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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: JUN 20 2012

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

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 with the field office or service center that originally decided your case by filing a 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,

UPD adndk

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is a synagogue. 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 cantor. The director determined that the petitioner had not established that it qualifies as a bona fide non-profit religious organization in the United States or a bona fide organization which is affiliated with the religious denomination and had not established how it intends to compensate the beneficiary. The director additionally determined that the petitioner had not established that the proffered position qualifies as a religious occupation and that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition.

On the Form I-290B Notice of Appeal, filed on October 22, 2010, counsel for the petitioner indicated that a brief and additional evidence would be submitted within 30 days. The AAO received a letter from counsel on November 30, 2010 requesting “a 30 day extension of time to file the Appellant’s Brief and/or supporting documentation.” On May 15, 2012, the AAO received a cover letter from counsel with an attached letter to the petitioner from the Internal Revenue Service (IRS). As no other evidence or brief has been received, the AAO will consider the record complete as it now stands.

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

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

(ii) seeks to enter the United States –

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

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

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

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

The United States Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(3) provides that in order to be eligible for classification as a special immigrant religious worker, an alien must be coming to work for a bona fide non-profit religious organization in the United States, or a bona fide organization which is affiliated with the religious denomination in the United States. The regulation at 8 C.F.R. § 204.5(m)(5) states, in pertinent part:

(5) Definitions. As used in paragraph (m) of this section, the term:

Bona fide non-profit religious organization in the United States means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the IRS confirming such exemption.

Bona fide organization which is affiliated with the religious denomination means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code and possessing a currently valid determination letter from the IRS confirming such exemption....

Tax-exempt organization means an organization that has received a determination letter from the IRS establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the Internal Revenue Code of 1986 or subsequent amendments or equivalent sections of prior enactments of the Internal Revenue Code.

The regulation at 8 C.F.R. § 204.5(m)(8) states:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or

(iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, as something other than a religious organization:

(A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

On the Form I-360 petition, filed on August 31, 2009, the petitioner listed its IRS tax number as 11-3365774. In a letter accompanying the petition, counsel indicated that the petitioner was submitting a "Tax Exemption certificate for [REDACTED] as supporting documentation. However, no such document was submitted with the petition.

On March 9, 2010, USCIS issued a Request for Evidence which, in part, instructed the petitioner to submit documentary evidence that it qualifies as a non-profit religious organization or a bona fide organization which is affiliated with the religious denomination in accordance with 8 C.F.R. § 204.5(m)(8). In response, the petitioner submitted a New York State and Local Sales and Use Tax Exempt Organization Certification as well as documents showing that it is exempt from New York City real estate tax. The petitioner also submitted its articles of incorporation and evidence of its religious nature and activities.

In a letter responding to the Request for Evidence, counsel indicated that the petitioner was submitting "IRS 501 c3 proof of a related organization [REDACTED] [REDACTED]. The document referred to by counsel was a printout from the IRS.gov website's "Search for Charities, Online Version of Publication 78 Search Results." The printout showed partial results from a search for names which include [REDACTED] in Brooklyn, New York, including [REDACTED] [REDACTED] which was underlined by the petitioner. As part of the Employer Attestation submitted by the petitioner in response to the Request for Evidence, the petitioner

included a "Religious Denomination Certification" signed by its president, which stated that the petitioning organization is affiliated with the religious denomination of "Orthodox Judaism." In his letter, counsel asserted that the petitioner's denomination is [REDACTED] and stated:

Annexed hereto is a copy of the calendar of the organization showing the affiliated synagogues in the United States for the year 2007/2008. The Calendar also confirms [REDACTED] as the leader of said congregation. The Calendar also confirms that the school that employed [REDACTED] is part of the same denomination as the present proposed employer synagogue.

The calendar discussed by counsel contains only limited portions written in English, including the petitioner's address and the name of its president as well as another highlighted address, purportedly of the beneficiary's former employer. The calendar does not contain the petitioner's name or the names of any other religious organizations in English. As the petitioner failed to submit a certified translation of the document, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3).

