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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



U.S. Citizenship
and Immigration
Services

DATE: **AUG 29 2014** 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:

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

for Ron Rosenberg
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. The petitioner then filed a motion to reopen and reconsider. We granted the motion to reopen, dismissed the motion to reconsider, and affirmed the previous decision. We then granted a second motion to reopen, dismissed a second motion to reconsider, and again affirmed the denial of the petition. The matter is now before us on a third motion to reopen and reconsider. We will grant the motion to reopen, dismiss the motion to reconsider, and affirm the denial of the petition.

The petitioner is a Sikh temple. It filed Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on August 28, 2009, seeking 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). The petitioner claims that the beneficiary will perform services as a *kirtankar*, or devotional hymn singer and priest. The director denied the petition on January 12, 2010, having determined that the petitioner had not established that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition. We dismissed the appeal on April 23, 2013, citing the original ground for denial as well as a lack of required evidence regarding the beneficiary's compensation. We issued our subsequent decisions on June 3, 2013 and December 3, 2013.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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).

On motion, the petitioner submits a brief; a letter from [REDACTED] president of the petitioning entity; and copies of various financial documents.

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 . . . ; 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 U.S. Citizenship and Immigration Services (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 continuously for at least the two-year period immediately preceding the filing of the petition. The USCIS regulation at 8 C.F.R. § 204.5(m)(11) reads, in pertinent part:

Evidence relating to the alien's prior employment. . . . 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.

The USCIS regulation at 8 C.F.R. § 204.5(m)(10) states:

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.

Except where necessary for context, this decision will not repeat details about the chronology of the proceeding that appeared in earlier decisions. The present decision will limit discussion to issues raised or addressed in the latest motion.

Our most recent prior decision, issued December 3, 2013, affirmed and reinforced prior findings that the petitioner had not adequately documented the beneficiary's past compensation, and that the lack of such evidence also cast doubt on claims of the beneficiary's past qualifying employment.

The brief submitted with the latest motion indicates that the petitioner now "submits its audited financial statements for fiscal years June 30, 2007 – June 30, 2012 inclusive. These statements demonstrate that the petitioner had at the time of filing and continues to have sufficient net revenues and/or current net assets to pay the beneficiary the offered wage."

The petitioner submits partial copies of financial statements, the two most recent of which do not refer to any audit of the petitioner's books and which therefore do not appear to be "audited financial statements." The new evidence submitted on motion meets the requirements of a motion to reopen at 8 C.F.R. § 103.5(a)(2).

The petitioner asserts that the newly submitted financial documents establish the petitioner's ability to compensate the beneficiary. The relevant regulatory requirement at 8 C.F.R. § 204.5(m)(10) concerns not just the petitioner's ability to compensate the beneficiary, but its intention to do so. The evidence (or lack thereof) regarding petitioner's past payments to the beneficiary is directly material to the question of the petitioner's intention to compensate the beneficiary.

The petitioner initially stated in August 2009 that it would provide the beneficiary with compensation worth at least \$25,000 per year – more if, as indicated on the petitioner's employer attestation, the \$25,000 figure did not include room and board. On July 25, 2011, the petitioner filed Form I-129, Petition for a Nonimmigrant Worker, indicating that the beneficiary's salary would be \$12,950 per year plus "free boarding/lodging/food & monetary benefits in the form of offerings by devotees or congregation." The petitioner's assertions have been inconsistent. When we dismissed the petitioner's appeal of the denial of the Form I-129 petition, we found that the petitioner had submitted an altered IRS Form W-2. Our decision of June 28, 2013 describes the alterations. The petitioner has, therefore, made conflicting claims and submitted altered documentation in seeking immigration benefits for the beneficiary. 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.

The brief on motion states:

Without ever directly saying so, the AAO's decision occasionally implies that it may be dismissing the petitioner's appeal on the grounds that it failed to establish that the beneficiary had the requisite experience as well. . . . [The language of the decision] implies that the AAO may be holding that the petition is deniable because the petitioner has failed to establish that he has two years of continuous full time experience preceding the filing of the petition but . . . nowhere does the decision say so outright.

