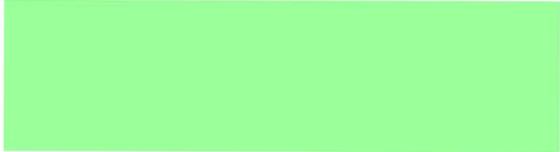




U.S. Citizenship
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Services

(b)(6)

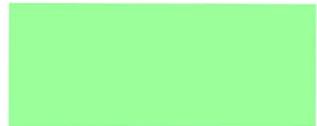


Date: **MAY 29 2013** Office: CALIFORNIA SERVICE CENTER FILE:

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 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 music director. 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 that the beneficiary has the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition. The director also found that the petitioner failed to establish how it intends to compensate the beneficiary and that the beneficiary would be employed in a qualifying position.

On appeal, the petitioner submits a letter and brief from counsel, an affidavit from the beneficiary, affidavits from [REDACTED] and [REDACTED], a letter from the Internal Revenue Service (IRS) to the petitioning church, a copy of the petitioner's tax registration as a domestic nonprofit corporation in the state of Washington, a copy of the beneficiary's resume, a history of the [REDACTED], a letter from Pastor [REDACTED] of [REDACTED] in Brazil, a copy of the decision in *Kent First Korean Church v. USCIS*, 2002 U.S. Dist. LEXIS 27081 (W.D. Wash. 2002), and copies of documents already in the record.

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 March 23, 2012. Accompanying the petition, the petitioner submitted a copy of its Certificate of Incorporation as a non-profit corporation in the State of Washington.

On August 9, 2012, USCIS issued a Request for Evidence (RFE) which in part instructed the petitioner to submit documentary evidence that it qualifies as a non-profit organization in accordance with 8 C.F.R. § 204.5(m)(8), including a “valid 501(c)(3) determination letter” from the IRS.

In response to the request, the petitioner again submitted a copy of its Certificate of Incorporation as well as a copy of its constitution and informational material about the petitioning church. The petitioner also submitted a “Compliance Certificate” from [REDACTED], stating that the church “operates in compliance with applicable nonprofit law and IRS Code §501(c)(3) requirements.”

The director denied the petition on November 14, 2012, in part finding that the petitioner had not established that it qualifies as a bona fide nonprofit religious organization in the United States or a bona fide organization which is affiliated with the denomination.

On appeal, counsel for the petitioner argues that the petitioner “is in compliance with IRS 501c3 requirements,” as affirmed by the accounting firm of [REDACTED] and that the state of Washington recognizes the petitioner’s nonprofit status. Counsel also notes that the IRS is in receipt of, and processing, the [REDACTED] IRS Form 1023 to secure the IRS exempt status. The petitioner submits a November 2, 2012 letter from the IRS confirming receipt of the petitioner’s Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code. Additionally, counsel argues that the issue of the petitioner’s status as a bona fide non-profit organization was “previously determined in Petitioner’s favor” in the adjudication of the petitioner’s Form I-129, Petition for a Nonimmigrant Worker on behalf of the beneficiary.

At issue here is whether the record before the director established that the petitioner was a tax-exempt organization. The petitioner's Form I-129 and accompanying documents are not a part of the record of proceeding. As previously indicated, at the time the petition was filed, the petitioner submitted no evidence of a currently valid determination letter from the IRS. 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 the petitioner asserts that it is now in the process of applying for a determination letter, the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated.

To the extent that counsel argues that the petitioner qualifies as a bona fide religious organization under the regulations without a valid determination letter, the AAO disagrees. In the preamble to its final regulations, USCIS acknowledged that the IRS does not require all churches to apply for a determination letter, but stated that the requirement is included in the final rule because it is a "valuable fraud deterrent" and an IRS determination letter provides "verifiable documentation that the petitioner is a bona fide tax-exempt organization or part of a group exemption." See 73 Fed. Reg. 72280, 72281 (Nov. 26, 2008).

Counsel also argues that USCIS previously adjudicated this issue when it approved a nonimmigrant petition filed by the petitioner on behalf of the beneficiary. If the previous nonimmigrant petition was approved based on the same evidence contained in the current record, the approval would constitute a material error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). USCIS need not treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), aff'd, 248 F.3d 1139 (5th Cir. 2001), cert. denied, 122 S.Ct. 51 (2001).