On July 12, 2010, USCIS issued another Request for Evidence again requesting, in part, evidence to establish that the petitioner qualifies as a bona fide nonprofit religious organization or a bona fide organization which is affiliated with the religious denomination or religious organization. The notice specifically instructed the petitioner to submit a letter from the IRS confirming its tax exempt status in accordance with section 501(c)(3) of the Internal Revenue Code. Alternately, as evidence that the petitioner is affiliated with a bona fide religious organization, the notice instructed the petitioner to submit a valid determination letter from the IRS establishing that the organization is tax exempt and a statement signed by the religious organization certifying that the petitioner is affiliated with the religious denomination.

In a letter responding to the notice, counsel noted that "Churches that meet the requirements of IRC section 501(c)(3) are automatically considered tax exempt and are not required to apply for and obtain recognition of tax exempt status from the IRS." The AAO notes that the regulations governing immigration under the purview of the USCIS and those governing federal taxation under the purview of the IRS serve two distinctly different purposes. While the IRS regulations may automatically exempt churches as nonprofit organizations for the purpose of determining whether such an organization is required to file a federal tax return and pay taxes, the USCIS regulation offers no such exemption for those organizations who seek benefits under immigration laws.

The Act and its implementing regulations do not require an organization to establish that it is a church to qualify as a bona fide nonprofit religious organization; nonetheless, it must establish that its tax-exemption is based on its religious nature. As discussed earlier, the IRS and USCIS regulations serve different purposes, and while a currently valid letter from the IRS recognizing an organization as a church is required under USCIS regulation, the IRS automatic exemption of a church as nonprofit is unrelated to the USCIS requirements that the organization establish itself

as both a religious organization and as a nonprofit organization for immigration purposes. When USCIS published the relevant regulation, supplementary information published with the regulation explained USCIS's reasoning:

Several commenters objected to the proposed requirement that petitioners must file a determination letter from the IRS of tax-exempt status under IRC section 501(c)(3), 26 U.S.C. 501(c)(3), with every petition. Commenters pointed out that the IRS does not require churches to request a determination letter to qualify for tax-exempt status. A designation that an organization is a "church" is sufficient to qualify for tax-exempt status. Although some churches choose to request a formal IRC section 501(c)(3) determination, they are not required to do so. . . .

USCIS recognizes that the IRS does not require all churches to apply for a tax-exempt status determination letter, but has nevertheless retained that requirement in this final rule. *See Internal Revenue Service, Tax Guide for Churches and Religious Organizations: Benefits and Responsibilities under the Federal Tax Law* (IRS pub. no. 1828, Rev. Sept. 2006). A requirement that petitioning churches submit a tax determination letter is a valuable fraud deterrent. An IRS determination letter represents verifiable documentation that the petitioner is a bona fide tax-exempt organization or part of a group exemption. Whether an organization qualifies for exemption from federal income taxation provides a simplified test of that organization's non-profit status.

Requiring submission of a determination letter will also benefit petitioning religious organizations. A determination letter provides a petitioning organization with the opportunity to submit exceptionally clear evidence that it is a bona fide organization. 73 Fed. Reg. 72276, 72279-80 (Nov. 26, 2008).

In this proceeding, the issue is not whether the IRS would automatically regard the petitioner as tax-exempt, but whether the petitioner has produced the required IRS determination letter that USCIS regulations require. As the petitioner has failed to provide the required letter from IRS, it has failed to establish that it is a bona fide nonprofit religious organization as defined by the regulation. The regulation makes no exception for the denomination of the petitioning organization.

Counsel then asserted that "the parent organization of the Congregation" is tax exempt and stated the following:

By researching the IRS site, it was determined that several of the synagogues that are affiliated with the parent organization of the [REDACTED] have received Federal tax ID numbers including Congregation [REDACTED]

[REDACTED]. As there is no requirement for congregations to apply, Congregation Chassidei [sic] Gur has not applied (but it is apparent that it is eligible for the exemption).

The petitioner again submitted its Tax Exempt Organization Certification from New York State and documentation of its exemption from real estate tax as well as the printout from the IRS.gov website search for charities listing [REDACTED]. The petitioner also submitted a copy of guidelines regarding IRS tax exempt status. Additionally, the petitioner submitted a statement signed by counsel asserting that the petitioning organization is a bona fide religious organization and is affiliated with the denomination of [REDACTED]. However, the petitioner submitted no evidence to establish that the purported parent organization, [REDACTED] has a valid determination letter from the IRS establishing that it has qualifies for a group tax exemption under which the petitioner is covered.

