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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

[REDACTED]

C1

DATE: **SEP 28 2012**

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
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,

Perry Rhew
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The director granted motions to reopen and to reconsider on October 19, 2010 and on January 31, 2011 and again dismissed the appeal. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Jewish temple. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Act, 8 U.S.C. § 1153(b)(4), to perform services as a music, language, and prayer teacher. The director determined that the petitioner had not established that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the petition.

Counsel asserts on appeal that the decision is “an unfortunate reflection of blatant misinterpretation of the facts and law in the instant matter.” Counsel submits a brief and additional documentation in support of the appeal.

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

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

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

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

Therefore, the petitioner must show that the beneficiary worked in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The petition was filed on April 30, 2010. Accordingly, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

The regulation at 8 C.F.R. § 204.5(m)(11) provides:

Evidence relating to the alien's prior employment. Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14, and if acquired in the United States, must have been authorized under United States immigration law. If the alien was employed in the United States during the two years immediately preceding the filing of the application and:

- (i) Received salaried compensation, the petitioner must submit IRS [Internal Revenue Service] documentation that the alien received a salary, such as an IRS Form W-2 [Wage and Tax Statement] or certified copies of income tax returns.

(ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.

(iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.

If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

The petitioner indicated on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, that the beneficiary entered the United States on February 22, 2009 and that his current nonimmigrant status was that of "religious functionary." With the petition, the petitioner submitted copies of IRS Forms W-2 that it issued to the beneficiary in 2008 and 2009, reflecting that it paid the beneficiary wages of \$23,794.38 and \$30,395.97, respectively.

In a request for evidence (RFE) dated July 1, 2010, the director instructed the petitioner to provide additional documentation regarding the beneficiary's employment:

- **Evidence of past compensation:** The beneficiary has worked since his entry or authorization. For the years 2008 and 2009, although W-2s were submitted, submit computer generated copies of the beneficiary's:
 - federal tax transcripts
 - wage and income (Form W-2 Wage and Tax Statement) transcripts,

and copies of W-2s and /or 1099s forms and/or other sales or wage income report forms (if not being submitted. The computer generated transcript copies must be obtained from and certified (or stamped) by a local [IRS] district office. If requested evidence is not available, please explain and provide supporting documentation, there's any.

- **Terms of Employment:** Submit a copy of employment offer from the petitioning organization to the beneficiary. The job offer must have specific information regarding title, working location, payment and compensation, duties and schedules.
- **Work Schedule:** Submit a weekly work schedule of the beneficiary, showing specific duties hourly. Please describe in full English specific duties/services in break-down hours spent by the beneficiary in performing such duties. Please indicate the weekdays or weekend days and the complete address and contact information of when and where the beneficiary reports to work.

In response, the petitioner resubmitted the beneficiary's IRS Forms W-2 for 2008 and 2009 and submitted an IRS Form 1099-MISC, Miscellaneous Income, on which it reported that it paid the beneficiary \$930 in nonemployee compensation in 2009. The petitioner also provided copies of the beneficiary's IRS Form 1040, U.S. Individual Income Tax Return, for 2008 and 2009, on which the beneficiary reported the wages received from the petitioner and also reported \$3,766 and \$5,119 in self-employment income as a music teacher for 2008 and 2009, respectively.

The petitioner also submitted a copy of a teaching contract which the beneficiary signed on July 21, 2010 for the 2010-2011 school year. The contract references a "Covenant of Education" and a calendar; neither is included in the record. In a June 1, 2010 "Letter of Agreement," the petitioner and the beneficiary agreed that the beneficiary would also serve as a percussionist for the temple:

As per our conversation, you will be responsible to play percussion for all Friday night services, select holidays not on Friday nights . . . , 2-3 Concerts, and rehearsals as needed.

This year will commence for [sic] Friday, September 3rd and conclude Friday June 17th, 2011. For the year 2010-11, you will receive a salary of \$160.00 per service or special holiday, and additional compensation of \$300 for each concert. You will be paid monthly for each month's work.