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 qualified as a bona fide nonprofit religious organization at the time of filing.

The second issue to be discussed is whether the petitioner has established that the beneficiary 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 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. As stated above, the petition was filed on March 23, 2012. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work in lawful status throughout the two-year period immediately preceding that date. The regulation at 8 C.F.R. § 204.5(m)(4) also sets forth the requirements for an acceptable break in the continuity of an alien's religious work as follows:

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...

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 arrived in the United States on May 2, 2010 in R-1 nonimmigrant status authorizing his employment with the petitioner until May 1, 2013. In a letter accompanying the petition, the petitioner stated that the beneficiary "is the Music Director at the Church and has been serving in this capacity for the last 18 months." The petitioner also submitted copies of paystubs addressed to the beneficiary between July 4, 2010 and December 5, 2011.

In the August 9, 2012 RFE, USCIS requested additional evidence to establish that the beneficiary was working in a qualifying position for at least the two-year qualifying period immediately preceding the filing of the petition. The notice specifically instructed the petitioner to submit experience letters providing detailed information about the beneficiary's schedule and the work performed during the qualifying period, and stated that "[e]ach experience letter must be written by an authorized official from the specific location at which the experience was gained." The petitioner was also instructed to submit evidence of compensation received, including "IRS Form W-2 or certified copies of income tax returns" for any salaried compensation in the United States. The notice also instructed the petitioner to submit comparable evidence of any employment outside of the United States during the qualifying period, and to provide an explanation for any break in the continuity of the beneficiary's work.

In a letter responding to the notice, the petitioner provided a description of the beneficiary's duties, weekly schedule, level of responsibility, and qualifications for the position. The letter indicated that from 2005 to 2009, the beneficiary served as "Teens Band Leader and Musical Director at [REDACTED] in Brazil," and from "2010 – Present date," the beneficiary served as musical director for the petitioning church.

The petitioner submitted copies of additional paystubs addressed to the beneficiary between January 5, 2012 and September 5, 2012. The petitioner submitted a copy of the beneficiary's 2011 Form W-2 which indicated that he earned \$17,500 from the petitioning church during that year. Additionally, the petitioner submitted two documents entitled "Federal Income Tax Summary," which listed total income of \$10,935 for the beneficiary and his wife during the year 2010 and \$12,864 for 2011.

Regarding the beneficiary's work experience abroad, the petitioner submitted a letter dated August 2009 from [REDACTED], Pastor of [REDACTED] in Brazil, who stated in pertinent part:

I have been working with [REDACTED] family since 2002 as we served at the [REDACTED]. Before I become [sic] [REDACTED] pastor, I worked as missionary at [REDACTED] and this family worked with me in many projects, like Cd's arrangements and recordings and at the 2006 National [REDACTED] congress worship.

They have been members of the [REDACTED] in Atibaia, Sao Paulo since 2008. During this time [REDACTED] was responsible for the Ministry of Praise, where in addition to playing keyboard he was responsible to the group's musical direction and spiritual leadership. ...

Moreover, [REDACTED] and [REDACTED] started a missionary music school where the whole family worked as teachers.

The petitioner also submitted an August 5, 2009 email from Rev. [REDACTED], Chancellor of [REDACTED] in Sao Paulo, Brazil, in which he stated that he has known the beneficiary "since he was a boy." The letter stated: "For a time he was under my ministry in [REDACTED]. He served at the church music ministry, sometimes would lead us in worship and also minister to the youth and children."

In the decision denying the petition, the director noted that neither of the letters discussing the beneficiary's experience abroad provided dates of employment or indicated whether the beneficiary's religious work was compensated, and the petitioner did not submit any documentary evidence to show compensation for the beneficiary's religious work abroad. The director also noted that the experience letter from the petitioner did not list a start date for the beneficiary's employment and the evidence of compensation only dated back to July 4, 2010. The director therefore found the evidence insufficient to establish that the beneficiary had the requisite two years of qualifying work experience immediately preceding the filing of the petition.

