the beneficiary.

The AAO affirmed the director's decision that the petitioner had provided no verifiable documentation to establish the beneficiary's qualifying work during the two years preceding the filing of the petition.

*In the petitioner's April 8, 2011 motions to reopen and reconsider, counsel asserted that the AAO failed to consider the letter from the [REDACTED] "which addresses the period from February 2006 to February 2007." Counsel is correct to the extent that the AAO's decision did not specifically address the letter from [REDACTED]. Nonetheless, the letter stating that the beneficiary volunteered with the organization, with no other supporting documentation, is not sufficient in and of itself to establish the beneficiary's actual work with the organization. Counsel argues that, "In a situation where the religious work is performed on a purely voluntary basis, a letter from the religious institution receiving this benefit is entitled to serious consideration." While*

the letter from [REDACTED] is considered as evidence, it is not dispositive of the issue. The letter from [REDACTED] is not self-proving, and the petitioner submitted no other documentation of the beneficiary's work with [REDACTED]. Simply 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)).

Counsel also asserted:

In addition the record contains a series of photos showing the beneficiary in the clothing that distinguishes him as a priest before the altar containing the deities of his faith, and performing his priestly function. They were not given consideration because they were not labeled. He is seen preparing the altar for the day visits by devotees, cleansing the idols, praying, offering sweets to children, burning incense, and placing the scared [sic] red mark on the forehead of a visiting Sikh representative. They are entitled to same consideration afforded to photos taken in a Christian church showing a priest in his vestments at the altar tending to members of the parish. The pictures speak clearly and deserve attention in the consideration of this motion. There is no reason to deny the credibility of well-established temples devoted to worship under the creed of a major world religion.

Counsel's argument is not persuasive. The AAO found the petitioner's photographs were limited in evidentiary value not because of what they contained but what they failed to contain. The petitioner provided photographs without any explanation as to who, what, when, or where the photographs were supposed to depict. Similar to the letter from the [REDACTED] the photographs are not self-proving. The photographs alone do not establish that they are of the beneficiary, working as a volunteer for the petitioner (or any other entity) at any time during the two years immediately preceding the filing of the petition. There is no indication that they are depictions of activity in a one-week or one-month period of time or of regular activities that took place over the course of the qualifying period. Additionally, counsel's assertions as to what the photographs depict are not supported by evidence in the record. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Counsel also asserts that the beneficiary's brother's statement constitutes "other verifiable evidence" of the beneficiary's qualifying work history. However, counsel does not explain how this unsupported statement is "verifiable" by USCIS.

The AAO also dismissed the appeal because the record does not establish that the beneficiary was in a lawful immigration status during the two years immediately preceding the filing of the petition. Regarding this issue, counsel states:

The letter from [REDACTED] is consistent with the history of this case. It is believed that [the] file . . . should contain an approved I360 filed by [REDACTED] prior to April 3, 2001 and an I485 filed pursuant

thereto under receipt [REDACTED] . . . Although as recently as 08/26/2009, USCIS showed this I485 as pending, the current status report shows the I485 was denied on July 31, 2006. . . . Never the less[sic], the beneficiary's voluntary work as a priest in February 2006 began at a time when his I485 was pending.

The filing of the I485, together with eligibility to work at any location while the I485 is pending, leads to the second question concerning the beneficiary's work experience. The second question is directed to the first paragraph of 8 CFR Sec. 204 Sec. 204(m)(11)(iii) regarding evidence needed to show that the beneficiary has been carrying on his religious vocation for two years pursuant to INA Section 203(b)(4)(iii). The AAO cites no authority other than the language of the regulation stating that qualifying experience acquired in the United States "must have been authorized under United States immigration law." It is by no mistake that in the regulation the words "immigration law" are not capitalized and do not require any compliance with any section of the Immigration and Nationality Act. The law would seem to be directed to work that that [sic] violated an alien's nonimmigrant status. In another religious worker case involving worshipers from [REDACTED]

[REDACTED] The AAO ruled that the beneficiary was entitled to credit for 2 years work while he was a theology student. Work as a religious worker without pay can occur when the alien is in the United States under a different category. There is no immigration law cited by the AAO to show that volunteer work requires any authorization. In February 2006, as the evidence shows, the beneficiary started his 2 years of qualifying experience while his I485 was pending. At that time even work for pay would not violate immigration law. It does not follow that continuing to serve as a priest for no compensation wipes away his 2 years volunteer service as a priest.

Furthermore, as the beneficiary of an approvable immigrant petition filed before April 30, 2001.[sic] Upon approval of the form I 360 filed by [the petitioner], the beneficiary could rely on the provisions of Section 245(i) to cover not only his overstay, but his employment issues.

