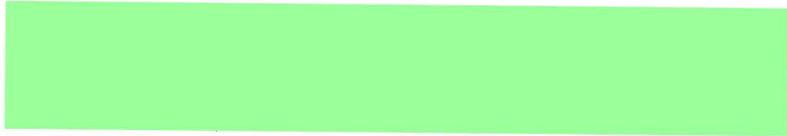


(b)(6)

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: **DEC 31 2013** 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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in cursive script, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The AAO dismissed the petitioner's appeal from that decision. The matter is now before the AAO on a motion to reopen. The AAO will grant the motion and affirm the dismissal of the appeal. The petition remains denied.

The petitioner is the national headquarters of a Christian missionary organization. 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 minister for a congregation in ██████████ Connecticut. The director determined that the petitioner had not established that the beneficiary will be working for a bona fide non-profit religious organization in the United States. In dismissing the appeal, the AAO made additional determinations that the beneficiary had worked without authorization during the two years immediately preceding the filing of the petition, and that the petitioner had submitted inconsistent documentation regarding the beneficiary's prior compensation.

On motion, the petitioner submits a letter from Rev. ██████████ senior pastor and international field director of the petitioning organization; documentation from the Internal Revenue Service (IRS), including tax return transcripts and a copy of a previously issued determination letter recognizing the petitioner's tax-exempt status; and bank documentation regarding the church in ██████████. Some of these exhibits duplicate previous submissions, but other materials are new on motion.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.5(a)(2) requires that a motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. The AAO will grant the motion because it includes relevant new information.

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

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
- (ii) seeks to enter the United States—
 - (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
 - (II) before September 30, 2015, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before September 30, 2015, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

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

Tax-Exempt Status

The first issue under discussion concerns the tax-exempt status of the prospective employer. The USCIS regulation at 8 C.F.R. § 204.5(m)(8) requires the petitioner to submit (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. The denial of the petition and the dismissal of the appeal both rested, in part, on the petitioner's failure to submit an IRS determination letter to establish that the church in Trumbull is tax-exempt in its own right, or covered by a group exemption issued to the parent organization.

On motion, Rev. [REDACTED] maintains that the churches in Florida and Connecticut are the same entity. Bank documents submitted on motion show that the Connecticut church's tax identification number, [REDACTED] matches the Florida petitioner's federal employer identification number (EIN). Rev. [REDACTED] states that the two churches, therefore, are facets of the same entity. The matching numbers, by themselves, are not conclusive support for the petitioner's claim, because the bank documents only show the petitioner's EIN because the petitioner itself provided that information on the Corporate Signature Card for the Connecticut church's bank account. These documents do not show that the IRS recognizes that the Connecticut church shares the Florida petitioner's EIN.

Furthermore, the Corporate Signature Card dates from February 7, 2012, and the printouts from the bank date from January 17, 2013. The Corporate Signature Card is marked "Revised," with no indication of what information had changed from the previous card (which the petitioner has not submitted). These materials do not show that the Connecticut church used the petitioner's EIN in October 2011 when the petitioner filed the petition. An applicant or petitioner must establish eligibility for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). Therefore, subsequent events cause the petition to become approvable after the filing date. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998).

The petitioner has not addressed or overcome the finding that the Connecticut church is only temporarily relying on the petitioner's financial assistance, until it becomes self-sufficient through its own fundraising activities. Newly created bank documents cannot take the place of IRS documentation to establish that the IRS recognizes the church in Connecticut to be an integral part of the petitioner in

Florida, sharing the same EIN and the same tax exemption even without a group ruling. The petitioner has not overcome this ground for denial of the petition and dismissal of the appeal.

Inconsistent Documentation of Compensation

The second issue under discussion concerns the beneficiary's employment during the two years immediately preceding the filing of the petition. The regulation at 8 C.F.R. § 204.5(m)(11) reads:

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.

The AAO, in its December 2012 dismissal notice, stated:

The petitioner submitted a copy of the beneficiary's 2009 [IRS] Form 1099-MISC [Miscellaneous Income statement], which indicated that he received \$1,273.68 as "Housing Allowance" from the petitioner during that year, as well as a copy of the beneficiary's 2009 Tax Return Transcript listing \$1,273 as his total income for that year. The petitioner submitted a copy of the beneficiary's 2010 [IRS] Form 1099-MISC, which indicated that he received \$19,400.00 from the petitioner during that year. The petitioner also submitted copies of processed checks which were issued to the beneficiary from the petitioning organization in Miami in 2008, 2009, and 2010, as well as from [church offices] in [redacted] Connecticut in 2009 and 2010. . . . [S]everal of the checks from Connecticut specified that they were intended as pastor

compensation. The AAO notes that the total amount listed on checks from the petitioner in [REDACTED] during 2009 far exceeds the \$1,273.68 reported on the Form 1099-MISC. The petitioner provided no explanation for why the additional amounts from the petitioner and the payments from the church in Connecticut were not reported as income on the beneficiary's 2009 tax return transcript. . . .