The AAO notes that the contract memorializing the terms of the beneficiary's work with the petitioner was signed after the date of the director's RFE. The petitioner submitted no contracts or agreements for any period prior to that date.

The director denied the petition on September 22, 2010, finding that the petitioner had failed to fully respond to the RFE. The director determined that the petitioner had failed to provide copies of the beneficiary's IRS Form W-2 and tax return transcripts as requested in the RFE, or to explain why they were not available. The director also noted that the income reported by the beneficiary on his tax returns and that reported as paid by the petitioner differed. The director further noted that the beneficiary had been absent from the United States from August 7, 2008 to February 23, 2009 with no indication that he had engaged in qualifying work during that period. The director found that the petitioner had not established that this period during which the beneficiary was absent from the United States and presumably not engaged in qualifying religious work constituted an exception to the continuous work requirement under 8 C.F.R. § 204.5(m)(4).

On December 27, 2010, the director granted the petitioner's October 19, 2010 motion to reopen and to reconsider her denial, in which counsel stated:

You have questioned an apparent discrepancy between the amount reflect[ed] on the applicants W-2 statement in the sum of \$30,395 and the amount declared on the tax return which is \$33,475. You apparently neglected to acknowledge the fact that the beneficiary had a form 1099 in the sum of \$930, issued by the petitioner for additional services provided by the beneficiary, and that he received additional

income for services which he provided at the behest of the petitioner. Clearly, this is a non sequitur to the issue at hand.

Counsel's explanation, however, did not account for the additional \$2,150 shown on the beneficiary's 2009 tax return as taxable self-employment earnings or the \$5,119 he reported in self-employment gross earnings as a music teacher.

Counsel also stated:

Most perplexing, is your baseless assertion that the beneficiary has not worked continuously in the past two years before filing the petition. Admittedly, the beneficiary was not in the U.S. when he requested an extension of time to respond, since this was his summer vacation. There is no basis in law or fact for suggesting that brief vacation periods are interruptive of the two-year qualifying period.

Counsel then challenged the director's finding that the beneficiary had been out of the United States for the six-month period from August 7, 2008 to February 23, 2009. The petitioner provided copies of the beneficiary's passport, which indicated that he entered Israel on August 7, 2008 and was readmitted to the United States on September 5, 2008, and that he again entered Israel on February 8, 2009 and was readmitted to the United States on February 24, 2009.

In an October 4, 2010 letter submitted on motion, the petitioner's [REDACTED] stated:

I understand that you have also requested confirmation regarding [the beneficiary's] actual employment by the Temple from April 30, 2008 to April 30, 2010. As his direct supervisor and the individual under whose auspices he has performed liturgical services, I can attest to the fact that he has been employed on a full-time basis during the aforementioned period.

• • •

I would also like to confirm that it is the intent of the Temple to continue the employment of [the beneficiary] as a full-time permanent member of our religious staff. He will continue the selfsame duties and responsibilities previous described and will continue to receive a salary pursuant to the contract between him and the Temple. He will receive supervision from the head of the Education Department relating to his duties as an instructor in the religious studies school, and he will be under my supervision for his religious duties performed during our religious services.

Although acknowledging the error regarding the beneficiary's purported absence from the United States from August 2008 to February 2009, the director again denied the petition on December 27,

2010. The director noted that the petitioner's untimely response to the RFE had not been considered in the denial but that the information and documentation provided by the petitioner in response to the RFE and on motion were not dispositive of the issue of the beneficiary's continuous work experience.

The director found that the beneficiary had been absent from the United States and on vacation, according to counsel, for a period of six weeks from August 2008 to February 2009. The director also stated that "Records show that there were 6-week breaks in the two years requirement period." The director pointed out that the regulation does not contain an exception for such prolonged "vacation" periods as an exception to the continuous work requirement.

