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

[redacted]

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Date: DEC 1 3 2012 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: Beneficiary: [redacted]

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:

[redacted]

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (NSC), initially approved the employment-based immigrant visa petition on January 16, 1996. On further review, the director, NSC, determined that the beneficiary was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the preference visa petition stating the reasons therefore and subsequently revoked the approval of the petition. The petitioner appealed the matter to the Administrative Appeals Office (AAO). The AAO remanded the matter for consideration under revised regulations and the Director, California Service Center (CSC), denied the petition under the revised regulations and certified that decision to the AAO for review. The AAO remanded the matter to the director, CSC, for the issuance of a new decision under the previous regulations and specified that an adverse decision must take the form of a revocation. The director revoked the approval of the petition and certified the decision to the AAO for review. The AAO will affirm the revocation of approval of the petition.

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 an orchestra conductor. In the Notice of Intent to Revoke, issued on November 10, 2011, the director stated that the petitioner had failed to establish that the beneficiary had the requisite two years of qualifying work experience immediately preceding the filing of the petition, and found grounds for a finding of willful misrepresentation of a material fact. In the final decision, issued on March 16, 2012, the director found that the petitioner had not submitted sufficient evidence to overcome the grounds for revocation.

In response to the notice of certification, the petitioner submits a brief from counsel.

Section 205 of the Act, 8 U.S.C. § 1155, states that the Secretary of the Department of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Id.*

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).

At the time the petition was approved in 2006, the regulation at 8 C.F.R. § 204.5(m)(1) provided:

> (m) *Religious workers.* (1) An alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or 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. All three types of

> religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition. Professional workers and other workers must obtain permanent resident status through immigration or adjustment of status on or before September 30, 1997, in order to immigrate under section 203(b)(4) of the Act as section 101(a)(27)(C) special immigrant religious workers.

The Form I-360 petition was filed on March 31, 1995. In a letter accompanying the petition, a board member of the petitioning church stated the following, in pertinent part:

> In February 1990, our Church hired as an instructor for the Mandolin Orchestra. We think is qualified to be our Mandolin Orchestra Instructor based on his 25 years experience playing the mandolin.
>
> During this activity is teaching three orchestras at different levels with about 70 students (the children get homework), rehearsing every Tuesday night from 7 PM to 9 PM and every Wednesday night from 7 PM to 9 PM and playing every Sunday night from 5 PM to 7 PM during the worship service with at least one orchestra. Also part of this activity, works with the children preparing different programs of songs for Christmas, Mother's Day, Easter, Thanksgiving, etc.
>
> Starting with February 1, 1995, was hired full time with a salary of $18,000.00 per year to continue and develop these activities.
>
> These activities involve him as follows:
>
> · Teach basics mandolin skills; maintain and repaire the instruments
> · Teach orchestras at different levels and different ages (70 students)
> · Prepare songs for special events
> · Tune all the instruments prior to every rehearsal (3 times a week)
> · Develop a mandolin teaching method for children
> · Prepare and organize trips to other Romanian churches
> · Work on individual bases with children that have difficulties of learning
>
> is hired full time because of the fact that the materials needed for these activities must be developed and prepared by himself.

In a Request for Evidence (RFE) issued on September 29, 1995, USCIS requested additional documentation regarding the beneficiary's qualifying experience as follows:

> You state that the beneficiary was hired as orchestra leader in 1990 and hired full time in 1995. Submit evidence of the number of hours the beneficiary spent performing his duties prior to February of 1995. ... Was the beneficiary being

> paid for his services prior to 1995? If so, submit evidence of payment such as pay receipts, W-2 form, etc. If not, how was the beneficiary supporting himself? Is he engaged in any other employment at the present time?

The petitioner submitted a letter responding to the notice, dated October 26, 1995, and signed by [redacted] In it, the petitioner indicated that the beneficiary served on a voluntary basis until February 1995. The petitioner also stated:

> The number of hours he spent weekly were an average as follows:
>
> - Up to two hours of recruiting, introducing and acquainting children with orchestra;
> - Three hours of tuning instruments
> - Four hours of teaching mandolin skills at different levels and ages;
> - Two hours of working with children that have difficulties in learning;
> - One hour for repairing and maintaining the instruments;
> - Two hours of performing in the Church on Sundays;
> - In addition to these activities [redacted] was and is responsible for
> - preparing songs for special events;
> - performing for special events;
> - copying songs and musical repertoire;
> - developing a mandolin teaching method for children;
> - preparing and organize trips to other Romanian churches;
> - organizing special events for the children performing in the orchestra
> -picnics, Holiday events, outdoor activities, competitions, etc.
> - participating in Christian workers' meetings at the Church level and with the two other Christian workers for orchestra
> - keep in touch with the parents in regard to orchestra's activities, etc.
>
> With these additional activities, [redacted] spends more than 35 hours per week working in the Church. This constitutes [redacted] as a full time employee of this Church.

