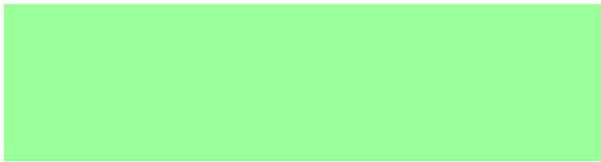




U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: JUN 18 2013 Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE: Petitioner:   
Beneficiary: 

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

ON BEHALF OF PETITIONER:



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  
Chief, Administrative Appeals Office

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

The petitioner is a church. 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 missionary. The director determined that the petitioner failed to establish that it qualifies as a bona fide non-profit religious organization in the United States and failed to establish its ability to compensate the beneficiary.

On appeal, the petitioner submits a brief from counsel and 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 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 Service (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 petitioner filed the Form I-360 petition on November 14, 2011. On the petition, the petitioner listed its address as [REDACTED] and indicated that this would also be the address where the beneficiary will be working. Accompanying the petition, the petitioner submitted a copy of the Articles of Incorporation for [REDACTED] Alabama, filed in 1999. The petitioner also submitted a determination letter from the IRS to [REDACTED] Alabama, confirming that the organization is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code. A flyer advertising [REDACTED] listed a headquarters address in [REDACTED] Alabama and also listed "Prayer Line Satellite Locations" in New York, Florida, and Alabama.

On December 20, 2011, USCIS issued a Request for Evidence which stated, in part:

The petitioner is located at [REDACTED]. However, the proof of tax exempt status submitted shows a location of [REDACTED], AL. Therefore, you have only shown that the address [REDACTED] AL is exempt from Federal income tax. Provide documentary evidence that the petitioner's location qualifies as a nonprofit religious organization.

In response to the notice, the petitioner submitted a copy of Articles of Incorporation for [REDACTED] address, filed in 2005. The petitioner also submitted a copy of its Exempt Organization Certificate from New York State Department of Taxation and Finance, dated February 25, 2009, and resubmitted a copy of the IRS determination letter to [REDACTED] Alabama.

The director denied the petition on March 30, 2012. The director noted that the determination letter submitted by the petitioner was "not a group exemption letter and does not apply to the petitioner who is located in New York."

On appeal, counsel for the petitioner asserts that the signatory of the petition originally founded [REDACTED] in Alabama, and later founded "the [REDACTED] of the petitioner." Counsel asserts that the signatory "believes that the tax determination letter ... applies to the [REDACTED]. Counsel further asserts:

After the Decision was issued, the Bishop sought counsel with tax advisors in the [REDACTED]. Following his meeting with them, the [REDACTED] filed Form 1023 with the Internal Revenue Service and sought to ascertain whether it is covered by the

earlier tax determination letter or whether it must obtain one itself to cover its activities in the [REDACTED]

At issue here is whether the record before the director established that the petitioner was a tax-exempt organization. As previously discussed, the petitioner has identified itself as an organization in [REDACTED] New York, and has submitted evidence that it was incorporated in New York in 2005. The petitioner has submitted an IRS determination letter which applies to [REDACTED] in [REDACTED] Alabama, an entity which was incorporated in [REDACTED]. Despite any affiliation between the two organizations, the petitioner has not established that the Alabama church applied for or was granted a group exemption which would apply to subordinate organizations. In response to the RFE, 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. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r. 1971). Although counsel asserts that the petitioner has now filed a Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, the petitioner on notice of the initially required evidence and also given a reasonable opportunity to provide it for the record before the visa petition was adjudicated.

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 qualifies as a bona fide nonprofit religious organization.

The second issue to be discussed is whether the petitioner has established its ability 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.

On the Form I-360 petition, the petitioner stated that the beneficiary would receive a wage of \$400 per month (\$4,800 per year) and non-salaried compensation in the form of room and board "valued at \$1,000 per month" (\$12,000 per year). In a letter accompanying the petition, the petitioner stated the following:

Miss [REDACTED] is a most dependable worker and as such, she will be compensated annually with a stipend of Four Thousand Dollars (\$4,000.00) in addition to room

and board with market value of Thirty Two Thousand, Seven Hundred Dollars (\$32,700.00) including all utilities.

No explanation was provided for the discrepancies between the amounts listed on the petition and in the accompanying letter. 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).

The petitioner submitted partial copies (pages 2 and 3) of a financial statement for the year 2010, which indicated total expenses of \$63,345 for 2010 without providing any breakdown of expenses, and total net assets of \$493,848 for 2010. No verifiable documentary evidence was provided to support the figures asserted on the statement. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

In the December 20, 2011 Request for Evidence, USCIS instructed the petitioner to submit evidence of how the petitioner intends to compensate the beneficiary in compliance with 8 C.F.R. § 204.5(m)(10). The notice also requested evidence of the beneficiary's past compensation in the form of IRS documentation, including Forms W-2 and certified copies of income tax returns, records from the Social Security Administration, and copies of the petitioner's state quarterly wage reports.

