U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: APR 2 5 2014 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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
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 withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further action and consideration.

The petitioner is a synagogue. 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 religious studies teacher. The director determined that the petitioner failed to overcome the negative findings of a compliance review site visit.

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
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> (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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(12) reads:

> *Inspections, evaluations, verifications, and compliance reviews.* The supporting evidence submitted may be verified by USCIS through any means determined

> appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on June 21, 2011. On the petition, the petitioner listed its address as New Jersey, and indicated that the beneficiary would work as a religious studies teacher at that address. Accompanying the petition, the petitioner submitted a letter, dated May 8, 2011, asserting its "offer of permanent employment" to the beneficiary. The letterhead listed New Jersey, as the petitioner's address and as its "Mailing Address." The petitioner also submitted copies of an October 25, 2006 letter to the "Tax Assessor, Township of " a December 10, 2009 letter to USCIS, and an "Attachment for Form 1023 Application." In each of these documents, the petitioner indicated that the synagogue was located at New Jersey, and that religious services were held there three times daily in addition to several study sessions. Additionally, the petitioner submitted a copy of a deed indicating the petitioner's ownership of the property at as well as copies of utility bills for service at " " addressed to the petitioning organization at

On March 15, 2012, USCIS issued a Notice of Intent to Deny the petition (NOID), based on the negative findings of a compliance review site visit conducted on February 7, 2012 at New Jersey, which found that the location was a supermarket rather than a religious organization. The notice also stated that, on "previous site checks" conducted on June 10, 2008 and June 19, 2008,[1] the beneficiary was found to be working for another organization. Additionally, the notice cited a January 6, 2011 site visit to an unspecified address, during which no contact was made with the beneficiary or the signatory and no evidence was found of the petitioner's operation at the facility.[2]

In a letter responding to the NOID, dated April 2, 2012, counsel asserted that the petitioning organization's physical address, at which the beneficiary works, is while it maintains the address "for legal documents." Counsel stated that the beneficiary had been employed by the petitioner since March 15, 2010, and worked for a different organization prior to that date. The petitioner submitted evidence that the beneficiary was granted R-1

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[1] The record indicates that June 19, 2008 was the date of a scheduled interview with the beneficiary and petitioner, not a site visit.

[2] Although the record contains a summary of the findings of the visit, the actual details of this site visit are not contained in the record.

nonimmigrant status authorizing his work for the petitioner from March 15, 2010 until May 7, 2012, and additionally submitted evidence of compensation paid to the beneficiary.

On April 24, 2012, the director denied the petition, finding that the petitioner failed to overcome the grounds for denial as specified in the March 15, 2012 NOID. The petitioner filed a motion to reopen and reconsider the proceeding which was subsequently granted by the director.

On March 11, 2013, USCIS issued a second NOID which stated, in pertinent part:

> A site check visit was conducted for the petitioner on 12/19/12 to verify the validity of the information within the petition and the signatory of the file was interviewed. The signatory was familiar with the beneficiary and indicated that he was not currently employed by the organization. The signatory indicated three different dates for when the beneficiary's employment ended: (1) March 2012; (2) May 2012; and (3) "four months ago" (from date of interview in December 2012) which is September 2012. The signatory stated the last time he had seen the beneficiary was four months prior to the site visit.
>
> At the time of the site visit, the signatory indicated he would submit a withdrawal of the petition given that the beneficiary no longer works for the organization, but correspondence received since the site visit indicates otherwise. . . .
>
> The address does not visually appear to be that of the petitioning organization where religious services are held and the beneficiary is not employed by the religious organization. The petitioning organization is not operating as described and has not established they are a bona fide religious organization offering services at the address indicated in order to place the beneficiary in a religious occupation as requested.

In response, the petitioner submitted a letter from counsel, asserting that investigating officer had incorrectly "attempted to compel the petitioner to withdraw the petition" on the grounds that the beneficiary was not currently employed by the petitioner. Counsel asserted that the petitioner denied stating any intent withdraw the petition and that the reason the beneficiary was not employed at the time of the site visit was that his R-1 status had expired in May of 2012. Counsel further stated:

> The officers who made a site visit to the premises entered the sanctuary and viewed the interior of the premises as well as speaking to Rabbinical students who were engaged in their studies. Your file should clearly reflect that the premises are indeed a religious sanctuary containing an Ark and a Torah Scroll, as well as seating for the congregants and for members of the Kollel (advanced rabbinical training), to engage in lectures, sermons, and religious services.