Our prior decision, issued in December 2013, indicated that "the petitioner had not established that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition," and our decision affirmed that holding. The December 2013 decision discussed the petitioner's failure to establish not only the petitioner's ability to pay the beneficiary, but also to establish past employment. Under the USCIS regulation at 8 C.F.R. § 204.5(m)(11), the petitioner must establish the beneficiary's past employment by documenting the compensation the beneficiary received at the time. The regulation at 8 C.F.R. § 204.5(m)(11)(i) calls

for IRS documentation of salaries received. As detailed in our earlier decisions, the IRS documentation of the beneficiary's compensation has been incomplete and inconsistent. The petitioner does not address this point on motion. The assertion that the petitioner was able to fully compensate the beneficiary does not establish that the petitioner actually did so.

The regulation at 8 C.F.R. § 204.5(m)(11)(ii) requires documentation of the beneficiary's past non-salaried compensation, which would include housing. As described in our earlier decisions, the petitioner and the beneficiary have offered several contradictory accounts as to where, and under what circumstances, the beneficiary lived during the two years immediately preceding the filing of the petition.

At various times, the petitioner and/or the beneficiary have claimed that the beneficiary resided: (1) in "an apartment located in the Temple . . . at [REDACTED]"; (2) in an apartment owned by the petitioner at [REDACTED] and (3) at [REDACTED]. The petitioner and the beneficiary have made conflicting claims regarding the third listed address. In a statement submitted with the first motion, the beneficiary noted the similarity between the two addresses, [REDACTED] and stated: "It is obvious from being only one street number off that a typographical error occurred somewhere. I have always lived at the Temple since I entered the United States." Subsequently, the petitioner contradicted the beneficiary's claim by submitting a copy of a lease for an apartment at [REDACTED] stating that the beneficiary moved to that address in order to provide room for his family. The petitioner also provided conflicting dates for the beneficiary's claimed use of that address, with some documents indicating the beneficiary planned to move to the apartment in September 2008, and others placing him there as early as 2004.

The petitioner's brief on motion does not directly address these inconsistent claims. Instead, it states:

Here since the AAO has identified a discrepancy which "raises legitimate doubts" regarding whether the beneficiary actually received a salary from the petitioner, therefore by providing evidence of his financial support by the congregation the petitioner has mooted those doubts by showing that even if in fact the beneficiary received no salary and no living quarters from the petitioner during the two years prior to the filing of the petition, still he has managed to support himself with contributions from the members of the petitioner's congregation.

The petitioner, above, acknowledges "a discrepancy" but does not directly address it, and submits nothing to resolve it or to explain the petitioner's and the beneficiary's contradictory claims. The discrepancy relating to the beneficiary's past housing, therefore, remains as a factor that casts doubt on the petitioner's claim to have compensated the beneficiary with housing prior to the filing of the petition. The petitioner, on motion, has not overcome the finding that the petitioner has not submitted adequate evidence of non-salaried compensation as required by the regulation at 8 C.F.R. § 204.5(m)(11)(ii).

Furthermore, if the beneficiary had relied entirely on contributions from the congregation, this would not “moot” our concerns about the credibility of the petitioner’s evidence. Instead, it would confirm those concerns. The petitioner claimed, originally, to have paid the beneficiary a salary and to have provided him with an “apartment located in the temple.” The petitioner has since changed this claim, asserting that the beneficiary lived at nearby apartments owned or leased by the temple, including one apartment at an address that the beneficiary himself had dismissed as a “typographical error.” The assertion that the beneficiary relied solely on donations from temple members, therefore, would amount to yet another substantive and fundamental change regarding the nature of the beneficiary’s claimed past compensation.

The petitioner on motion observes that the regulations contain no express requirement that the beneficiary’s prior experience must have been full-time. There has been no prior finding that the beneficiary’s employment was part-time and therefore non-qualifying. The issue is relevant, however, insofar as it pertains to general questions of credibility. Throughout this proceeding, officials of the petitioning temple have asserted that the beneficiary has worked full-time for the temple. Several witnesses, identified as temple members, made the same claim in a statement discussed in our December 2013 decision. The question of whether the beneficiary worked full-time, therefore, speaks directly to the accuracy (and thus the credibility) of the petitioner’s statements and evidence.

The petitioner has not established that the previous decision was based on an incorrect application of law or USCIS policy, or that the decision was incorrect based on the evidence of record at the time of the initial decision. Therefore, the motion does not meet the requirements of a motion to reconsider at 8 C.F.R. § 103.5(a)(3), and we will dismiss that motion.

We will affirm the denial of the petition for the above stated reasons. 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, the petitioner has not met that burden.

ORDER: The motion to reopen is dismissed. The AAO’s decision dated December 3, 2013, is affirmed. The petition remains denied.