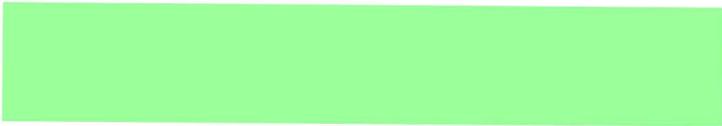




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUN 20 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 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The petitioner is a [REDACTED] It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Act to perform services as a granthi. 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 date of the petition.

The petitioner asserts on appeal that the experience letters submitted “support the fact that the beneficiary has been employed as a religious worker for more than [the] two-year period immediately preceding the filing of the petition.” The petitioner submits a letter 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, 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).

The issue presented 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 date 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 date of the petition. The petition was filed on July 20, 2012. 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.

With the petition, the petitioner submitted a copy of the beneficiary's visa indicating that he was issued an R-1, nonimmigrant religious worker visa, on January 8, 2007, which was valid until January 3, 2012. The beneficiary's I-94, Departure Record, indicates that he entered the United States pursuant to that visa on March 30, 2010. The petitioner submitted letters from four different organizations in the United States, two of which attested that the beneficiary worked during the qualifying period as follows:

April 9, 2010 to August 1, 2010
August 22, 2010 to December 28, 2010



The petitioner provided no other documentation of the beneficiary's qualifying work experience with the petition. In a request for evidence (RFE) dated December 11, 2012, the director instructed the petitioner to submit evidence of the beneficiary's qualifying work experience to include experience letters that specified the beneficiary's duties, evidence of compensation as required by the regulation, and evidence that the beneficiary was in a lawful immigration status during his employment in the United States.

In response, the petitioner submitted a copy of an August 31, 2012 Form I-797A, Notice of Action, notifying the petitioner of the approval of the beneficiary's extension of stay to work for the petitioning organization from January 4, 2012 to October 16, 2012. The petitioner also submitted a copy of an IRS Form W-2 that it issued to the beneficiary in 2012 and copies of processed and unprocessed checks, indicating that the petitioner paid the beneficiary \$9,600 in wages for the year.

The petitioner also provided a statement outlining the beneficiary's employment history:

March 2011 – Present	[The petitioning organization] (Volunteer Priest for initial 10 months)
February 2011 – March 2011	...
January 2011 – February 2011	
January 2011 – January 2011	
August 2010 – December 2010	...

April 2010 – August 2010

A December 1, 2011 letter from the [REDACTED] stated that the beneficiary “provided religious service to our Gurdwara from April 9, till August 1, 2010. He was part of a three person Jatha (team) who provided service during our Friday and Sunday services. We gave cash offerings to [the beneficiary] for his devoted service to our membership.”

A November 26, 2011 letter from the [REDACTED] certified that the beneficiary “worked as a missionary of [REDACTED] with us from August 22, 2010 to December 28, 2010.”

A January 9, 2013 “Appreciation Letter” from [REDACTED] stated that the beneficiary was a member of Ragi Jatha and “addressed our Congregation, preaching holy scripts from The Holy Guru [REDACTED] for four weeks from January 01, 2011 to January 31, 2011.

A January 16, 2011 letter from [REDACTED] confirms that the beneficiary served as a “Ragi (preacher) . . . in our Gurdwara ([REDACTED]) since January 31st to February 28th and has been performing Gurbani Kirtan (hymn singing) in the daily diwan.” The letter does not specify the year in which the beneficiary worked for the organization but states that the gurdwara “provided him with necessary boarding, lodging, and other expenses.”

A June 4, 2013 letter from [REDACTED] “thank[s the beneficiary] for his distinguished services (hymn singing) at our Gurdwara during the month of March 2012.” The letter does not address any previous employment of the beneficiary in 2011, as alleged by the petitioner.

In a December 22, 2011 letter, the petitioner, through its director [REDACTED] stated:

It is to inform that [the beneficiary] is working as a priest in [REDACTED] [REDACTED] That is being owned and organized by [the petitioner] since March 27, 2011.

[The beneficiary] was serving in our temple voluntarily from March 27, 2011 until December 31, 2011 as a priest and all the community members liked his services. After [REDACTED] got nonprofit organization status, Management committee decided to hire [him] as priest to serve our community.

He is performing various services at the Gurdwara, from installing the Holy Book in the morning, singing holy hymns, preparing food in the community kitchen and also teaching kids how to play the drums, etc. . . .

The petitioner provided copies of the beneficiary’s IRS tax return transcripts for 2009 and 2010 on which he reported self-employment income of \$3,485 and \$4,450, respectively. The petitioner also

provided a copy of the beneficiary's 2011 IRS Form 1040, U.S. Individual Income Tax Return, on which he reported net self-employment income of \$4,008. The return indicated that it was received by the IRS on November 21, 2012. The petitioner did not provide a copy of any IRS Form 1099-MISC, Miscellaneous Income, or any other documentation of the source of the beneficiary's income for the stated years. The petitioner also resubmitted the IRS Form W-2 that it issued to the beneficiary in 2012 but did not provide any evidence that the form was filed with the Social Security Administration (SSA) or that the beneficiary filed a federal tax return reporting the income.