The director denied the petition on June 28, 2013, finding that the petitioner failed to overcome the negative findings of the site visit and to establish "that they are operating in the capacity claimed on the

petition and are a bona fide religious organization that can support the beneficiary." The director restated the findings of the site visit as described in the NOID and stated that no documentary evidence had been submitted in support of counsel's statements responding to the NOID. The director noted counsel's assertion that the petitioner did not agree to withdraw the case and stated that "[c]ounsel's brief failed to assuage other discrepancies and inconsistencies found during the previous failed site inspections."

On appeal, counsel asserts that the director erroneously "invoked a negative inference" from the beneficiary's absence at the December 19, 2012 site visit despite the beneficiary's lack of employment authorization at the time. Further, counsel contends that the director "has denied the petitioner due process by failing to provide it with evidentiary material that it could review and rebut." Counsel states:

> If the USCIS is determining the fate of this petition based upon the purported site visit, why does the NOID fail to set forth at which address the site visit was made, why does the NOID fail to include a copy of the investigative report, and why does the NOID and the denial of the District Director all fail to include the photographs taken by the officer.

Regarding the director's statement that counsel failed to resolve discrepancies from previous site visits, counsel states:

> An objective overview of the District Director's final conclusion would lead the reader to conclude that there were unresolved discrepancies and inconsistencies. In fact, as we have hereto explained in our prior analysis of the NOID, there were only two issues raised, that is, physical location of the petitioner, and whether or not the beneficiary was employed. We have provided in the past, and we are again submitting the actual locations where services and studies are conducted.

The petitioner submits an affidavit from the signatory of the petition denying that he expressed any intent to withdraw the petition and asserting that he told the investigating officer that the only reason the beneficiary was no longer employed was the expiration of his R-1 status.

The director cited the finding, from the December 19, 2012 site visit, that beneficiary was not present and was not currently employed by the petitioning organization. However, the regulations do not require the petitioner to establish its current employment of the beneficiary, only that the beneficiary was continuously employed during the two-year qualifying period immediately preceding the filing of the petition. The petitioner's explanation for the beneficiary's absence during the site visit, namely that he was not employed by the petitioner following the expiration of his R-1 status, is consistent with the submitted evidence regarding the beneficiary's immigration status. Further, although the director cited the finding that the petitioner indicated its intent to withdraw the petition during the site visit, the petitioner denied expressing such an intent and, regardless, has since indicated its continued support of the petition.

Regarding the remaining grounds for denial, the regulation at 8 C.F.R. § 103.2(b)(16)(i) provides that, "[i]f the decision will be adverse to the applicant or petitioner and is based on derogatory information

considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered." The regulation does not specify that USCIS must provide the petitioner with a copy of the investigative report or any photographs taken during the site visit. However, it does require the director to provide the petitioner with sufficient notice of the derogatory information underlying the decision to allow an opportunity for rebuttal.

In summarizing the findings of the site visit, the director stated that "[t] he address does not visually appear to be that of the petitioning organization where religious services are held," and "[t]he petitioning organization is not operating as described." The director did not specify the address in question and did not provide further information, such as the observations of the investigating officer, in support of these conclusions. Further, the director found that the petitioner failed to resolve "discrepancies and inconsistencies found during the previous failed site inspections," without identifying the unresolved issues.

For the reasons discussed above, the AAO will remand the matter for the director to determine whether the petitioner has overcome the findings of the compliance review site visit and established that that they are operating in the capacity claimed on the petition and are a bona fide religious organization that can support the beneficiary. On remand, given the various work locations claimed by the petitioner for the beneficiary during these proceedings, the director may request additional information, including the specific location where the beneficiary will work as well as the days and times during which his presence at the petitioning organization would be required. The director may also request any additional evidence and conduct any additional verification or compliance review deemed warranted. The director must, pursuant to 8 C.F.R. § 103.2(b)(16)(i), provide the petitioner an opportunity to respond to any derogatory information upon which the new decision may be based, and should allow the petitioner to submit additional evidence in support of its petition within a reasonable period of time.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.