(b)(6)

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

Date: APR 17 2013 Office: CALIFORNIA SERVICE CENTER

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.

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 withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further action and consideration.

The self-petitioner[1] seeks classification 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 for New York. The director found the evidence insufficient to establish that the prospective employer qualifies as a bona fide non-profit religious organization in the United States.

On appeal, the petitioner submits a brief from counsel, copies of documents already in the record, as well as additional evidence.

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

[1] Part 1 of the Form I-360 petition identifies as the petitioner. Review of the petition form, however, indicates that the alien is the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 10 of the Form I-360, "Signature," has been signed not by any official of the church, but by the alien himself. Thus, the alien, and not , has taken responsibility for the content of the petition. The petition was properly filed because the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(6) allows the alien to file the Form I-360 petition on his or her own behalf. The appeal has also been properly filed, as the attorney who filed the appeal represents the alien.

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)(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.

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.

The Form I-360 petition was filed on June 15, 2012. The petition identified New York as the petitioner's prospective employer, and listed that organization's Internal Revenue Service (IRS) "Tax #" as

Accompanying the petition, the petitioner submitted a copy of a June 2, 1972 letter from the IRS to the General Council of the in Springfield, Missouri, Employer Identification Number (EIN) The letter confirmed that organization's exemption from taxation under section 501(c)(3) of the Internal Revenue Code and indicated that the organization was granted a group exemption which would apply to its subordinates. The petitioner also submitted a letter from the general secretary of The General Council of the in Springfield, Missouri, stating that is "one of the exempt subordinate units" covered by the group exemption.

On July 13, 2012, USCIS issued a Request for Evidence (RFE) which in part requested evidence that the prospective employer qualifies as a bona fide non-profit religious organization or a bona fide organization that is affiliated with the religious denomination. The notice stated the following:

NOTE: The IRS determination letter for 501(c)(3) exemptions must indicate the petitioner's IRS Employer Identification Number.

NOTE: The evidence submitted shows the petitioner is exempt State income tax. You must provide evidence that shows the petitioner is exempt Federal income tax.

In a letter responding to the request, counsel stated that "[t]he information requested above has been previously provided" as part of the initial evidence submitted with the petition.

On October 10, 2012, the director denied the petition, finding the evidence "insufficient to establish that the employer qualifies as a bona fide religious organization."

On appeal, counsel argues that the petitioner has submitted evidence in compliance with 8 C.F.R. § 204.5(m)(8)(ii), establishing that the prospective employer is an organization that is recognized as tax-exempt under a group tax-exemption. Counsel notes that, as the organization is an exempt subordinate unit under a group exemption, it is not required to possess a determination letter from the IRS listing its own EIN.

The AAO agrees with counsel that the petitioner has submitted sufficient evidence to establish that the prospective employer qualifies as a bona fide non-profit religious organization in the United States. Accordingly, the AAO will withdraw the director's findings on this issue.

The above discussion indicates that the petitioner has overcome the only stated basis for denial of the petition. The AAO will withdraw that basis and, therefore, the denial decision.

However, review of the record shows additional obstacles to approval of the petition. The AAO may deny an application or petition that fails to comply with the technical requirements of the law 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 AAO finds the evidence insufficient to establish that the self-petitioner has the requisite two years of continuous, qualifying work experience immediately preceding the filing 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 June 15, 2012. Therefore, the petitioner must establish that he was continuously performing qualifying religious work in lawful immigration 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.

As stated above, the Form I-360 petition indicated that the self-petitioner would be employed as a pastor at At the time of filing, the petitioner submitted copies of his "Certificate of Ministry" and "Ministry License" from The General Council of the dated June 8, 2010 and April 25, 2011 respectively, as well as other documentation of his credentials as a minister.

The petitioner submitted an October 1, 2011 letter from Senior Pastor of stating that the petitioner "has been an active member and in good standing with the Church since March 2004." The petitioner also submitted a "Certificate of Recognation [sic]," dated October 25, 2009, from recognizing the petitioner's "outstanding commitment to teaching the work of God."

Additionally, the petitioner submitted an unsigned, uncertified copy of his 2010 Form 1040 tax return, which listed $17,667 in income for the year but did not identify the source of the income.

No further evidence was submitted regarding the petitioner's work history during the two-year qualifying period and neither the petition nor the accompanying evidence indicated whether the petitioner was currently employed by at the time of filing the petition.

The July 13, 2012 RFE included a request for additional evidence regarding the alien's work history during the two years immediately preceding the filing of the petition. The notice specifically requested experience letters providing detailed information about the alien's schedule and the work performed during the qualifying period. The notice also requested

evidence of compensation received, and instructed the petitioner to submit official copies of the alien's IRS Forms W-2 for the years 2010 and 2011 in a sealed IRS envelope.