The director also found that the petitioner had not sufficiently explained the beneficiary's reported self-employment income, stating:

Computerized transcripts and tax returns show that [the beneficiary] received extra income from other sources. In fact, transcripts of tax returns show that he earned \$5,119 dollars in 2009 and \$3,766 dollars in 2008 from his own business as a music teacher. The above extra income was not shown on W-2s or 1099s of the petitioner and the beneficiary. The petitioner provided a form 1099 for 2009 showing \$930 dollars and explained that the beneficiary has received other additional income "for services which he provided at the behest of the petitioner." However, the petitioner has not presented independent and verifiable evidence for supporting the explanation. Evidence clarifying the services and the relationship of the petitioner with the services, and the sources of the extra income is not available.

The director determined that, as the record indicates that the beneficiary performed additional work without authorization, he had violated the terms of his R-1 nonimmigrant religious worker visa status and was not in a lawful immigration status.

On January 18, 2011, the petitioner again moved the director to reopen and to reconsider her decision, alleging: "The District [sic] Director continues to justify the denial of the petition on the grounds that the beneficiary precipitated the denial by failing to disclose a 27 day vacation period. This is a fictional requirement clearly not found in the statues or regulations." On January 31, 2011, the director granted the petitioner's motion to reopen but determined that the petitioner had failed to submit sufficient documentation explaining the beneficiary's additional income. The director therefore issued an RFE in which she instructed the petitioner to submit copies of the beneficiary's wage and income transcripts for 2008 and 2009 that had been certified or stamped by the IRS. The director also instructed the petitioner to submit:

Evidence clarifying the extra music teaching services and the relationship of the petitioner with the services, and the sources of the extra income is not sufficient at this time. In the appeal/motion, the petitioner only submitted two forms 1099-MISC showing \$3,766 income in 2008 and \$930 income in 2009. But, some do not match income reported on IRS transcripts. Counsel has provided no clarification.

Please submit evidence from the petitioner clarifying the above mentioned extra income earnings and extra services in 2008 and 2009.

In his February 15, 2011 letter accompanying the petitioner's response, counsel stated:

Attached hereto are copies of forms 1099 issued by the petitioner for the years 2008 and 2009. As you can see, the 2008 form 1099 confirms that the petitioner received additional income from the synagogue in the amount of \$3765.71. This was for additional religious activities performed by the beneficiary on behalf of the petitioner, at the petitioner's specific request for which additional compensation was provided by the petitioner. The petitioner chose to pay the beneficiary in this fashion for the additional work for its own internal bookkeeping purposes, and to maintain contractual parity among his teachers the beneficiaries original contract of employment. Likewise, the 2009 form 1099 in the sum of \$930.00 was issued by the petitioner to the beneficiary for the selfsame reason.

In a February 15, 2011 letter, regarding the nonemployee compensation that the petitioner paid to the beneficiary in 2008 and 2009, [REDACTED] stated:

[The beneficiary] had been requested by the Temple to provide additional liturgical services on its behalf, as well as to provide additional teaching and tutoring of the Hebrew liturgy to students in grades six and seven of the Temple religious school.

Because this involved additional time outside his contractual obligations to the Temple, he was compensated for his additional work.

The petitioner also submitted a copy of a January 4, 2011 letter from [REDACTED] from [REDACTED] in which she stated:

On May 2, 2009, the beneficiary participated in a non-profit fundraising event at [REDACTED] in Richmond, Virginia, in order to raise funds for The [REDACTED]

[REDACTED] is a non-profit organization that provides housing for the out of town families of patients undergoing critical surgeries at The Medical College of Virginia. . . .

For his generous participation in raising funds to support this extraordinary institution, [the beneficiary] received \$4,189.00. The monies covered airfare, lodging for the rehearsal period and concert weekend, food and a small honorarium.