The director denied the petition on September 22, 2010, finding in part that the petitioner had not established that it qualifies as a bona fide nonprofit religious organization in the United States. The director noted that the petitioner had been instructed in both of the Requests for Evidence to provide a currently valid determination letter from the IRS confirming its organization is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code. The director stated that the evidence provided by the petitioner only established its exemption from state tax and did not meet the requirements of 8 C.F.R. § 204.5(m)(8).

On the Form I-290B Notice of Appeal, counsel for the petitioner states the following:

The decision states that the petitioner has not provided proof of a valid 501c3 status, when in fact it has supplied proof, namely that the affiliated and/or parent organization of the congregation is a valid 501c3 and in the calendar which states the different divisions of the parent organization, the petitioner is listed as one of the said division. This appears to have been overlooked by the department. The initial R visa granted to the alien, relies upon the religious nature of this organization and upon its exemption. This proof contradicts the decision which states that no proof of the affiliation was provided. The printed calendar is relied upon and used by the congregants on a regular basis, and provides the various members of all the affiliated religious organizations with a connection to each other.

The regulation at 8 C.F.R. § 204.5(m)(8) requires a petitioning organization to submit a valid determination letter from the IRS confirming that it is tax-exempt under section 501(c)(3) of the Internal Revenue Code either individually or under a group exemption. The regulation at 8 C.F.R. § 204.5(m)(8)(iii) provides that a petitioner can submit evidence that it is a bona fide organization that is affiliated with the religious denomination “if the organization was granted tax-exempt status ... as **something other than a religious organization**” (emphasis added). A church may not petition as a bona fide organization which is affiliated with a religious denomination as a means to avoid the evidentiary requirements applicable to churches.

Prior to the publication of the current regulations, USCIS published a rule proposing to amend regulations regarding the special immigrant and nonimmigrant religious worker visa classifications

on April 25, 2007. Supplementary information published with the proposed rule explained the inclusion of “affiliated” organizations:

USCIS also proposes to add to the existing definition of “bona fide organization which is affiliated with the religious organization in the United States,” to include entities such as educational institutions, hospitals, or private foundations. See 8 CFR 204.5(m)(2), 214.2(r)(2). Such entities may qualify as a petitioning employer organization for immigration purposes, even if their purpose is not exclusively religious, if documentation is provided to establish the organization's religious purpose and the religious nature of its activities. The eligibility of each organization will be determined on a case-by-case basis.... A church may not present itself as a bona fide organization affiliated with a religious denomination as a means of avoiding the requirement that churches present an IRS tax-exempt letter as a religious organization. 72 Fed. Reg. 20442, 20445 (Apr. 25, 2007).

On appeal, counsel claims that the petitioner has demonstrated that it is “affiliated” with tax-exempt synagogues within the same denomination. To the extent that counsel argues that the petitioner therefore qualifies as a bona fide organization which is affiliated with the religious denomination, the AAO disagrees. The petitioner has identified itself as a synagogue and has not shown that it has been granted tax-exempt status as something other than a religious organization. Accordingly, the petitioner must submit a valid determination letter under section 501(c)(3) or a letter identifying the petitioner as covered under a parent group exemption. The petitioner failed to submit either.

As an additional argument regarding the petitioner’s tax-exempt status, counsel notes that the beneficiary was granted R-1 nonimmigrant status which authorized his work for the petitioning organization. The AAO notes that the beneficiary’s R-1 status was granted under the prior regulations which contained different evidentiary requirements with regard to the petitioning organization. Further, the AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm’r 1988).

More than a year and a half after filing this appeal, the petitioner additionally submitted a letter from the IRS, dated March 8, 2012, confirming that the petitioner is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code.

At issue here is whether the director erred in determining that the petitioner failed to establish that it was a tax-exempt organization. As previously indicated, at the time the petition was filed, the petitioner submitted no evidence of a currently valid determination letter from the IRS. In response to two Requests for Evidence, the petitioner again failed to submit qualifying documentation of its federal tax-exempt status. A 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. 8 C.F.R. 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm’r 1971).