Counsel's argument is without merit. USCIS records reflect that a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, USCIS receipt number [REDACTED], was filed on behalf of the beneficiary on April 26, 2001 by [REDACTED]. The petition was initially approved on June 10, 2002. However, the director revoked approval of the petition on November 9, 2005, on the grounds that the petitioner had not established that the beneficiary had the required two years of qualifying experience, that it could pay the beneficiary the proffered wage,

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<sup>1</sup> The USCIS receipt indicates that the petition was filed on June 21, 2001. However, the priority date is set at April 26, 2001, which would indicate that the petition was filed on that date. Additionally, the director's decision refers to the filing date as April 26, 2001. Therefore, for purposes of this decision, the filing date will be considered as April 26, 2001.

and because the beneficiary was no longer working for [REDACTED] USCIS records also reflect that the beneficiary's Form I-485, Application to Register Permanent Resident or Adjust Status, filed on August 8, 2002 under USCIS receipt number [REDACTED], was denied on November 21, 2003 because he no longer worked for [REDACTED]. The notice indicates that the beneficiary's attorney received a copy of the denial notice. Additionally, the beneficiary was notified that he should immediately depart the United States or become subject to removal proceedings. The beneficiary was also notified that USCIS intended to revoke his employment authorization and that "if the expiration date on the employment authorization document previously issued to you is reached, or you are placed in removal proceedings, or you are granted voluntary departure, the employment authorization granted to you is automatically terminated pursuant to 8 C.F.R. 274a." The record also reflects that the USCIS decision was hand delivered to the beneficiary on November 21, 2003.<sup>2</sup> The beneficiary's subsequent Form I-765, Application for Employment Authorization, was denied on August 11, 2004.

Thus, the record establishes that the beneficiary was properly notified that his Form I-485 had been denied and that he was no longer authorized to work in the United States.

Counsel also asserts that the AAO "cites no authority other than the language of the regulation stating that qualifying experience acquired in the United States 'must have been authorized under United States immigration law.'" Regulations published in the Code of Federal Regulations have the force of law. *See U.S. v. Caseer*, 399 F.3d 828 (6<sup>th</sup> Cir. 2005). It is therefore not clear what other "authority" counsel believes is necessary to support the AAO's finding. The regulation is binding on USCIS employees in their administration of the Act, and USCIS employees do not have the authority to ignore its own agency regulations. *See, e.g., Panhandle Eastern Pipe Line Co. v. Federal Energy Regulatory Commission*, 613 F.2d 1120 (C.A.D.C., 1979) (an agency is bound by its own regulations); *Reuters Ltd. v. F.C.C.*, 781 F.2d 946, (C.A.C.D., 1986) (an agency must adhere to its own rules and regulations; ad hoc departures from those rules, even to achieve laudable aims, cannot be sanctioned). An agency is not entitled to deference if it fails to follow its own regulations. *U.S. v. Heffner*, 420 F.2d 809, (C.A.Md. 1969) (government agency must scrupulously observe rules or procedures which it has established and when it fails to do so its action cannot stand and courts will strike it down); *Morton v. Ruiz*, 415 U.S. 199 (1974) (where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures).

Counsel further asserts that the AAO cites to no immigration law that requires the beneficiary to have authorization to engage in volunteer work. The regulation at 8 C.F.R. § 204.5(m)(11) requires that the past employment must be compensated either through salaried or non-salaried compensation. Although the regulation at 8 C.F.R. § 204.5(m)(11)(iii) provides that a beneficiary could be self-supporting, such support is only allowed in very limited circumstances outlined at 8 C.F.R. § 214.2(r)(11)(ii), which involve the beneficiary's participation in an established program for

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<sup>2</sup> Although counsel for the beneficiary, in a March 30, 2004 letter, stated that the beneficiary had appealed the November 21, 2003 denial, there is no appeal of a denial of a Form I-485. 8 C.F.R. § 245.2(a)(5)(ii).

temporary, uncompensated missionary work. The petitioner has not shown or claimed that the beneficiary participated in such a program.

Regardless, any claim of volunteer work during the requisite period is non-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).

The AAO determined that the petitioner had provided no verifiable documentation to establish that the beneficiary worked continuously in qualifying religious work for the two-year period immediately preceding the filing of the petition. The petitioner submits no new documentation in support of this requirement either in support of its own motion or on service motion.

Furthermore, while alleging that the beneficiary worked in a volunteer capacity, the petitioner also stated that it provided the beneficiary with food and clothing. The Board of Immigration Appeals (BIA) held that an alien who “receives compensation in return for his efforts on behalf of the church” is “employed” for immigration purposes, even if that compensation takes the form of material support rather than a cash wage. See *Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982). Thus, the petitioner claims to have provided the beneficiary with non-salaried compensation for his services but submitted no documentation of this compensation. 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)). Again, however, even if the petitioner were able to establish its non-salaried compensation of the beneficiary, the petitioner would be unable to establish that its employment of the beneficiary was authorized.