The petitioner's letter did not address the question of whether the beneficiary was engaged in any other employment. A November 22, 1995 letter from counsel, also submitted in response to the notice, indicated that the beneficiary additionally "tutors children in mandolin studies outside of the church," and stated: "We understand he charges individuals for said services."

The director approved the petition on January 16, 1996. On February 8, 1996, the beneficiary filed a Form I-485, Application to Register Permanent Residence or Adjust Status based on the approved petition. Accompanying the application, the beneficiary submitted a Form G-325A, Biographic Information, which the beneficiary signed on February 5, 1996. On the form, the beneficiary was instructed to list his employment for the last five years, including name and address of employer, occupation, and dates of employment. The beneficiary listed only his

employment with the petitioning church as an orchestra conductor from February 1995 to the present.

On August 10, 2007, the Director, NSC, issued a Notice of Intent to Revoke (NOIR) the petition which stated, in pertinent part:

> In a Service letter dated September 29th, 2005, you were specifically asked how the beneficiary was supporting himself prior to being paid for his services, and if he was engaged in any other employment at the time. You failed to reveal any other such employment.
>
> It has since come to the Service's attention that the beneficiary was, in fact, employed elsewhere during that period. Social Security records and an employment check at 30 East Elm Condo, Chicago, IL, demonstrate that the beneficiary was employed (40 hours per week) from February, 1993, and continuing through the processing of the petition, as a maintenance worker. The outside employment (and the failure to reveal it after being specifically asked) casts doubt on the sufficiency and reliability of the evidence of the beneficiary's experience.

The director noted that USCIS interprets the continuous two-year experience requirement as requiring that the prior experience was full time and generally compensated employment. The director explained that this interpretation is based on legislative history and congressional intent.

The director found that the record indicated the beneficiary "spent more hours in secular employment than volunteering for the church," and that the failure to disclose the outside employment further called into question the amount of time the beneficiary spent on religious work during the qualifying period. The notice provided the petitioner an opportunity to submit evidence in support of the petition and in opposition to the revocation.

On February 16, 2008, the director revoked the petition, noting the reasons for revocation as described in the NOIR, and finding that the petitioner failed to respond to the notice or to provide any additional evidence in support of the petition within the time provided.

The petitioner appealed the decision on March 3, 2008. On appeal, the petitioner asserted through counsel that it had not received the August 8, 2007 NOIR and that USCIS failed to cite a specific basis for denial. Counsel argued that the regulations and the Act did not require prior experience in a religious occupation to have been full time and asserted that the beneficiary and petitioner had disclosed the beneficiary's outside employment. The petitioner submitted a new letter dated March 13, 2008 asserting that it currently employed the beneficiary and describing his duties as orchestra conductor.

Additionally, the petitioner submitted a letter signed by [redacted] and dated October 26, 1995. The letter appeared identical to the October 26, 1995 letter submitted in response to

the September 29, 1995 RFE, except that instead of stating that the beneficiary works more than 35 hours per week in the church and is a full time employee of the church, the newly submitted version stated the following:

> We expect to spend an average of 30 hours per week with these activities. Apparently, is supplementing his income by working for another company. We agree with this situation as long as it does not interfere with his duties at the Church.

No explanation was provided for the discrepancies in the two submitted versions of the letter. 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). 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. *Id*, at 591.

On December 10, 2008, the AAO withdrew the director's decision and remanded the petition to the Director, CSC, for consideration under revised regulations published on November 26, 2008.

On June 2, 2009, the Director, CSC, issued a Notice of Intent to Deny the petition (NOID), noting that the October 26, 1995 letter submitted on appeal indicated a 30 hour per week schedule, and again finding the evidence insufficient to establish that the beneficiary had been performing full time religious work for at least the two years immediately preceding the filing of the petition.

In response to the NOID, counsel for the petitioner asserted that the "statutory framework ... does not require that the beneficiary perform duties that are exclusive to the religious function, but rather primarily in the religious vocation/occupation for the requisite two-year period." Counsel argued that the petitioner's previously submitted evidence demonstrated that the beneficiary worked at least 35 hours per week at the church "irrespective of other services provided outside the church." The petitioner submitted a completed version of the revised Form I-360 petition, as well as copies of documents already in the record, including the original version of the October 26, 1995 letter. The petitioner did not provide any documentary evidence to support the assertions by the petitioner and counsel that the beneficiary worked 35 hours or more per week for the church prior to the filing of the petition. 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)).