The director again denied the petition, finding that the petitioner had failed to provide certified or stamped copies of the beneficiary's wage and income transcripts and that the beneficiary's work for [REDACTED] was in violation of his nonimmigrant visa status.

On appeal, counsel asserts that the director “continually attempts to justify [her] erroneous conclusions by blaming the beneficiary for not notifying the USCIS of his yearly three-week vacation outside the US” and that “the honorarium received by the beneficiary for his participation in a religious and charitable fundraising event for a synagogue and hospital [] has mistakenly been identified by the District [sic] Director as unauthorized employment.” In his brief, counsel details a list of complaints about the clarity and redundancy of the director’s decisions and requests for additional evidence. The AAO will focus only on those statements that are material and relevant to the grounds on which the director denied the petition.

The petitioner failed to provide certified or stamped copies of the beneficiary’s wage and income transcripts from the IRS.

The petitioner submitted copies of the IRS Forms W-2 and IRS Forms 1099-MISC that it issued to the beneficiary in 2008 and 2009, and copies of the beneficiary’s uncertified IRS Forms 1040 for the same periods. In her RFE of July 1, 2010 and again on January 31, 2011, the director instructed the petitioner to submit IRS certified or stamped wage and income reports for the years 2008 and 2009. In response, the petitioner provided copies of the beneficiary’s tax return transcripts retrieved from the IRS website. 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). Also in response to the director’s request, the petitioner provided an explanation of the self-employment income reported by the beneficiary. The figures reported in all of the documents are consistent and the director does not suggest that the submitted transcripts are flawed in any way. It is unclear what new or additional information would be retrieved from certified copies of the transcripts. The AAO therefore finds that the petitioner’s failure to provide certified or stamped copies of the beneficiary’s IRS transcripts does not preclude a material line of inquiry and withdraws the director’s determination regarding this issue.

The beneficiary’s work for [REDACTED] was without the permission of USCIS and therefore was unauthorized under U.S. immigration laws.

The beneficiary reported self-employment income as a music teacher in 2008 and 2009 in the amount of \$3,766 and \$5,199, respectively. The petitioner submitted copies of IRS Form 1099-MISC that it issued to the beneficiary in 2008 and 2009 in the amount of \$3,765.71 and \$930, respectively. The petitioner states that these funds were paid to the beneficiary because the petitioner had requested him to provide “additional liturgical services” and “to provide additional teaching and tutoring of the Hebrew liturgy to students in grades six and seven of the Temple religious school.” The petitioner alleges that it paid the monies separately to the beneficiary “[b]ecause this involved additional time outside his contractual obligations to the Temple” but did not indicate how much of these funds paid to the beneficiary was for his “additional liturgical services” and how much was for his work providing “additional teaching and tutoring.” The AAO notes that the petitioner indicated on the IRS Form 1099-MISC that it compensated the beneficiary as a “nonemployee.”

The petitioner also provided a letter from [REDACTED] stating that the beneficiary had assisted the organization in 2009 in its fundraising efforts on behalf of the [REDACTED] in Richmond, Virginia, and that it had paid the beneficiary \$4,189 in reimbursement for his airfare, lodging, food, “and a small honorarium.” The January 4, 2011 letter from [REDACTED] did not provide an outline of how much it paid the beneficiary for each of the items it identified nor did the petitioner provide an IRS Form 1099-MISC or any other verifiable documentation from [REDACTED] reflecting this payment to the beneficiary.