On appeal, counsel for the petitioner argues that the beneficiary's employment history is "well-documented" in the record, and that "[i]t is not accurate to assert that the Beneficiary was in sufficiently [sic] experienced and/or employed in religious music ministry for two years prior to filing the petition." The petitioner resubmits a copy of the beneficiary's 2011 Form W-2. The petitioner also submits an affidavit from the beneficiary, in which he states that he has worked in church music ministry for over 21 years. He further states:

The only time I was not officially employed was in the transition months before I moved to the US to work for the [REDACTED] in R-1 status. My first paid month was July 2010.

The petitioner submits a copy of the beneficiary's resume, which indicates that he worked for [REDACTED] from 2004 to 2009, and for the petitioner from "May 2010 up to the present date."

As noted above, the petitioner must establish that the beneficiary was employed in a qualifying position continuously for the two years immediately preceding the date of filing, March 23, 2012. The petitioner has not claimed or submitted evidence to establish that the beneficiary was employed in a qualify position prior to his entry into the United States in May 2010. Nor has the shown that the break in the continuity of the beneficiary's religious work is a qualifying break under 8 C.F.R. § 204.5(m)(4) which, in part, requires that the beneficiary "was still employed as

a religious worker.” Additionally, although the petitioner submitted a copy of the beneficiary’s 2011 Form W-2, no IRS documentation was submitted to show the beneficiary’s salaried compensation for the year 2010 as required under 8 C.F.R. § 204.5(m)(11). As evidence of the beneficiary’s purported compensation for 2010, the petitioner submitted a “Tax Summary,” which does not indicate that it was issued by the IRS, as well as copies of the beneficiary’s paystubs. This evidence consists only of the petitioner’s own assertions and is not verifiable documentary evidence. 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)).

Accordingly, the AAO agrees with the director’s determination that the petitioner failed to establish that the beneficiary was continuously engaged in qualifying religious work throughout the two years immediately preceding the filing of the petition.

The next issue to be discussed is whether the petitioner established how it intends 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 described the proposed compensation as follows:

The [redacted] will monthly pay \$1,000.00 plus students payments, or if no students income [redacted] will pay [redacted] \$1,500.00

Accompanying the petition, the petitioner submitted an employment contract, dated January 3, 2012, which stated that the petitioner agreed “to continue to pay [redacted] as director of the [redacted] School of Music the sum of \$1500 per month.” The contract additionally stated:

The \$1500 per month has represented a base sum of revenue comprised of \$1000 minimum plus whatever was collected for each month from student lessons. The lessons have generated an average of \$500 per month. During the term of this contract, [redacted] will not be paid less than \$1500 per month regardless of lesson revenues, but if student lessons exceed \$500 for any given month, he will be paid

the additional amount above \$500. This additional amount will be paid the following month after monthly funds have been calculated.

As noted above, the petitioner also submitted copies of the beneficiary's paystubs for the period of July 4, 2010 to December 5, 2011.

In the August 9, 2012 RFE, USCIS requested "verifiable evidence of how the petitioner intends to compensate the alien," and included a list of requested evidence as follows:

- Proof of past compensation for similar positions(s) [sic]
- Verifiable documentation that room and board will be provided
- Budgets showing monies set aside for salaries, leases, etc. (e.g. audited financial statements, bank statements/cancelled checks, paystubs) and
- IRS documentation such as IRS Form W-1 [sic] or certified returns, if available.
- If IRS documentation is unavailable, submit an explanation for the absence of IRS documentation along with comparable, verifiable documentation.

In response, the petitioner submitted a copy of a lease dated May 24, 2010 between [REDACTED] as "Lessor," and the beneficiary and his wife as "Tenant." The petitioner also submitted copies of various utility bills, some of which were addressed to the beneficiary and some to the petitioner. As discussed above, the petitioner submitted copies of additional paystubs, a copy of the beneficiary's 2011 Form W-2 for \$17,500.00, and two documents entitled "Federal Income Tax Summary." Additionally, the petitioner submitted copies of its bank account statements for July and August of 2012, which included handwritten notations indicating the source of various deposits, including "music school payments."