The petitioner [later] submitted a record of the beneficiary's earnings from the SSA [Social Security Administration]. The record listed total earnings of \$1,176.00 in 2009 and \$13,041.00 in 2010, with earnings from both years reported as self-employment. The petitioner did not provide an explanation for why the amounts listed on the SSA record do not match the amounts listed on the Forms 1099-MISC, or why they do not include the additional amounts of earnings reflected on the processed checks discussed above.

On motion, Rev. [REDACTED] states that the IRS tax return transcripts show amounts matching the amounts shown on the SSA printouts. Specifically, the amounts shown as "SE [self-employment] income" on the transcripts match the amounts shown as "earnings" on the SSA printouts (with a one-dollar difference that can be attributed to rounding). Also, the amounts shown as "gross receipts" on the tax return transcripts match the amounts shown as "nonemployee compensation" on the IRS Forms 1099-MISC. Although the IRS transcripts are consistent with the SSA printouts, there remains the discrepancy between the checks the beneficiary received and the subsequent IRS and SSA documentation.

In 2009-2010, the beneficiary received checks from entities sharing the petitioner's name, showing addresses in four different cities – one in Florida [REDACTED] and three in Connecticut ([REDACTED]). The record contains copies of 28 checks issued to the beneficiary in 2009. Twenty-six of those checks, totaling \$19,070.75, are from the [REDACTED] address. The remaining two checks, totaling \$968.45, are from the [REDACTED] address. Thus, the beneficiary received \$20,039.20 in 2009. His tax documents, however, show only \$1,273 in income that year.

On motion, Rev. [REDACTED] states:

[W]hen a Missionary is assigned to a location to start work in a community . . . we start our meeting [in] the same house where the missionary lives. The checks provided in [the] year 2009, exceed the amount of the 1099 and were not included in the 1099 because this was part of the housing allowance (rent and utility bills) of the house where the meeting had been held in addition [to being] the house where he lived. The form 1099 issued only indicates the non-salaried compensation he received.

Rev. [REDACTED] explanation indicates that the petitioner and the beneficiary reported only the beneficiary's "non-salaried compensation" to the IRS, leaving his salaried compensation unreported. A minister's housing allowance is taxed differently from other income, but the minister must still report all income. The 2009 tax return transcript indicates that the beneficiary reported gross income

– before expenses – of only \$1,273, all of which is said to have gone toward the petitioner’s housing expenses (which does not include food, clothing or other basic necessities unrelated to housing). The petitioner has not accounted for the substantial difference between the bank documents and the IRS documents with respect to the beneficiary’s compensation. Doubt cast on any aspect of the petitioner’s proof may 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). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92. This stated ground for denial stands.

Unauthorized Change of Employment

The third and final issue on motion concerns the beneficiary’s nonimmigrant status and employment authorization. The USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working as a minister or in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The USCIS regulation at 8 C.F.R. § 204.5(m)(11) requires that qualifying prior experience, if acquired in the United States, must have been authorized under United States immigration law.

When the petitioner filed its Form I-129 petition to classify the beneficiary as an R-1 nonimmigrant religious worker on June 3, 2009, the petitioner indicated that the beneficiary would work in [REDACTED] Florida. At the time the petitioner filed its Form I-360 special immigrant petition on October 25, 2011, the beneficiary worked in [REDACTED] Connecticut. This change of location was a major factor in the AAO’s December 19, 2012 dismissal notice. In that notice, the AAO cited the USCIS regulations that were in effect at the time of the beneficiary’s admission as an R-1 nonimmigrant. The former regulation at 8 C.F.R. § 214.2(r)(3)(ii)(E) required an authorized official of the organization to provide the “name and location of the specific organizational unit of the religious organization” for which the alien would work. The regulation at 8 C.F.R. § 214.2(r)(6) stated that, if the beneficiary will work for more than one organizational unit of the religious denomination, each organizational unit must file its own Form I-129 petition on the beneficiary’s behalf, and that “[a]ny unauthorized change to a new religious organizational unit will constitute a failure to maintain status.” The requirement for each employer to file its own petition now exists in the current regulation at 8 C.F.R. § 214.2(r)(2). The current regulation at 8 C.F.R. § 274a.12(b)(16) states that an R-1 nonimmigrant “may be employed only by the religious organization through whom the status was obtained.” Under the regulation at 8 C.F.R. § 214.1(e), unlawful or unauthorized employment by a nonimmigrant constitutes a failure to maintain status.

USCIS records show that the beneficiary entered the United States as an R-1 nonimmigrant on June 1, 2007, “to establish [a] new church in [REDACTED] MD.” The petitioner, however, has submitted no evidence that the beneficiary ever actually established a church in Maryland or traveled there at all.