A review of the beneficiary’s tax returns indicates that he claimed all of the income reported by the petitioner, and allegedly by [REDACTED] as self-employment income from his work as a music teacher. His 2008 Schedule C-EZ, Net Profit from Business, indicates that he deducted expenses totaling \$1,610 for teaching materials, telephone, car and truck expenses, and meals and entertainment. The beneficiary deducted similar expenses in 2009 in the amount of \$2,040 on self-employment income of \$5,199, although he was allegedly paid only \$930 by the petitioner. As discussed above, the petitioner does not identify how much of this extra income that it paid to the beneficiary in 2008 or 2009 was for teaching and how much was for his performance during liturgical services. The AAO notes that the 2010-2011 contract includes \$8,000 for “private tutoring” and that the petitioner entered into a separate agreement with the beneficiary for his performance during liturgical services. The AAO also notes that the beneficiary did not deduct the airfare or lodging that he allegedly received from [REDACTED] for his participation in its fundraiser. Thus, the record does not establish that the beneficiary received only a “small honorarium” from [REDACTED] and does not sufficiently explain his self-employment earnings or rebut the director’s finding that the beneficiary engaged in unauthorized employment.

The regulation at 8 C.F.R. 274a.12(b) states, in pertinent part:

Aliens authorized for employment with a specific employer incident to status. The following classes of non-immigrant aliens are authorized to be employed in the United States by the specific employer and subject to the restrictions described in the section(s) of this chapter indicated as a condition of their admission in, or subsequent change to, such classification...

- (16) An alien having a religious occupation, pursuant to § 214.2(r) of this chapter. An alien in this status may be employed only by the religious organization through whom the status was obtained;

The former regulation at 8 C.F.R. § 214.2(r)(6), in effect prior to November 26, 2008, stated:

Change of employers. A different or additional organizational unit of the religious denomination seeking to employ or engage the services of a religious worker admitted under this section shall file Form I-129 with the appropriate fee. . . . Any

unauthorized change to a new religious organizational unit will constitute a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act.

Similar provisions now exist at 8 C.F.R. § 214.2(r)(13). More generally, under 8 C.F.R. § 214.1(e) a nonimmigrant may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status.

The record indicates that the beneficiary was approved for entry into the United States pursuant to an R-1 nonimmigrant religious worker visa to work for the petitioning organization. The beneficiary's work with any entity other than the petitioner, including his self-employment, violates the terms of his R-1 visa and constitutes unauthorized work in the United States. The beneficiary was no longer in lawful immigration status as soon as he engaged in unauthorized employment.

Counsel asserts on appeal that the issue of the beneficiary's unlawful employment is relevant only to an application to adjust status under section 245(a) of the Act. Counsel's argument is again without merit. The regulations at 8 C.F.R. § 204.5(m)(4) and (11) specifically provide that qualifying work for this immigrant visa classification must be in a lawful immigration status. As discussed above, the beneficiary was no longer in lawful immigration status as soon as he engaged in unauthorized employment. Accordingly, the petitioner has failed to establish that the beneficiary worked continuously in a lawful immigration status and therefore in qualifying work for two full years immediately preceding the filing of the visa petition.

As an additional matter, the petitioner has not established that it is a bona fide nonprofit religious organization. The regulation at 8 C.F.R. § 204.5(m)(5) provides, in pertinent part:

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 IRC [Internal Revenue Code] of 1986 or subsequent amendments or equivalent sections of prior enactments of the IRC.

Additionally, the regulation at 8 C.F.R. § 204.5(m)(8) provides:

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 . . . (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 [IRC] of 1986, or subsequent amendment or equivalent sections of prior enactments of the [IRC], 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.

The petitioner submitted a copy of a December 3, 2007 letter from the [REDACTED] [REDACTED] stating that it was previously known as the [REDACTED] and that the petitioner “is a member in good standing” of that organization, which is “the umbrella organization for the reform movement.” The petitioner also submitted a copy of a July 21, 2003 letter from the IRS confirming that the [REDACTED] as a nonprofit tax-exempt organization under section 501(c)(3) of the IRC. The letter does not indicate that the [REDACTED] was granted a group exemption for its subordinate units.

The petitioner submitted no other documentation pursuant to the above-cited regulations to establish that it is a bona fide nonprofit religious organization. Accordingly, the petitioner has failed to establish that it is a bona fide nonprofit religious organization within the meaning of the regulation.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial 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 (9th 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).

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.