Although the petitioner did submit evidence regarding its 501(c)(3) status on appeal, the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. The AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

The AAO further notes that the Employer Identification Number listed on the determination letter, 36-4725161, does not match the number listed on the Form I-360 petition, 11-3365774. Such a fact serves to reinforce the director's finding that the petitioner failed to establish its tax-exempt status at the time of filing. Moreover, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Accordingly, the AAO finds no error on the part of the director in determining that the petitioner failed to establish that it had a valid determination letter from the IRS at the time it filed the petition and therefore that the petitioner failed to establish that it qualified as a bona fide nonprofit religious organization at the time of filing. Additionally, the AAO agrees with the director's determination that the evidence submitted by the petitioner was not sufficient to establish that the petitioner is recognized as tax-exempt under a group tax-exemption, or is a bona fide organization that is affiliated with the religious denomination under the evidentiary requirements of 8 C.F.R. 204.5(m)(8).

In the decision, the director also determined that the petitioner has not 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 the materials accompanying the Form I-360 petition, the petitioner did not provide information or documentation regarding its intended compensation of the beneficiary. In the Request for Evidence issued on March 9, 2010, the petitioner was instructed to complete an employer attestation and to submit evidence of how it intends to compensate the beneficiary in accordance with 8 C.F.R. § 204.5(m)(10). The notice additionally instructed the petitioner to submit recent audits, tax returns, or financial statements supported by documentary evidence such as bank statements, certificates, and/or letters from financial institutions.

In a letter responding to the March 9, 2010 notice, counsel stated, in pertinent part:

G. Financial Statement:

This is a synagogue and does not file tax returns.

H. Ability to Pay:

Initially this will be a non paying position requiring 40 plus hours a week.

I. Compensation:

Not applicable as the Alien is not currently compensated. ...

On the Employer Attestation submitted in response to the notice, the petitioner did not respond to item 5(d), which requested "a description of the proposed salaried and/or non-salaried compensation."

In the second Request for Evidence, issued on July 12, 2010, USCIS instructed the petitioner to submit evidence regarding compensation. The notice also instructed the petitioner to provide a list of the current paid employees of the petitioning organization. In response, counsel stated that the petitioner has no paid employees. Counsel also stated that the beneficiary "has sold an apartment in Israel and has a significant amount of proceeds with which to maintain himself." The petitioner submitted a translated abstract of the contract of sale for the beneficiary's apartment in Israel.

In her decision denying the petition, the director noted that the petitioner had not provided evidence, as requested, of its ability to compensate the beneficiary, but had instead indicated that the beneficiary would be a self-supporting volunteer. The director therefore found the evidence insufficient to establish that the petitioner will be able to compensate the beneficiary.

On appeal, counsel for the petitioner states the following:

The department claims that the synagogue will not be able to compensate the cantor, when in fact there are several individuals within the synagogue who are ready, willing and able to compensate the cantor. The cantor is at the moment self sufficient, but it is clear that in the future he will need to be compensated in order to continue spending 40 plus hours per week in the synagogue. Item 5D which may inadvertently have been left out will be addressed in our supplemental brief.

Please allow us additional 30 days to submit additional notarized letters in support of the statement.

This is intended to be a salaried position and not a volunteer position. The congregation and its members are going to pay dues to the synagogue so that the cantor will be compensated for his services. Additionally individuals have taken it upon themselves to supplement the salary needs and requirements of the cantor, including but not limited to room and board.

The AAO notes that, although counsel indicated that notarized letters and a supplemental brief would be submitted to further address the issue of compensation, nothing further has been received pertaining to this issue.

The AAO agrees with the director's finding that the petitioner has failed to establish how it intends to compensate the beneficiary. Although counsel asserts on appeal that the proffered position will be salaried, the petitioner has not offered documentary evidence in support of that assertion. 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). Furthermore, the petitioner has not submitted any IRS documentation relating to its ability to compensate the beneficiary, nor has it provided any comparable, verifiable documentation regarding its finances as required under 8 C.F.R. §204.5(m)(10).