Finally, counsel asserts that “as the beneficiary of an approvable immigrant petition filed before April 30, 2001 . . . the beneficiary could rely on the provisions of Section 245(i) to cover not only his overstay, but his employment issues.”

Section 245(i) of the Act, 8 U.S.C. § 1255(i) provides:

(i) Adjustment in status of certain aliens physically present in United States

(1) Notwithstanding the provisions of subsections (a) and (c) of this section, an alien physically present in the United States –

(A) who –

(i) entered the United States without inspection; or

(ii) is within one of the classes enumerated in subsection (c) of this section;

(B) who is the beneficiary (including a spouse or child of the principal alien, if eligible to receive a visa under section 1153(d) of this title) of –

(i) a petition for classification under section 1154 of this title that was filed with the Attorney General on or before April 30, 2001; or

(ii) an application for a labor certification under section 1182(a)(5)(A) of this title that was filed pursuant to the regulations of the Secretary of Labor on or before such date; and

(C) who, in the case of a beneficiary of a petition for classification, or an application for labor certification, described in subparagraph (B) that was filed after January 14, 1998, is physically present in the United States on December 21, 2000;

may apply to the Attorney General [now the Secretary of Homeland Security] for the adjustment of his or her status to that of an alien lawfully admitted for permanent residence.

On the previous Form I-360 filed on behalf of the beneficiary, [REDACTED] indicated that he entered the United States on November 17, 1997, and that his authorized period of stay expired on April 4, 1999. The record does not reflect that the beneficiary left the United States after that date. As discussed above, the previous Form I-360 petition was filed on April 26, 2001, under section 203(b)(4) of the Act, 8 U.S.C. § 1153(b)(4) and not under section 204(a) of the Act, 8 U.S.C. § 1154. The director revoked approval of that petition on November 9, 2005.

The question of whether the revoked 2001 petition qualifies the beneficiary for section 245(i) relief lies outside the scope of this proceeding. Even if the AAO were to find that the beneficiary qualifies for such relief, that finding would not change the outcome of the present proceeding.

Section 245(i) relief applies at the adjustment stage, not the petition stage. The present proceeding is not an adjustment proceeding. Section 245(i)(2)(A) of the Act requires that an alien seeking section 245(i) relief must be “eligible to receive an immigrant visa;” that is, the alien must be the beneficiary of an approved immigrant visa petition. The law does not require USCIS to approve every petition filed on behalf of aliens who seek section 245(i) relief. Rather, such relief presupposes an already-approved petition. Without an approved petition, the beneficiary has no basis for adjustment of status, and therefore section 245(i) relief never comes into play.

The regulations at 8 C.F.R. § 204.5(m) say nothing about what benefits are or are not available to the beneficiary at the adjustment stage, and neither the AAO nor the director in this proceeding

bars the beneficiary from ever receiving benefits under section 245(i) of the Act. Rather, the decisions found that the beneficiary's lack of lawful status during the two-year qualifying period prevents the approval of the present petition. The beneficiary's hypothetical eligibility for section 245(i) relief at the adjustment stage does not require USCIS to approve the petition before the beneficiary has even reached that stage.

The petitioner has failed to establish that the beneficiary worked lawfully and continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the petition.

The second issue is whether the petitioner has established how it will compensate the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(10) provides that the petitioner must submit:

*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 November 16, 2007 contract, the petitioner stated that the beneficiary would receive a yearly salary of \$9,000 and that it would provide the beneficiary with "other benefits" when it "can do so." To establish how it will compensate the beneficiary, the petitioner submitted a copy of its unaudited income and expenses report for 2005 and 2007, copies of its unaudited annual cash flow reports for 2001 through 2004, and copies of IRS Form 941, Employer's Quarterly Federal Tax Return, and California EDD Form DE6 (Quarterly Wage & Withholding Report), for all quarters of 2007 and the first quarter of 2008. The unaudited financial statements are based only on the representations of the petitioner, who provided no further supporting documentation to reflect the accuracy or reliability of the assertions contained within the statements. Therefore, limited reliance can be placed on the validity of the facts presented in the financial statements. Regarding the tax returns, the AAO stated in its previous decision that the tax returns were dated after the filing date of the petition and were therefore not relevant. In fact, the tax returns related to the qualifying period; therefore, the AAO's prior statement was in error and is hereby withdrawn. Nonetheless, the petitioner does not allege that the beneficiary will replace another paid employee. Therefore, the tax returns provide no evidence of how the petitioner intends to compensate the beneficiary.

On motion, counsel asserts that the AAO "failed to give proper weight to the financial records of the petitioner" and that the AAO cites the documentation without discussing the record

submitted. Counsel's argument is without merit. While the AAO did not specify the actual figures indicated on the financial documentation, it did find, as noted above, that the petitioner submitted nothing to corroborate the information contained within its financial documentation.

