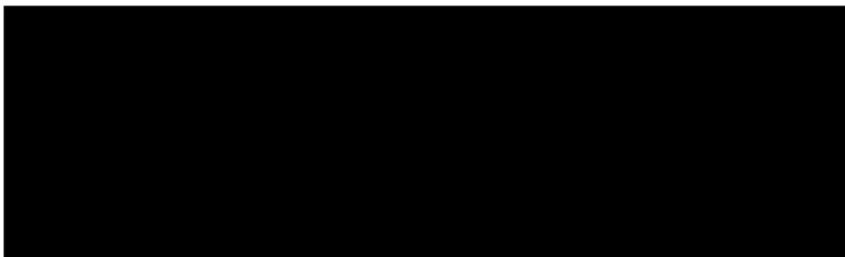


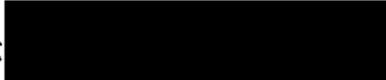
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

C 1



DATE: DEC 24 2012 OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

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

ON BEHALF OF PETITIONER:

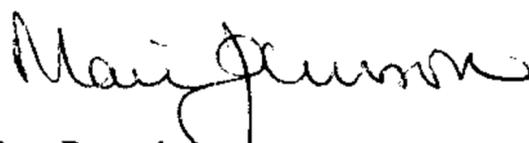
SELF-REPRESENTED

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, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a member [REDACTED]. 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 required two years of continuous, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits various documents intended to establish the beneficiary's prior employment and compensation.

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, 2015, 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, 2015, 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 U.S. Citizenship and Immigration Services (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 USCIS regulation

at 8 C.F.R. § 204.5(m)(11)(i) requires that, if the alien was employed in the United States during the two years immediately preceding the filing of the application and received salaried compensation, the petitioner must submit IRS documentation that the alien received a salary, such as an Internal Revenue Service (IRS) Form W-2 or certified copies of income tax returns. 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 filed the Form I-360 petition on January 24, 2012. The employer attestation that accompanied the petition contained little information about the beneficiary's prior experience except for the general claim that the beneficiary "has been a pastor in Brazil since his ordination in March 1990."

On February 8, 2012, the director issued a request for evidence (RFE), instructing the petitioner to submit information and evidence about the beneficiary's past employment. The director specifically requested detailed "letters written by the previous and current employers," as well as "evidence that shows monetary payment, such as pay stubs or other items showing the beneficiary received payment."

In response, the petitioner submitted a translated letter, dated April 17, 2012 and jointly signed by [REDACTED] and [REDACTED] respectively the president and [REDACTED]. The translation reads, in part:

[The beneficiary] is a Minister of the Gospel and worked for this institution as a Pastor since his ordination . . . on Mach 15ht [sic] of 1990.

. . . He used to work an average 40 hours a week.

We inform that this institution use [sic] to pay rent others needs [sic] the amount of R\$ 1.750,00 reais monthly that was complemented through volunteers' offers from the others [sic] church when they call [sic] him for extra or special preaching.

The petitioner's response did not include the requested evidence of compensation.

The director denied the petition on June 7, 2012, stating that the petitioner had submitted "no corroborating evidence" to show that the church in Brazil employed and compensated the beneficiary as claimed.

On appeal, the petitioner submitted translated copies of documents from the church in Brazil, including a June 30, 2009 agreement relating to the beneficiary's compensation and the minutes of an April 10, 2009 meeting in which the church agreed to lease an apartment for the beneficiary. The petitioner also submitted photocopied pay receipts showing gross monthly pay of 1,750 Brazilian reais. The dates on the receipts range from May 2009 through February 2012, even though the beneficiary left Brazil in November 2011.

USCIS regulations state that the petitioner shall submit additional evidence as the director may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether the petitioner has established eligibility for the benefit sought as of the petition's filing date. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The 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).

Where, as here, the director has notified the petitioner of a deficiency in the evidence and given the petitioner an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533, 537 (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.* In this instance, the director's RFE instructed the petitioner to submit "evidence that shows monetary payment, such as pay stubs," and the petitioner's response did not include that evidence. Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

The director, in denying the petition, did not find that evidence of compensation does not exist, or that the beneficiary received no compensation. Rather, the director found that the petitioner failed to submit evidence of compensation when instructed to do so. The petitioner, on appeal, does not rebut or contest this finding. The AAO will therefore dismiss the appeal.

Review of the record reveals additional deficiencies that amount to further grounds for denial of the petition. The AAO may identify additional grounds for denial beyond what the Service Center identified in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

#### CONTINUITY OF EMPLOYMENT

The USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the beneficiary's two years of qualifying work to have been continuous. 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.

On Part 3, line 13 of Form I-360, the petitioner indicated that the beneficiary arrived in the United States on November 22, 2011, as a B-2 nonimmigrant tourist whose status would expire on January 21, 2012. That expiration date had already passed by the receipt date stamped on the petition form (January 24, 2012), and therefore the beneficiary appears to have been out of status as of that date.

The petitioner indicated that the beneficiary had never worked in the United States without permission. The USCIS regulation at 8 C.F.R. § 214.1(e) prohibits B-2 nonimmigrants from engaging in employment in the United States. Therefore, the petitioner's statements on Form I-360 amount to a claim that the beneficiary did not work after his entry on November 22, 2011.

The RFE included the following instruction: "If there was a break in the continuity of the [beneficiary's] work during the preceding two years explain the reason for the break." The petitioner's response to the RFE did not address this instruction. Therefore, the petitioner has submitted no evidence to show that the interruption in the beneficiary's work from November 22, 2011 to January 21, 2012 constitutes a qualifying break in the continuity of that employment.

#### RELIGIOUS DENOMINATION

The USCIS regulations at 8 C.F.R. §§ 204.5(m)(1) and (2) require the beneficiary to have belonged to the petitioner's religious denomination for at least two years immediately preceding the petition's filing date. This requirement derives from sections 101(a)(27)(C)(i) and (ii) of the Act. The record shows that the petitioner belongs to [REDACTED]. The petitioner has not shown that the beneficiary's former employer in Brazil, Igreja Evangélica Assembléia de Deus da Missão em Jundiá, belongs to that denomination or an affiliated foreign denomination.

#### INTENDED COMPENSATION

The USCIS regulation at 8 C.F.R. § 204.5(m)(10) requires the petitioner to submit 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.

The petitioner indicated that the beneficiary would receive a salary of \$400 per week plus an unspecified allowance to cover his rent. The initial submission included no financial documentation. In the RFE, the director quoted the above regulation in full. The petitioner's response (which added health insurance to the beneficiary's offered compensation) included three bank statements showing balances of \$14,123.35 at the beginning of January 2012 and \$14,822.67 at the end of March 2012. The petitioner was not yet compensating the beneficiary during those months. The beneficiary's salary, rent and insurance costs would therefore represent new drains on the petitioner's resources.

The petitioner did not submit IRS documentation or explain its absence. The petitioner's documentation does not meet the requirements set forth in the regulation at 8 C.F.R. § 204.5(m)(10).

The AAO will dismiss the appeal for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.