As an additional ground for denial, the director found that the petitioner has not established that the proffered position qualifies as a religious occupation. The USCIS regulation at 8 C.F.R. § 204.5(m)(5) defines "religious occupation" as an occupation that meets all of the following requirements:

- (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.
- (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.
- (C) The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible.
- (D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

In a letter accompanying the Form I-360 petition, counsel stated that the petitioner "is pleased to have [REDACTED] as a Cantor – the leader of the Synagogue in prayer and would like to petition on his behalf to have [REDACTED] continue to lead the prayer on a permanent basis as he is an asset to the synagogue." Counsel additionally stated that the beneficiary "has multiple certifications and generations of experience from his family origins, training and learning in Israel as well as for [REDACTED] while on his R-1 visa."

In the March 9, 2010 Request for Evidence, USCIS requested further information regarding the proffered position, including a detailed description of the duties, a daily and weekly schedule, a description of the job requirements and documentary evidence that the beneficiary has met such requirements. The notice also instructed the petitioner to provide evidence that the duties primarily relate to a traditional religious function and that the position is recognized as a religious occupation within the denomination.

On the Employer Attestation submitted in response to the notice, the petitioner was asked to provide a detailed description of the alien's proposed daily duties and, in a separate question, to provide a description of the alien's qualifications for the position offered. In response to both questions, the petitioner wrote "Lead the congregation in prayer." In the letter from counsel responding to the notice, he wrote:

The beneficiary will serve as the congregation's Cantor, vocally leading the congregation in their Sabbath and Holiday Prayer Services. Additionally, he will be employed by the petitioner as a Teacher, giving classes in Gemarah (Talmud), a sacred religious text dealing with the Jewish Law and lifestyle.

The petitioner submitted a printout from a website, "Judaism 101," providing a description of "Rabbis, Priests, and Other Religious Functionaries." The printout contained the following description:

A chazzan (cantor) is the person who leads the congregation in prayer. Any person with good moral character and thorough knowledge of the prayers and melodies can lead the prayer services, and in many synagogues, members of the community lead some or all parts of the prayer service. In smaller congregations, the rabbi often serves as both rabbi and chazzan. However, because music plays such a large role in Jewish religious services, larger congregations usually hire a professional chazzan, a person with both musical skills and training as a religious leader and educator.

Professional chazzans are ordained clergy. One of their most important duties is teaching young people to lead all or part of a Shabbat service and to chant the Torah or Haftarah reading, which is the heart of the bar mitzvah ceremony. But they can also perform many of the pastoral duties once confined to rabbis, such as conducting weddings and funerals, visiting sick congregants, and teaching adult

education classes. The rabbi and chazzan work as partners to educate and inspire the congregation.

In the July 12, 2010 Request for Evidence, USCIS again asked for evidence to establish that the position qualifies as a religious occupation, including evidence that the proffered position is recognized as a religious occupation related to a traditional function in the denomination. The notice also requested a detailed description of the work to be done, including “specific job duties, level of responsibility, number of hours per week performing the work duties and the minimum education, training, and experience necessary to do the job.” The notice requested “detailed evidence that the beneficiary meets the denominations organization’s [sic] requirements including the beneficiary’s academic degree, transcripts, certificates, etc.” and requested “evidence that the beneficiary is an ordained chazzan (cantor).”

In response to the July 12, 2010 notice, counsel asserted in a letter that the petitioner “requires a very special cantor familiar with the traditional melodies of the [REDACTED] such as [REDACTED] who is a [REDACTED] and is familiar with the traditional melodies of the [REDACTED] and whose family has for three generations led multitudes of [REDACTED] in the traditional role of Cantor.” The petitioner did not submit any further description of the position or any documentary evidence relating to the beneficiary’s credentials. 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 Obaighena*, 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).

In the decision, the director stated that a religious occupation is traditionally a permanent and salaried position within the organization due to the significant time commitment necessary to perform the duties and the level of training and education required. The director distinguished such occupations from functions regularly performed by volunteers from among the congregation as an expression of their faith and practice of their beliefs. The director noted that the proffered position is unpaid and that the petitioner has not provided a detailed description of the beneficiary’s duties. The director stated:

While the general description of the beneficiary’s activities may be traditional church related activities, volunteer work does not constitute an occupation under the plain meaning of the term and the record is not persuasive that such activities are sufficiently specialized in a theological doctrine so as to constitute a religious occupation.