On June 3, 2009, the petitioner filed the aforementioned Form I-129 petition (receipt number [REDACTED]), seeking to extend the beneficiary's stay. On Part 5, line 5 of that petition form, asked to specify the "[a]ddress where the person(s) will work," the petitioner stated '[REDACTED]' Rev. [REDACTED] signed Part 6 of the Form I-129, thereby certifying under penalty of perjury that the information on the petition was true and correct.

The petitioner's claims about where the beneficiary would work are material issues of fact. The USCIS regulation at 8 C.F.R. § 214.2(r)(8)(x) requires the prospective employer to attest to "[t]he specific location(s) of the proposed employment." The regulation at 8 C.F.R. § 214.2(r)(8)(vii) requires the prospective employer to provide "a detailed description of the alien's proposed daily duties." On line 5 of the employer attestation that accompanied the Form I-129 nonimmigrant petition, the petitioner again indicated that the beneficiary would work at '[REDACTED]' Under "the alien's proposed daily duties," the petitioner stated: "He is the [sic] responsible for the direction and development of the [REDACTED] church." By signing the employer attestation, Rev. [REDACTED] certified under penalty of perjury that the contents of the attestation were true and correct.

In an accompanying letter dated April 27, 2009, Rev. [REDACTED] stated that the beneficiary "will continue to serve as the Pastor of our branch in [REDACTED]" A list of specific duties did not mention travel outside of the [REDACTED] area. Rev. [REDACTED] also listed the beneficiary's past positions within the petitioning organization. Four of the five chronologically listed positions were in the Dominican Republic. The two most recent items read as follows:

February 2004 to May 2007 – Pastor, [REDACTED], Dominican Republic.
June 2007 to date – Pastor, [REDACTED] Florida USA.

Later, in a letter dated August 9, 2011, Rev. [REDACTED] repeated the assertion that the beneficiary had worked in the Dominican Republic and in Florida, but did not claim the beneficiary had ever worked in Maryland.

On August 6, 2009, the director issued a request for evidence relating to the Form I-129 petition, instructing the petitioner to provide more information about the beneficiary's employment. The petitioner mailed its response on September 2, 2009. That response included a document with the title "Pastoral Duties and Office Hours," which indicated that "[t]he Pastoral office is located at [REDACTED]" and that the beneficiary "is generally in the office Monday to Friday, from 7am – 12m." Thus, as late as September 2, 2009, the petitioner asserted that the beneficiary worked in [REDACTED] and provided no indication that the beneficiary worked, or would work, anywhere else.

The USCIS regulation at 8 C.F.R. § 214.2(r)(16) provides for a compliance review process to verify the petitioner's claims and evidence, up to and including an on-site inspection of the petitioning organization. Such an inspection may include the work locations planned for the applicable employee. The approval of the petition permitted the beneficiary to work for the petitioner at the specified [REDACTED] address, and nowhere else. On January 21, 2011, USCIS attempted, without

success, to verify the beneficiary's address at the stated location. The beneficiary was already in Connecticut at the time of the attempted compliance review.

In August 2011, the petitioner submitted five "affidavits of acknowledgment" from members of "the [redacted] congregation located at [redacted]. All of these affidavits stated: "On August 2009, [the beneficiary] was transferred to the . . . location in Connecticut." Two affidavits from witnesses in Connecticut indicated that the beneficiary began working in Connecticut in "September 2009." The petitioner's September 2, 2009 correspondence did not indicate that such a transfer had happened or was about to happen. This omission affected USCIS's ability to verify the petitioner's claims and conduct compliance review. Omission of material information in response to a request for information is grounds for denial of the petition. *See* 8 C.F.R. § 103.2(b)(14). The substantive changes in the terms of beneficiary's employment amounted to a violation of status, that status being contingent on the information that the petitioner had provided in its petition on the beneficiary's behalf.

USCIS never admitted the beneficiary into the United States or granted him nonimmigrant status to work in Connecticut. His initial admission concerned purported duties in Maryland that he never performed, and the 2009 petition on his behalf specifically and repeatedly indicated that he would work in [redacted]. Multiple witnesses signed statements asserting that the beneficiary "was transferred" to Connecticut, indicating that the petitioner, not the beneficiary, initiated the move. The petitioner, therefore, would have been aware of the impending (or completed) transfer on September 2, 2009.

Doubt cast on any aspect of the petitioner's proof may 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 591. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 591-92. The beneficiary has twice obtained immigration benefits based on specific claims of future employment and then begun working at different sites without giving prior notice to USCIS.

The petitioner, on motion, has offered no argument or evidence to contest the AAO's findings regarding the lawful, authorized employment requirement.

The AAO will affirm the dismissal of the appeal for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The AAO's decision of December 19, 2012 is affirmed. The petition remains denied.