The director denied the petition, finding that the petitioner had not established that the beneficiary worked continuously throughout the qualifying period. The director stated that the tax returns did not establish the beneficiary's qualifying work as they do not state for whom he worked. The director also stated that evidence of the beneficiary's employment with the petitioner can only be established through the checks that the petitioner wrote to him in 2012.

The director also found that the beneficiary had worked for multiple employers during the qualifying period in violation of 8 C.F.R. § 214(r)(2), which provides that: "An alien may work for more than one qualifying employer as long as each qualifying employer submits a petition plus all additional required documentation as prescribed by USCIS regulations." Accordingly, the director determined that the beneficiary had violated the terms of his R-1 visa and was not in a lawful immigration status throughout the qualifying period.

On appeal, the petitioner states that the beneficiary's tax returns show that he worked as a priest and that the letters from the different organizations confirm his continuous employment during the qualifying period. The petitioner's assertion is not persuasive.

First, while the petitioner states that it has employed the beneficiary as a priest since March 2011, it alleges that the first 10 months of that "employment" was in a voluntary status. The petitioner provided no documentation in accordance with the regulation at 8 C.F.R. § 204.5(m)(11) to establish that the beneficiary worked for the petitioning organization during that time. Additionally, while the petitioner apparently issued the petitioner an IRS Form W-2 for the year 2012 reporting that it paid him \$9,600, the evidence of record does not support the reported amount. The petitioner did not provide documentation indicating that the IRS Form W-2 was filed with the SSA as required, and the checks purportedly written to the beneficiary in 2012 reflect that only the February and July checks were processed by the bank.

Additionally, the petitioner submitted no documentation in accordance with the regulation at 8 C.F.R. § 204.5(m)(11) to establish that the beneficiary worked at any of the other organizations identified by the petitioner or in accordance with the letters written by those organizations. As observed by the director, the beneficiary's tax returns do not show the source of his reported income, not all of the organizations reported paying him for his services, and none indicate that he worked in a full-time position.

The petitioner also asserts on appeal that the beneficiary's R-1 visa was issued in 2007, and therefore he was not required to obtain approval to work for multiple organizations. The

petitioner references the “Supplementary Questions and Answers: Final Religious Worker Rule Effective November 26, 2008” which provides that an individual who had been issued an R-1 visa without an approved petition pursuant to the previous regulation “may be admitted for the duration of the visa’s validity, provided they are otherwise admissible, and will not be required to have an approved I-129 for readmission in R-1 status. Upon application for extension, however, the new requirements must be met.”

Nonetheless, the previous regulation at 8 C.F.R. § 214(r)(1) required:

The alien must be coming the United States . . . to work for the religious organization or a bona fide organization which is affiliated with the religious denomination, at the request of the organization in a religious vocation or occupation.

The previous regulation at 8 C.F.R. § 214(r)(3) also provided that:

An alien seeking classification as a nonimmigrant religious worker shall present to a United States consular officer, or, if visa exempt, to an immigration officer at a United States port of entry, documentation which establishes to the satisfaction of the consular or immigration officer that the alien will be providing services to a bona fide nonprofit religious organization in the United States or to an affiliated religious organization as defined in paragraph (r)(2) of this section, and that the alien meets the criteria to perform such services.

Thus, the regulations in effect at the time the beneficiary received his R-1 visa required him to establish that he sought to enter the United States to work for a single religious organization. Additionally, the regulation at 8 C.F.R. § 214(r)(6) provided:

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. The petition shall be filed with the Service Center having jurisdiction over the place of employment. The petition must be accompanied by evidence establishing that the alien will continue to qualify as a religious worker under this section. 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.

The record does not reflect that any of the organizations, other than the petitioner, petitioned for the beneficiary to work at its specific organization. Furthermore, the petitioner alleges that the beneficiary worked in a voluntary capacity with the petitioning organization prior to receiving approval from USCIS. Accordingly, the petitioner has not established that any of the work performed by the beneficiary prior to January 2012 was in an authorized status.

The petitioner has failed to establish that the beneficiary worked continuously in a qualifying religious worker status for the two full years immediately preceding the filing of the visa petition.

Beyond the director's decision, the petitioner has not established how it intends to compensate the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(10) provides that the petitioner must submit:

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.

The petitioner stated on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, that it would pay the beneficiary a basic salary of \$1,000 per month, and provide him with an apartment, food, and utilities valued at \$1,000 per month. The Form W-2 provided by the petitioner indicates that it paid the beneficiary wages of \$9,600 in 2012. The Form W-2 did not indicate any other compensation provided to the beneficiary. The petitioner submitted no documentation of the non-salaried compensation that it alleged it would provide to the beneficiary. 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)).

The petitioner has failed to provide verifiable documentation of how it intends to compensate the beneficiary.

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.