On appeal, counsel again asserts that the beneficiary’s background and familiarity with the unique chants of the [REDACTED] render him qualified for the proffered position. However, the petitioner does not submit any documentary evidence regarding the beneficiary’s qualifications. The unsupported statements of counsel on appeal 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 additionally states:

Contrary to the assertion by the department, the congregation properly seeks to classify the beneficiary as a special immigrant religious worker to perform services as a cantor and religious teacher. This position is being offered as a permanent salaried position with the synagogue organization. The fact that initially he will be self-supporting does not mean that the congregation intends for him to continue working without compensation. The duties called for are specifically religious in nature.

The regulation at 8 C.F.R. § 204.5(m)(5)(A) requires that the beneficiary's proffered position "be recognized as a religious occupation within the denomination." The only documentary evidence submitted by the petitioner regarding the denomination's recognition of the position of cantor as a religious occupation was the "Judaism 101" printout submitted in response to the March 9, 2010 request for evidence. That document stated that "in many synagogues, members of the community lead some or all parts of the prayer service." While it provided that "larger congregations usually hire a professional chazzan," it went on to state that "[p]rofessional chazzans are ordained clergy" who have "both musical skills and training as a religious leader and educator." As noted above, the petitioner has not submitted any evidence beyond the assertions of counsel regarding the beneficiary's qualifications. Therefore, the petitioner has not established that the beneficiary is a professional cantor according to the petitioner's own description. The petitioner, through counsel, has acknowledged that the beneficiary has been and is currently performing his duties in an unpaid capacity. Counsel has asserted, without evidence, that the beneficiary will be paid in the future.

The AAO agrees with the director that, although the beneficiary's duties are religious in nature, the petitioner has not established that the beneficiary will be employed in a religious occupation recognized as such by the denomination rather than acting as a volunteer leading the prayer service as a member of the community. The AAO does not find that a cantor position could never meet the eligibility requirements of a religious occupation, only that the petitioner has not demonstrated that the beneficiary's role in its organization qualifies as a religious occupation.

As the final ground for denial, the determined that the petitioner has not established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

The USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the alien has been working as a minister or in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The petition was filed on August 31, 2009. Therefore, petitioner alien must establish that the beneficiary was continuously performing qualifying religious work in lawful 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.

On the Form I-360 petition, the petitioner indicated that the beneficiary currently held R-1 status expiring on October 12, 2009. At the time of filing, the petitioner did not specifically indicate whether the beneficiary was currently employed by the petitioning organization or submit any evidence regarding his employment during the qualifying period. In a letter accompanying the petition, counsel described the beneficiary's qualifications for the position, including "training and learning in Israel as well as for [REDACTED] while on his R-1 visa." Accompanying the beneficiary's Form I-485, Application to Adjust Status, filed concurrently with the Form I-360 petition, the beneficiary submitted Form G-325A, Biographic Information, on which he indicated that he had held the position of "cantor" for both the petitioner and [REDACTED] but did not provide dates of employment for either position.

In the Request for Evidence issued on March 9, 2010, USCIS requested additional evidence of the beneficiary's continuous, lawful, qualifying work experience during the two years immediately preceding the filing of the petition. The petitioner was specifically instructed to submit experience letters written by the previous and current employers including in part "specific dates of employment, specific job duties, number of hours worked per week, form and amount of compensation, and level of responsibility/supervision." The notice also instructed the petitioner to

submit evidence of compensation received, evidence that the beneficiary maintained lawful status, and an explanation for any break in the employment. The petitioner was instructed to submit the beneficiary's IRS Forms W-2 and certified federal income tax returns for the years 2007 to 2009 and an itemized record from the Social Security Administration (SSA).

In the letter responding to the notice, regarding the beneficiary's work history, counsel for the petitioner requested an additional 30 days "to produce the additional recommendation letters as due to the holiday of Passover, my client couldn't obtain the documentation." The petitioner submitted tax documentation and an SSA record for the years 2005 to 2007, showing that the petitioner received income from [REDACTED] in the amounts of \$3,000 in 2005, \$12,000 in 2006, and \$10,000 in 2007. The petitioner did not submit IRS or SSA records for the years 2008 or 2009, nor did it submit any "additional recommendation letters" regarding the beneficiary's work history as counsel has suggested.