Counsel asserts:

The regulation is conspicuously absent any requirement that an I360 petitioner must have its financial records "audited[.]" The ability to pay standards for an I360 filed by a religious institution cannot be fairly compared to standards that are to be applied to I140 cases. In I140 cases there is a vital national interest to establish that the petitioner will comply with Department Of Labor prevailing wage standards. This is to protect American workers. Hindu priests do not take jobs from American workers. The issue is solely whether a priest to a congregation of Hindu devotees will be able to survive while vested with the scared [sic] duty to meet the tenets of a faith embraced by millions of devotees. The role of a [sic] "auditor" is insignificant in such an endeavor. The need for the government of the United States to recognize the decency and integrity of the promise of the temple to comply with what it says it will do to maintain the welfare of its priest cannot be overstated.

Counsel's argument is again without merit. The regulation governing immigrant religious worker petitions requires a Form I-360 petitioner to provide "verifiable evidence" of how it intends to compensate the beneficiary and states that "[t]his 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." An audited financial document provides independent verification of the validity of the petitioner's financial documentation. The AAO did not require the petitioner to submit audited financial statements but noted that without supporting documentation, the petitioner's unaudited financial statements lacked sufficient reliability to meet the "verifiable evidence" criterion of the regulation.

Counsel's argument regarding the purpose of the "ability to pay" provisions for the Form I-360 and Form I-140 is misplaced. In supplementary information published with the proposed rule in 2007, USCIS stated:

The revised requirements for immigrant petitions and nonimmigrant status require that the alien's work be compensated by the employer because that provides an objective means of confirming the legitimacy of and commitment to the religious work, as opposed to lay work, and of the employment relationship. Unless the alien has taken a vow of poverty or similarly made a formal lifetime commitment to a religious way of life, this rule requires that the alien be compensated in the form of a salary or in the form of a stipend, room and board, or other support so long as it can be reflected in a W-2, wage transmittal statements, income tax returns, or other verifiable IRS documents. USCIS recognizes that legitimate

religious work is sometimes performed on a voluntary basis, but allowing such work to be the basis for an R-1 nonimmigrant visa or special immigrant religious worker classification opens the door to an unacceptable amount of fraud and increased risk to the integrity of the program. In this rule, USCIS is proposing to implement bright lines that will ease the verification of petitioner's claims in the instances where documentary evidence is required.

72 Fed. Reg. 20442, 20446 (April 25, 2007). When USCIS issued the final version of the regulation, the preamble to that final rule incorporated the above assertion by reference: "The rationale for the proposed rule and the reasoning provided in the preamble to the proposed rule remain valid and USCIS adopts the reasoning in the preamble of the proposed rule in support of the promulgation of this final rule." 73 Fed. Reg. 72275, 72277 (Nov. 26, 2008).

Counsel's suggestion that the scrutiny of the petitioner's finances is somehow related to its status as a Hindu organization or that USCIS should defer to the representations of the petitioner is equally without basis. As discussed above, the regulation does not distinguish between employers, either on the basis of their "for profit" or nonprofit status or on the size of the organization. Counsel points to no evidence to establish that the implementation of this provision by USCIS is based on the religious status of the organization. The regulation is intended to address a 1999 Government Accounting Office (GAO) report that identified instances of fraud in the religious worker program and a 2005 USCIS benefit fraud assessment designed to measure the integrity of specific nonimmigrant and immigrant applications and petitions. Specifically, the report and assessment identified the prevalence of false statements submitted in support of the petition as well as the material misrepresentations in the documents submitted to establish eligibility. USCIS promulgated the 2008 religious worker regulations in order to address the pervasive fraud within the religious worker program. USCIS must apply its regulations in the same manner to all organizations in order to maintain the integrity of the program. Counsel has pointed to no reason why the petitioning organization should be exempt from the regulation as it is applied to other religious organizations.

On motion, the petitioner submits partial copies of its monthly bank statements for the period ending December 2006 and December 2007 for two accounts, each showing balances in excess of \$135,000, and a bank statement indicating that it had a \$630,000 certificate of deposit that matured on March 30, 2008.

The petitioner failed to submit this documentation with the petition, in response to the director's request for evidence, or on appeal. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). On this basis alone, the petition may not be approved. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on motion. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.*

As the petitioner has failed to establish that the beneficiary worked lawfully and continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the petition and how it intends to compensate the beneficiary, the petition cannot be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. As no new evidence has been presented to overcome the grounds for the previous dismissal, and evidence that the decision was based on an incorrect application of law, the previous decisions of the AAO and the director will be affirmed. The petition is denied.

**ORDER:** The AAO's decision of March 9, 2011 is affirmed. The petition is denied.