The director issued a decision denying the petition on September 8, 2009 and certified the decision to the AAO for review. In the decision, the director found that "the totality of the circumstances does not convincingly establish that the beneficiary has worked on a full time basis for the qualifying period." The director noted the petitioner's obligation to submit

objective evidence to resolve any inconsistencies in the record, and found the petitioner's evidence insufficient to overcome the grounds described in the NOID.

In a brief submitted in response to the certified denial, counsel again asserted that the petitioner had submitted evidence that the beneficiary worked 35 hours per week for the church. Regarding the inconsistencies in the record, counsel stated:

> Admittedly, there is some confusion in the documentation. The Service notes in its decision that stated that had provided these services on a voluntary basis and that he would average 30 hours a week as the Orchestra Conductor. However, in light of the fact that case has been pending for fourteen (14) years, it is impossible for to seek clarification from Such clarification would be especially useful in the instant case in order to address any errors in English may have made. *See generally Matter of R- -M*, 6 I. & N. Dec. 265 (BIA 1954) (holding that petitioner who admitted he was part of the Communist Party, but had poor understanding of English and later repudiated those statements at a hearing, should not be bound by his previous admissions). In addition, the fact that evidence is from 1995 shows that his evidence was submitted in good faith to support his I-360 petition and was not constructed solely in response to the NOID.

On July 21, 2011, the AAO withdrew the director's decision and again remanded the petition for further consideration and action. The AAO noted that, because it had previously withdrawn a revocation by the NSC director, any new adverse decision by the CSC director must also be a revocation, rather than a denial decision. The AAO also stated that, upon further consideration and consultation with other USCIS components, it was determined that a petition approved before November 28, 2008 was not "pending" on that date, even if a subsequent appeal of a revocation was pending on that date. Accordingly, the AAO advised the director to issue a new decision under the pre-2008 regulations.

Additionally, the AAO noted that an investigative report found evidence indicating that the beneficiary worked as a full-time maintenance worker for several employers between 1991 and 1996, but that the beneficiary omitted these employers on his February 5, 1996 Form G-325A. The decision also noted the discrepancies in the two versions of the October 26, 1995 letter. The AAO stated:

> The petitioner's submission of an altered letter and the beneficiary's failure to report substantial secular employment on Form G-325A appear to constitute grounds for a finding of willful misrepresentation of a material fact. Any further action by the director should take this into account.

On November 10, 2011, the director issued a NOIR. In the notice, the director stated that the beneficiary's full-time employment outside of the church during the qualifying period, as well as the petitioner's failure to disclose the outside employment even after being specifically asked in

the September 29, 2005 Request for Evidence, cast doubt on the sufficiency and reliability of the evidence relating to the beneficiary's prior experience. The director again explained USCIS' interpretation, based on legislative history and congressional intent, of the prior experience requirement of full time and generally salaried employment:

> The legislative history of the religious worker provision of the Immigration Act of 1990 reflects that a substantial amount of case law has developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." *See* H.R. Rep. No. 101-723, at 75 (1990). The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law, a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948). The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).
>
> In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Although there may be limited circumstances in which unpaid volunteer work may constitute qualifying experience, the burden of proof remains on the petitioner to establish that the claimed work took place continuously.

The director discussed the two versions of the October 26, 1995 letter from The director also noted that, unlike the beneficiary's February 5, 1996 Form G-325A, a previous Form G-325A filed by the beneficiary, dated August 8, 1994, listed various mechanic and maintenance positions that he had held from August 1979 to "present." The director found that the altered letter and the failure to report the outside employment constituted grounds for a finding of willful misrepresentation of a material fact.

The director again noted that 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*, at 591-92.

An attorney, submitted a letter responding to the notice, as well as a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, authorizing her representation of the beneficiary.

On March 16, 2012, the director issued a decision revoking the approval of the petition, and certified the decision to the AAO for review. In the decision, the director found that, because attorney had never submitted a G-28 authorizing her representation of the petitioner, her appearance as attorney for the petitioner would not be recognized. The director further noted that the response to the NOIR did not include any documentary evidence, but consisted only of the assertions of counsel, which do not constitute evidence. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The director therefore found that the petitioner failed to submit sufficient evidence in rebuttal to the NOIR and failed to overcome the grounds for revocation.

In response to the notice of certification, attorney submits a brief, as well as a Form G-28 authorizing her representation of the petitioner. In her brief, as in her previously submitted letter of response to the NOIR, counsel argues that the beneficiary's experience during the qualifying period need not have been full time, citing two unpublished decisions by the AAO. The AAO notes that while 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a). Counsel further argues that the decisions cited by USCIS relating to its interpretation of the two-year experience requirement are not relevant to the instant case. Counsel asserts that the cited cases apply only to ministers and dealt with cases in which the proffered position was unpaid.