In response to the notice, counsel stated the following:

> ... [T]he Beneficiary is currently volunteering his time as a pastor and religious leader for the Beneficiary. He is unable to maintain this level of commitment as well as staying committed to his current job. The Petitioner would like the opportunity to pursue his higher calling as a full-time commitment. ...
>
> The Beneficiary has volunteered for the Petitioner since or about 2004. He has led sermons and services in addition to supervising extra-curricular groups. For additional information, please see Exhibits "G." Additionally, Petitioner and Beneficiary's original form I-360 lists Beneficiary's expected duties and is signed by the Petitioner.

The petitioner again submitted the October 1, 2011 letter from stating that the petitioner "has been an active member and in good standing with the Church since March 2004." The petitioner also submitted an August 30, 2012 letter from which stated that the petitioner "is an active member" of the church and "is also a Licensed Minister," but did not indicate that the petitioner had served as a minister at Additionally, the petitioner submitted a September 25, 2012 letter which stated the following:

> has been heavily involved in the Church ministry as:
>
> · Sunday school teacher
>
> · Choir member
>
> · President of Men's ministry
>
> · Preaching
>
> · Leading worship service, etc.

Although the letter contained a space for signature, it was not signed and was not printed on letterhead. The petitioner also submitted a "List of volunteer and paid ministers and staff" which did not include the petitioner's name and listed a different individual, as the volunteer President of the men's ministries. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Regarding the request for the petitioner's Forms W-2, counsel stated that such evidence "has been previously provided." The petitioner also submitted a copy of a 2011 Form W-2 from indicating that he earned $17,048.00 from that organization, as well as an uncertified copy of his 2011 tax return listing the same amount as his total earnings for the year.

Counsel has asserted that the petitioner served as "a pastor and religious leader" for However, the AAO notes that no documentary evidence has been submitted in support of counsel's assertion and at no time has an official from stated that the petitioner served in such a capacity or provided dates of service. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Further, regarding the claim of the petitioner's volunteer work within the United States, such work is not considered to be qualifying experience. In the preamble to the proposed rule, USCIS recognized that although "legitimate religious work is sometimes performed on a voluntary basis . . . allowing such work to be the basis for . . . special immigrant religious worker classification opens the door to an unacceptable amount of fraud and increased risk to the integrity of the program." *See* 72 Fed. Reg. 20442, 20446 (April 25, 2007). The regulation at 8 C.F.R. § 204.5(m)(11) specifically requires that the alien's prior experience have been compensated either by salaried or non-salaried compensation (such as room and board), but can also include self-support under limited conditions. In elaborating on this issue in the final rule, USCIS determined that the sole instances where aliens may be uncompensated are those aliens "participating in an established, traditionally non-compensated, missionary program." *See* 73 Fed. Reg. at 72278. *See also* 8 C.F.R. § 214.2(r)(11)(ii). The petitioner has neither claimed nor established that he was participating in such a program. Accordingly, any time the petitioner may have spent in the United States "working" as a volunteer for cannot be considered qualifying employment.

Additionally, the 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 during the qualifying period, and the regulation at 8 C.F.R. § 204.5(m)(5) defines "minister" as one who "[w]orks solely as a minister in the United States." In this instance, the petitioner has submitted evidence that the petitioner held outside employment during the qualifying period. Therefore, in addition to the lack of evidence that the petitioner was performing continuous religious work and the lack of compensation, the AAO finds that the petitioner's purported work as a minister cannot be considered qualifying experience as he was not working "solely as a minister" during the qualifying period as required by the regulations. *See Matter of Faith Assembly Church,* 19 I&N 391, 393 (Comm'r. 1986). The Ninth Circuit Court of Appeals, whose jurisdiction includes the California Service Center, has upheld the AAO's interpretation of the two-year experience

requirement. *See Hawaii Saeronam Presbyterian Church v. Ziglar,* 243 Fed. Appx. 224, 226 (9th Cir. 2007).

For the reasons discussed above, the AAO finds this evidence insufficient to establish that the petitioner was continuously engaged in qualifying religious work during the two years immediately preceding the filing of the petition.

Additionally, the USCIS regulation at 8 C.F.R. § 204.5(m)(12) reads:

> *Inspections, evaluations, verifications, and compliance reviews.* The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The AAO will remand the petition in order for the director to determine whether the petitioner has satisfied the regulatory requirements at 8 C.F.R. § 204.5(m) as discussed above.

The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review