In the director's November 14, 2012 decision, the director found the evidence submitted insufficient "to demonstrate the petitioner's future intent to compensate the beneficiary." The director stated that the petitioner "did not submit budgets showing expenses set aside for salaries, leases, miscellaneous expenses, IRS form W-3, Transmittal of Wages, financial bank statements, fees collected from student music lessons, etc. to compensate the proffered position."

On appeal, counsel asserts that the evidence demonstrates that the petitioner "properly pays the beneficiary." In his affidavit, the beneficiary states the following:

The [REDACTED] is growing and is increasingly able to afford a music ministry director. Due to savings and family assistance in addition to my salary from The [REDACTED] I am able to support my family. I will not be a public charge. In 2010, The [REDACTED] paid me \$10,900. In 2011 The [REDACTED] paid me \$17,500. In 2012, The [REDACTED] paid me \$26,385.40.

The petitioner also submits an affidavit from its church administrator, [REDACTED] who states:

It is my job to take in and process the payments to the church which come in from those participating in the church music school. Monthly I wrote a check to [REDACTED] for payments made to the church music school. In the following months, the checks paid [REDACTED] were:

October 2012 \$ 2,045.00

November 2012 \$3,014.70

December 2012 \$3,507.75

The evidence relating to the petitioner's increasing ability to compensate the beneficiary after the filing of the petition is not relevant to the instant matter, as it does not establish that the petitioner met eligibility requirements at the time of filing. 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. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). However, as the submitted 2011 Form W-2 constitutes evidence of past compensation for the position at the proffered rate, the AAO agrees with the petitioner that it has submitted sufficient evidence to establish its ability to compensate the beneficiary. The regulation does not specifically require the petitioner to submit the documents listed by the director, and the evidence submitted is sufficient to comply with the regulation at 8 C.F.R. § 204.5(m)(10).

Accordingly, the AAO will withdraw the director's findings on this issue.

The final issue to be discussed is whether the petitioner has established that the beneficiary will be employed in a qualifying position.

The USCIS regulation at 8 C.F.R. § 204.5(m)(2) provides that in order to be eligible for classification as a special immigrant religious worker, an alien must:

(2) Be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position in one of the following occupations as they are defined in paragraph (m)(5) of this section:

- (i) Solely in the vocation of a minister of that religious denomination;
- (ii) A religious vocation either in a professional or nonprofessional capacity; or
- (iii) A religious occupation either in a professional or nonprofessional capacity.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(5) defines "religious occupation" as an occupation that meets all of the following requirements:

(A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.

(B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

(C) The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible.

(D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

On the Form I-360 petition, the petitioner provided the following description of the beneficiary's daily duties as music director: "Work with the church worship team, church choir, teach and mentor musicians, preach, write and arrange music, organize concerts and events." In a letter accompanying the petition, the petitioner indicated that the beneficiary has been serving as music director "for the last 18 months." On the petition, the petitioner identified its religious denomination as "Interdenominational."

The petitioner submitted a letter from [REDACTED], [REDACTED] Worship Leader, who described the role of the beneficiary and his family in the [REDACTED] ministry as follows:

[The beneficiary] constantly shared ideas and songs that broadened by spectrum of musical possibilities, and even began holding music classes that produced a new guitarist and piano player to our team. ... Ever since they joined, they have been the most committed and hardworking among anyone I have ever ministered with.

The [REDACTED] family has truly stolen a place in my heart and has become irreplaceable to this very day! We meet once a week for 2 hours of practice, and every Friday we perform live praise and worship songs for the 60 to 80 kids that now attend. ... [REDACTED] is now conductor of musicians in my band, because he speaks their language so clearly and is able to translate what I want the team to do. ... We have since then performed in various church events, the most recent one for a crowd of over 1,100 people, and I am always reminded that without them, none of this would be possible.

The employment contract submitted with the petition included the following clauses:

3. [REDACTED] will continue to not pay any utility overhead costs to [REDACTED] for the use of the church building to teach music lessons and workshops. [REDACTED]

reserves the right, however, to seek reimbursement for expenses that either party is unaware of and could not foresee at this time. ...