On July 12, USCIS instructed the petitioner to submit verifiable evidence of all salaried and/or non salaried compensation received by the beneficiary or verifiable evidence of self-support. The notice specifically requested IRS documentation for the years 2008 and 2009, noting that the petitioner had only submitted documentation for the years 2005 to 2007. The notice additionally stated:

Submit documentary evidence that the beneficiary is authorized to worked [sic] for the [REDACTED] Your Form I-94, Arrival/Departure Record do not indicate the name of the employer.

In his letter of response, counsel asserted that the beneficiary "did not have income for the years of 2008 and 2009 and was not required to file taxes for those years." Counsel additionally stated that the beneficiary "has sold an apartment in Israel and has a significant amount of proceeds with which to support himself." The petitioner submitted a translated abstract of the sale contract for the beneficiary's apartment, dated April 19, 2010.

The director found that the beneficiary worked for the petitioner without authorization during the qualifying period and thus failed to maintain lawful status. The director therefore determined that the petitioner had failed to establish that the beneficiary had at least two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition.

On appeal, counsel states the following:

The beneficiary has been employed by the congregation for the two year period of time immediately preceding the present application as required under section 8CFR 204.5(M)(11) and received non salaried compensation and has been self supporting and provided documentation evidence the sale of an apartment in Israel which provided the cantor with sufficient money to exist in the United States without an immediate need for a salaried position, although the position with the congregation

is intended to be a salaried position and does come with compensation of the spiritual as well as material in the form of room and board and meals at the synagogue.

Since his position as a religious instructor at the [REDACTED] an affiliated organization of the petitioner as evidenced in the calendar, he has continued his employment as cantor; working on a volunteer basis for the period of time during which he did not have employment authorization from the USCIS.

The AAO finds the evidence insufficient to establish the beneficiary's continuous, qualifying employment during the qualifying period. Although counsel asserts on appeal that the beneficiary was employed by the petitioner throughout the qualifying period, the petitioner has not submitted an experience letter attesting to specific dates of employment in order to establish the continuity of the beneficiary's experience. Nor has the petitioner submitted a sufficient description of the beneficiary's duties to establish that his prior experience would be qualifying religious work.

Additionally, the regulation at 8 C.F.R. § 204.5(m)(11) requires the alien's previous religious work to have been compensated, either through salaried or non-salaried compensation, with limited exceptions for self-support outlined in the USCIS regulations at 8 C.F.R. § 214.2(r)(11)(ii). The circumstances for self-support involve the alien's participation in an established program for temporary, uncompensated missionary work. The self-petitioner has not shown or claimed that he participated in such a program. 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. Counsel asserts on appeal that the beneficiary received non-salaried compensation, but the petitioner has submitted no documentary evidence to support that claim.

Furthermore, the petitioner has not established that the beneficiary's work was authorized under United States immigration law. According to the record, the beneficiary held R-1 nonimmigrant status which authorized him to work for [REDACTED] beginning on June 30, 2004. The petitioner submitted copies of the beneficiary's Form I-94 departure records showing that he was subsequently admitted to the United States in R-1 nonimmigrant status on April 28, 2008 and July 6, 2009, with the expiration of his R-1 status most recently extended to October 12, 2009. The regulation at 8 C.F.R. § 214.2(r)(2) states that "[a]n alien may work for more than one qualifying employer as long as each qualifying employer submits a petition plus all additional required documentation as prescribed by USCIS regulations" and the regulation at 8 C.F.R. § 214.2(r)(1)(v) provides that the alien may not work in the United States in any other

capacity. Further, the regulation at 8 C.F.R. § 214.1(e) provides that a nonimmigrant may engage only in such employment as has been authorized. Any unlawful employment by a nonimmigrant constitutes a failure to maintain status.

The record does not indicate that the petitioner submitted a Form I-129 petition on behalf of the beneficiary and the petitioner has not submitted evidence that the beneficiary held authorization to work for the petitioner during the qualifying period.

For the reasons discussed above, the AAO agrees with the director's determination that the petitioner has not established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition.

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

ORDER: The appeal is dismissed.