The AAO disagrees with counsel's argument. As explained by the director, the cited cases are part of a body of case law which was referred to by Congress in the legislative history of the relevant statutory provision at section 101(a)(27)(C)(iii). *See* H.R. Rep. No. 101-723, at 75 (1990).

Therefore, regardless of the facts of the individual cases, these cases are relevant to interpreting Congress' intended meaning in using the term "continuously" as part of the prior experience requirement for all special immigrant religious workers, not just ministers. The case law indicates that to be continuously carrying on the religious work means to do so on a full time basis. While there have been numerous legislative extensions and amendments to the special immigrant religious worker program since 1990, at no time has Congress legislatively modified or overruled this agency's understanding of the term "continuous" as shaped by the case law described above.

Counsel alternately argues that the petitioner "has never claimed that qualifying two years of experience with their church was anything less than full-time" and that his outside employment did not mean that he was working less than 35 hour per week for the petitioner.

The director discussed the petitioner's failure to establish the beneficiary's full time religious work during the qualifying period as one of the grounds for revocation in the November 10, 2011 NOIR. The AAO agrees with the director that the petitioner failed to submit any objective evidence in order to overcome questions raised by the beneficiary's full time outside employment. The response to the NOIR included only a brief from counsel with no supporting evidence. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. at 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. The AAO notes that USCIS has provided the petitioner with opportunities to submit documentary evidence on this issue on several occasions, but the petitioner has not submitted anything beyond its own assertions and those of counsel. 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

The second ground for revocation listed in the NOIR was the finding of willful misrepresentation of a material fact.

On certification, counsel states the following regarding the two versions of the October 26, 1995 letter:

> The Service further contends that it doubts full time service with First Romanian throughout the two year period immediately preceding the date of filing, as First Romanian's pastor, submitted an amended version of the original support letter, dated October 26, 1995, to the AAO on or around March 31, 2008 in support of their appeal. The letter remained identical; however, in the 2008 version, indicated that would only be serving the church with approximately 30 hours of work per week, as opposed to 35. resigned the letter; however, he did not reflect the new date.
>
> The second version of the letter indicates that from the date of the amendment forward, or from 2008 onward, that First Romanian 'expected' to be

> serving the church with approximately 30 hours of work per week. The updated letter did not contradict the original statement. The initial version of letter merely confirmed that had been employed with First Romanian on a full-time basis, or at least 35 hours per week, for the two year period immediately preceding the filing of the I-360 Petition. The amended letter was submitted to the USCIS in 2008, approximately 13 years after the date of the initial filing, and only spoke to the number of hours would be working from that point forward.

Counsel argues against the director's finding of willful misrepresentation of a material fact, asserting that the beneficiary's secular employment during the qualifying period is not "material" because non-minister religious workers are not required to perform religious work exclusively. Counsel also asserts that the beneficiary did not conceal his employment, as it was disclosed on his August 8, 1994 Form G-325A.

The AAO is not persuaded by counsel's argument. The federal courts state that the general rule is that a concealment or misrepresentation is material if it "has a natural tendency to influence or was capable of influencing, the decision of the decision-making body to which it was addressed." *Kungys v. United States*, 485 U.S. 759, 770 (1988); *Monter v. Gonzales*, 430 F.3d 546 (2d Cir. 2005). In this case, the petitioner's concealment of the beneficiary's outside employment potentially influenced USCIS' initial evaluation of whether the beneficiary had been continuously engaged in full-time employment with the petitioner during the qualifying period. Therefore, the AAO finds that the beneficiary's full-time outside employment is material. Additionally, counsel's argument on certification that the beneficiary had previously disclosed his outside employment is not relevant to whether his omission of this information at a later date was intentional concealment. The AAO notes that the beneficiary had disclosed his outside employment in conjunction with a previous application for permanent residence which was unrelated to his purported religious work. The petitioner has not resolved why this information was omitted on the February 5, 1996 Form G-325A.

Counsel asserts that the two versions of the October 26, 1995 letter do not contradict each other, and that the letter's signatory, mistakenly failed to reflect a new 2008 date on the second letter. No evidence was submitted to support counsel's account of the purported mistake. The AAO notes that, response to the September 8, 2009 notice of certification, previous counsel suggested that clarification regarding the second letter was not available as it had been written "fourteen years" prior. Further, current counsel has not explained why, if not intended to appear to be from 1995, the second version letter was printed on the same letterhead as the first version. The other letter submitted by the petitioner in 2008 was printed on new letterhead containing the petitioner's updated address. 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. at 591.

Because the AAO agrees that the petitioner failed to overcome the grounds for revocation, the AAO will affirm the director's 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 AAO will affirm the director's decision to revoke the approval of the petition.

ORDER: The director's decision of March 16, 2012 is affirmed. The approval of the petition is revoked.