5. is still expected to develop the music school, attract and recruit students and is encouraged to be creative and novel in this endeavor. If the dynamics of this program change significantly for whatever reason, the Leadership Team reserves the right to review this letter of agreement at any time and recommend appropriate action.

The August 9, 2012 RFE instructed the petitioner to submit additional information about the proffered position, including information regarding the beneficiary’s duties and schedule, as well as an explanation of how the duties of the position relate to a traditional religious function. The notice also requested “documentary evidence that the governing body recognizes the position of music director as directly related to the religious creed of the denomination.”

In a letter submitted in response to the notice, the petitioner provided the following description of the beneficiary’s duties and schedule:

Specific Duties:

- Work on song arrangements with the worship team and the church choir
- Teach, develop, train, mentor and coach musicians and vocalists
- Prepare and equip musicians for service on the various worship teams the church uses in different ministries
- Coordinate and coach during practices
- Organize and develop the musical aspect of special events at e.g. Christmas Concert, Easter Celebration, Banquets, etc.

Level of responsibility: is direct under the Pastor guidance and supervision. He has the pastor’s authority and blessings to preach and teach at any ministry at

Number of hours per week: 35h

Schedule:

Days	Time	Tasks
Mondays	3 pm to 8 pm	Office hours – Teaching and training
Tuesdays	3pm to 6pm 6:30pm to 9pm	Office hours – Teaching and training Worship hours – Main Band Worship Practice
Wednesdays	3pm to 5pm 5pm to 9pm	Office hours – Teaching and training Worship hours – Kids band Worship Practice and presentation
Thursdays	3:30pm to 7:30 pm	Office hours – Teaching and training
Fridays	3pm to 5pm	Office hours – Teaching and training

	5pm to 9pm	Worship hours Kids Ministry Practice and presentation
Saturdays	10am to 2pm 2pm to 4pm	Office hours – Teaching and training Worship hours – Orchestra practice
Sundays	9am to 2pm	Worship hours – Main Band Worship Practice Sunday Service

The petitioner also submitted a schedule of its church services, including a three-hour service on Sunday from 11am to 2pm, a two-hour prayer on Wednesday from 7:30 to 9:30pm, a four-hour youth ministry on Thursday from 6:30 to 10:30pm, and a two-hour kids service on Friday from 7 to 9pm.

As noted above, in his letter accompanying the petition, [REDACTED] stated that the kids’ ministry meets “once a week for 2 hours of practice, and every Friday we perform live praise and worship songs for the 60 to 80 kids that now attend.” The church services schedule indicates that the Friday kids’ service lasts two hours. No explanation was provided for why the beneficiary’s schedule lists four hours on Wednesday and four hours on Friday dedicated to the kids’ band practice and presentation. 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).

Additionally, the petitioner submitted a brochure for guitar classes, which stated in full:

GUITAR CLASSES with fun Brazilian teachers

Customized classes for your needs and desires!

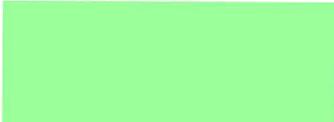
Bossa Nova, Samba, Pop, Rock’n roll Jazz or Blues

1h class p/week

\$25.00

Call: [REDACTED] and schedule a visit.

Classes are at:



In the November 14, 2012 decision, the director noted inconsistencies in the evidence regarding the proffered position and noted that, according to the schedule submitted, the beneficiary spends twenty hours per week “teaching music and training.” The director found that the evidence failed to establish that the beneficiary’s teaching duties are religious rather than secular in nature. The director also found that the petitioner failed to establish that the position of music director is traditionally recognized within the denomination.

On appeal, counsel asserts that the director mischaracterized the beneficiary's teaching music and training as secular in nature. Counsel argues:

All the evidence of record, and the supplemental evidence here, supports the fact that [REDACTED] *music teaching, training and performing does primarily involve The [REDACTED] religious creed and beliefs of praising God. The music school is a part of the church.* The music lesson payments are paid to the church. See Affidavit of [REDACTED].

