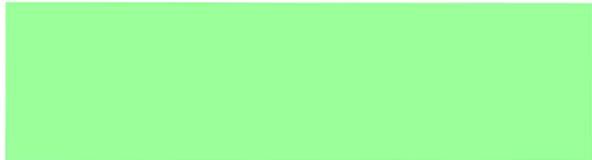
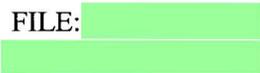


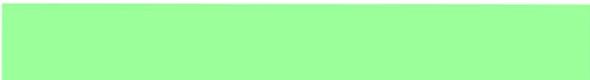
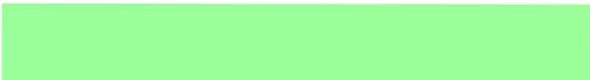


U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: JUN 24 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)

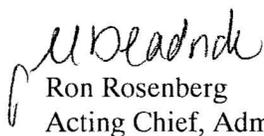
ON BEHALF OF PETITIONER:  


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,

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal from that decision. The matter is now before the AAO on a motion to reconsider. The AAO will dismiss the motion.

The petitioner is a division of the [REDACTED]. 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 the pastor of the [REDACTED] in Temple Hills, Maryland. The director determined that the petitioner had not satisfactorily completed the compliance review process or established that the beneficiary had the requisite two years of continuous, lawful work experience immediately preceding the filing date of the petition. The AAO agreed with the director, and added the finding that the petitioner had failed to submit the employer attestation required by the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(7).

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The petitioner filed the Form I-360 petition on June 21, 2007. The director denied the petition on September 17, 2011, stating that information gathered during site visits cast doubt on the petitioner's claims. The director stated, for instance, that the site visits showed that the beneficiary worked "as a full-time principal of [REDACTED] [operated by the petitioner at its address in Bowie, Maryland] since 2006," rather than as a full-time pastor in Temple Hills as claimed. The AAO dismissed the petitioner's appeal on August 29, 2012, citing additional information from the site visit reports.

On motion, the petitioner submits copies of Internal Revenue Service (IRS) Form W-2 Wage and Tax Statements for 2008 through 2011, and a brief in which counsel alleges "significant factual discrepancies" in the compliance review report that led to the denial of the petition and the subsequent dismissal of the appeal.

Review of the record justifies some of counsel's specific points. For example, in a June 14, 2011 notice of intent to deny the petition, the director made the following statements:

On June 9, 2010, a compliance review was conducted of the petitioner's facilities at [REDACTED] Bowie, MD. The following discrepancies pertaining to the validity of the petition were noted. . . .

Further testimony from a neighboring business failed to confirm that the beneficiary is a full time pastor. . . .

In response to the notice, [REDACTED], pastor in charge of the petitioning church, stated: "It is not clear whether a neighboring business at [REDACTED] or [the petitioner's] address was contacted."

The compliance review report shows that, on June 9, 2010, the USCIS officer first attempted a site visit at the [REDACTED] in Temple Hills, but no one answered the door. The officer then spoke to a worker at a nearby business, who claimed to have seen cars parked outside the church during a Sunday service, but rarely saw anyone there on weekdays. The director's wording implied, incorrectly, that the "neighboring business" was near "the petitioner's facilities at [REDACTED], Bowie, MD."

In the denial notice, the director repeated the same assertions about the site visit, without clarifying whether the "neighboring business" was near [REDACTED] or the petitioning church.

The AAO's dismissal notice contained modified versions of the director's statements:

USCIS conducted a site check on June 9, 2010 at the petitioner's address listed on the petition. . . .

A USCIS officer interviewed neighboring businesses during the site-visit. Those businesses were unable to confirm that the beneficiary was working at the address listed on the petition as a full-time pastor.

The AAO incorrectly referred to "neighboring businesses," even though the site visit report mentions contact with only one such business. Also, even more strongly than the director's wording, the AAO's wording implies that the "neighboring businesses" were near "the petitioner's address listed on the petition." As a result, on motion, counsel protests: "This compliance review inspection took place . . . at the location of the zonal headquarters where [REDACTED] is the Pastor, and not at the location where the Beneficiary . . . works as a Pastor." The petitioner cannot adequately respond to derogatory information when that information is presented in an incomplete and/or inaccurate form.

However, these objections, although well-founded, do not fully rebut the grounds for denial or resolve the credibility issues surrounding the petition. Specifically, the petitioner does not dispute the assertion that the beneficiary has worked full-time since 2006 as principal of [REDACTED]. Rather, counsel states:

Beneficiary's work hours are very long, practically doing two full-time jobs. . . . He works from 7:00 am to 3:00 pm at the school and 4 pm to 10 pm at church Monday through Friday and all day at the church on Saturdays and Sundays. . . . Therefore,

Beneficiary has been working 15-17 hours [a day] to serve the members of the congregation. . . .

Counsel's assertions on motion differ from the petitioner's and the beneficiary's statements during the site visit and those prior statements are also contradictory. The site visit report states:

According to [redacted] [the beneficiary's] work schedule [at the church] is from 4 p.m. through 9 p.m. Tuesday and Friday, 4 p.m. through 7 p.m. Monday, Wednesday and Thursday; and Sunday from 9 a.m. to 5 p.m. . . .

[The beneficiary] stated HIS office hours during the week were normally from 3 P.M. to 11:00 P.M.

The record also contains a letter from [redacted] dated October 18, 2007, a time when the beneficiary would already have been working as principal of [redacted]. In that letter, [redacted] stated that the beneficiary "works six days a week at an average of 8 hours per day." [redacted] listed 21 different job duties, such as "Preaching Sunday sermon" and "Making home visits," that conform to the duties of a pastor rather than those of a school administrator. [redacted] did not mention [redacted] and did not state that the beneficiary was principal of that school. The accounts from 2007 and 2010, from the same official, are contradictory.

As shown above, there remain inconsistencies in the record. 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.

Furthermore, the brief and exhibits submitted on motion address only the issues relating to the compliance review. Therefore, even if the petitioner had fully overcome those issues, there would still remain the evidentiary deficiency of the lack of the required attestation. On motion, the AAO will only consider arguments and evidence relating to the grounds underlying the AAO's most recent decision and the petitioner bears the burden of establishing that the AAO's prior decision was in error. The petitioner has not addressed this remaining issue which, by itself, is sufficient grounds to deny the petition. Because the AAO has already served notice of this deficiency, any future submission of the employer attestation would be untimely and would not establish that the AAO's decision was incorrect at the time of the decision.

**ORDER:** The motion is dismissed.