In response, the petitioner submitted signed, uncertified copies of Forms 941, Employer's Quarterly Federal Tax Returns for all four quarters of 2010. Each of the forms indicated that the petitioner had one employee who was not identified, and they listed the following wages paid: \$1,141.80 in each of the first three quarters, and \$4,355 in the fourth quarter. The petitioner also submitted signed, uncertified copies of Forms 941 for the second and fourth quarters of 2011. The forms indicated that the petitioner had one employee in the second quarter who earned \$1,200.00 and one employee in the fourth quarter, identified as the beneficiary, who earned \$1,200.00.

The petitioner also submitted Forms W-2 for 2009 and 2011, indicating that the beneficiary earned \$4,355 from the petitioner in 2009 and \$4,800 from the petitioner in 2011.

Additionally, the petitioner submitted a copy of its financial statements for 2010 and 2011 which included a letter from an accounting firm declaring that the statements had not been audited or reviewed.

In the March 30, 2012 decision denying the petition, the director observed that the submitted 2011 Form W-2 indicated that the beneficiary received \$4,800 in wages, tips and other compensation. The director noted that, although the petitioner asserted that it will provide non-monetary compensation equivalent to \$32,700.00 per year, it did not provide verifiable

documentation that room and board had been or would be provided to the beneficiary. The director therefore found the evidence insufficient to establish the petitioner's ability to compensate the beneficiary.

On appeal, the petitioner submits evidence related to the petition signatory's ownership interest in the property at [REDACTED] and asserts that the beneficiary receives free use of an apartment on the second floor of that building as part of her compensation package. The petitioner also submits additional tax documentation, including new copies of Forms 941 for the second through fourth quarters of 2010, quarterly wage reports purportedly filed with New York State, the petitioner's Form 940 and Form W-3 for 2009, the beneficiary's Form 1040 for 2011 with Form W-2 for 2011 and the beneficiary's IRS tax return transcripts for 2009 and 2010.

There are numerous inconsistencies contained in the petitioner's tax documentation which call into question the credibility of the petitioner's evidence. 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 at 591. The unsigned, uncertified Forms 941 submitted on appeal for the second and third quarters of 2010 each indicate that the petitioner had two employees during those quarters, unlike the Forms 941 submitted in response to the request for evidence which each listed one employee for the same quarters. The amounts of wages paid also do not match the previously submitted forms. For the fourth quarter of 2010, the petitioner submits two versions of the Form 941 on appeal, one of which matches the previously submitted form, listing one employee who earned \$4,355.00, and the other of which lists two employees who earned a total of \$2,041.80. The 2011 Form 1099-MISC submitted on appeal indicates that the beneficiary earned \$5,200.00 from the petitioner, while the previously submitted 2011 Form W-2 indicated that she earned \$4,800.00. The uncertified copy of the petitioner's 2009 Form 940 tax return indicates that the petitioner had one employee who earned \$4,567.00, while the petitioner's 2009 Form W-3 indicates that the organization had one employee who earned \$4,355.00. The beneficiary's 2009 tax return transcript submitted on appeal indicates that she earned \$4,567.00 while her previously submitted Form W-2 listed her income from the petitioner as \$4,355.00. 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. *Id.* at 591-92.

Because of the inconsistencies in the petitioner's assertions and evidence regarding compensation as discussed above, the AAO agrees with the director's determination that the petitioner failed to establish its ability to compensate the beneficiary.

As an additional matter, the AAO finds 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. 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 Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work in lawful status throughout the two-year period immediately preceding November 14, 2011.

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.

According to the Form I-360 petition and accompanying evidence, the beneficiary entered the United States on September 27, 2003 in B-2 nonimmigrant visitor status which expired on March 26, 2004. The regulation at 8 C.F.R. § 214.1(e) states that aliens in such status "may not engage in any employment."

In the December 20, 2011 Request for Evidence, USCIS instructed the petitioner to submit additional evidence regarding the beneficiary's work history during the two-year qualifying period immediately preceding the filing of the petition, as well as evidence to establish that the beneficiary maintained lawful immigration status.

In a letter responding to the notice, counsel for the petitioner asserted that the beneficiary has worked for the petitioner "for several years" and the petitioner submitted evidence of purported prior compensation as previously discussed. Additionally, the petitioner submitted a Form I-797C, Notice of Action indicating receipt of a Form I-765, Application for Employment Authorization, filed on October 6, 2011. Service records indicate the beneficiary was authorized to work from November 17, 2011 until November 16, 2013.

The petitioner has not submitted evidence to establish that the beneficiary held any lawful immigration status or employment authorization during the two years immediately preceding the filing date of the petition. Accordingly, any work performed by the beneficiary during that time is not considered qualifying prior experience under 8 C.F.R. § 204.5(m)(4) and (11).

Furthermore, the petitioner has not submitted sufficient documentary evidence to establish that the beneficiary was continuously engaged in compensated employment during the qualifying period. The regulation at 8 C.F.R. § 204.5(m)(11) requires compensated employment. The petitioner must submit evidence of prior compensation in the form of IRS documentation, or evidence of qualifying self-support. As discussed above, the tax documentation submitted by the petitioner contains significant inconsistencies which have not been resolved and which undermine the credibility of the petitioner's evidence. *Matter of Ho*, 19 I&N Dec. at 591-92.

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.