(Italics emphasis in original). In his affidavit, the beneficiary states that the "main goal of our Missionary Music School is to use music as a tool to bring families close to God and to each other." He additionally states:

My music director ministry work at [REDACTED] is not secular work but religious work in an occupation for Christian praise music which is a traditional religious function and means to worship God. My music ministry involves my religious creed and beliefs and is not administrative work or incidental to religion. My work is only a religious occupation, and not a secular occupation. Ours is a church music school. Our music performance is the practice of our religion in following the word of God at [REDACTED]. In my personal experience of over 20 years the church music directorship is traditionally a fulltime and salaried occupation in independent Evangelical Christian churches, when the church grows large enough to afford such a position.

The petitioner also submits an affidavit of [REDACTED], who states that she is currently employed as a "Producer of Worship & Creative Arts," and has worked in church music ministry for 30 years in various positions. [REDACTED] does not indicate her current employer, but states: "I have worked at [REDACTED]" [REDACTED] states the following:

I have been asked to review the Music Ministry Director position for [REDACTED] of Lynnwood, WA by attorney, [REDACTED]. I am informed that the position is held by [REDACTED], a national of Brazil, who holds a non-immigrant religious worker visa. I reviewed the professional resume and website of [REDACTED] and learned of [REDACTED] evangelical Christian church ministry. [REDACTED] uses music to bring families to a deeper understanding of God. It is my expert professional opinion that the [REDACTED] Music Ministry Director position is work of a traditional religious function and position. For centuries people are reaching God through music ministry.

As noted above, in a separate affidavit, [REDACTED] states that she processes the payments to the church from those participating in the music school and then writes monthly checks to the beneficiary "for payments made to the church music school."

In her brief, counsel cites *Kent First Korean Church v. USCIS*, 2002 U.S. Dist. LEXIS 27081 (W.D. Wash. 2002), in which the United States District Court for the Western District of

Washington found that the petitioner in that case had established that its proffered music director position was a qualifying religious occupation and related to a traditional religious function. In contrast to the broad precedential authority of the case law of a United States circuit court, the USCIS is not bound to follow the published decision of a United States district court even in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Accordingly, the cited decision is not a relevant precedent decision. Further, the case cited by counsel predates the current regulations, which were published on November 26, 2008. Therefore, the court's interpretation applied to regulations which are no longer in effect and not relevant to the instant case.

The AAO disagrees with counsel's assertion on appeal that the director imposed evidentiary requirements which were inconsistent with or beyond the regulatory requirements for a religious occupation. In determining which positions qualify as religious occupations, the current regulations focus on the duties of the position, requiring them to be primarily religious in nature, and the petitioner must establish that the occupation is traditionally recognized within the denomination. 8 C.F.R. § 204.5(m)(5).

The petitioner has submitted some evidence on appeal regarding the recognition of the occupation of music director within evangelical churches. However, the petitioner must also establish that the beneficiary's duties are primarily religious in nature. The petitioner has not resolved inconsistencies in the record regarding the amount of time the beneficiary spends working with the children's ministry, and the work schedule indicates that the majority of his time is spent "teaching and training," or giving music lessons. The fact that the music lesson fees are paid to and processed by the church is not sufficient to demonstrate that the music lessons are related to a traditional religious function and clearly involve inculcating or carrying out the religious creed and beliefs of the denomination. The beneficiary asserts on appeal that his music lessons are "a tool to bring families close to God." However, the previously submitted brochure for his guitar classes does not contain any indication that the classes are religious in nature apart from being held at a church. Although counsel asserts that "the music school is part of the church," the statement in the employment contract that the beneficiary need not pay overhead costs "for the use of the church building to teach music lessons" suggests that the lessons are independently run by the beneficiary. The documentary evidence submitted by the petitioner is not sufficient to resolve these inconsistencies and establish that the music lessons are religious in nature and primarily involve inculcating or carrying out the religious creed and beliefs of the denomination. 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. at 591-92.

For the reasons discussed above, the AAO agrees with the director's determination that the petitioner failed to establish that the beneficiary will be employed in a qualifying religious occupation. The AAO does not find that a music director position could never meet the eligibility requirements of a religious occupation, only that the petitioner has not demonstrated in this instance that the beneficiary's position qualifies as a religious occupation.

(b)(6)

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The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.