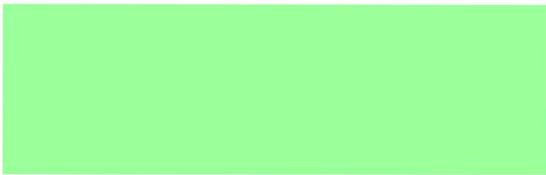




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **DEC 15 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. 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,

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. We will dismiss the appeal.

The petitioner is a Sikh temple. 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 priest/ragi. The director 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.

On appeal, the petitioner submits a brief 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, 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 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. The Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, was filed on May 9, 2013. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work 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 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.

According to the Form I-360 petition and accompanying evidence, the beneficiary entered the United States on July 19, 2012, in B-1 nonimmigrant visitor status and was later granted R-1 nonimmigrant status authorizing his work for the petitioner from January 25, 2013 to July 24, 2015. In an April 24, 2013 letter accompanying the petition, the petitioner stated, "For the past two years

or so, [the beneficiary] was employed as part of [redacted] on work permit in Canada at [redacted] Canada.” The petitioner submitted a January 24, 2011 letter from [redacted] Canada, stating that the beneficiary “stayed in Canada from September 2010 to January 2011 and served our congregation through devotional music and hymns.” The petitioner also submitted an October 1, 2012 letter from [redacted] Canada, stating that the beneficiary and two other priests “worked as religious workers at [redacted] from March 2011 until March 2012 on work visa for one year.” The petitioner submitted various certificates of appreciation for the beneficiary’s services, including a “Volunteer Service Certificate” recognizing the beneficiary’s volunteer services at a camp held at [redacted] from July 11, 2011 to July 22, 2011. In addition, the petitioner submitted copies of its [redacted] checking account statements for February 2013 and March 2013, which included photocopies of four processed checks to the beneficiary totaling \$1,696.03.

On August 21, 2013, the director issued a Request for Evidence (RFE), requesting additional evidence of continuous employment during 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 dates of employment, schedule, and the work performed, as well as evidence of compensation received by the beneficiary during the qualifying period.

In a November 11, 2013 letter responding to the RFE, the petitioner stated that the beneficiary has been working as a Sikh priest for over 27 years “without any meaningful break.” The petitioner stated that, during this time, the beneficiary has taken many “sabbaticals” to perform as part of a “religious [redacted] (group)” at the invitation of Sikh congregations in various countries. The petitioner further stated that “[t]hese trips were undertaken for the purpose of religious education of the individuals comprising the [redacted] as well as for the benefit of the Sikh’s [sic] living in the [redacted]” Regarding the beneficiary’s work history during the qualifying period, the petitioner stated:

The beneficiary . . . and his colleagues in the [redacted] took another sabbatical in March 2012. The petitioner . . . had requested/invited them to come to the U.S., interact with the congregation. [redacted] traveled to the U.S. and eventually accepted employment with the petitioner, who in turn filed R-1 petitions for all three of them, which was granted on 1/25/2013. During this period, all living expenses were paid by the [petitioner] and/or its devotees.

Please note that the beneficiary has worked for [redacted] Canada from 03/2011 to 03/2012 and thereafter for the Petitioner [...] for the time period from 06/30/2012 to 05/09/2013, initially on his sabbatical and later in valid R-1 status.

In a separate letter, dated November 5, 2013, the petitioner stated that the beneficiary worked for the petitioner “as a volunteer from July 30, 2012, to January 25, 2013.” The petitioner also submitted an October 28, 2013 letter from [REDACTED] stating that the beneficiary worked on a full time basis from March 2011 to March 2012, and then took a sabbatical from April 2012 until November 2012 “to perform at various religious functions overseas,” during which time he remained an employee and a parsonage was reserved for him. In a November 8, 2013 affidavit, the beneficiary stated that he took a sabbatical in March 2012 “to visit family members” in India and then to serve at the petitioning temple in the United States.

As evidence of the beneficiary’s compensation during the qualifying period, the petitioner submitted copies of the beneficiary’s Canadian Income Tax and Benefit Returns for 2011 and 2012, listing income of \$6,250.00 and \$3,050.00 respectively. The petitioner also submitted copies of “Current Paystubs” from the petitioning temple dated between February 8, 2013, and November 1, 2013, and photographs of the “residential area” of the petitioning temple.

The director denied the petition on February 27, 2014, finding that the petitioner failed to establish that the beneficiary was continuously performing qualifying religious work throughout the two years immediately preceding the filing date of the petition. The director stated that the petitioner had not submitted sufficient evidence to show the continuity of the beneficiary’s work between the end of his purported sabbatical from [REDACTED] in November, 2012, and the start of his compensated employment with the petitioner on January 25, 2013. The director noted that the petitioner indicated he was working as a volunteer during this period, and stated that volunteer work does not count towards the required qualifying experience.

On appeal, the petitioner again states that the beneficiary worked for the petitioner in a volunteer capacity from July 30, 2012, to January 25, 2013. The petitioner contends that the beneficiary entered the United States in B-1 nonimmigrant visitor status for the purposes of performing unpaid “missionary work” under 8 C.F.R. § 214.2(b)(1), and that the director was incorrect to find that this volunteer work was not qualifying experience.

Under 8 C.F.R. § 204.5(m)(4), the petitioner must establish that the beneficiary was engaged in qualifying religious work for at least the two years immediately preceding the filing of the petition. The petitioner has asserted that the beneficiary meets this requirement, but has not submitted sufficient documentary evidence, such as work schedules or similar documentation, to show continuous, qualifying employment throughout the qualifying period. 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 not submitted evidence to support its assertion that the beneficiary was engaged in religious work during his time in the United States prior to approval of his R-1 nonimmigrant status. To the extent that the beneficiary worked as a volunteer for a portion of the qualifying period, the regulation at 8 C.F.R. § 204.5(m)(11)(iii) requires the petitioner to submit documentary evidence showing how support was maintained. Although the petitioner stated in its November 11, 2013 letter that it paid “all living

expenses” for the beneficiary during his purported volunteer employment, no documentary evidence was submitted in support of that assertion. *Id.*

In addition, although not discussed by the director, there are inconsistencies in the record regarding the beneficiary’s employment during his purported sabbatical from [REDACTED]. We conduct appellate review on a *de novo* basis. See *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). As noted above, the regulation at 8 C.F.R. § 204.5(m)(4)(i) provides that a beneficiary must be “still employed as a religious worker” during any break in the continuity of his religious work. In the October 28, 2013 letter submitted in response to the director’s RFE, [REDACTED] indicated that the beneficiary remained its employee until November 2012. However, the October 1, 2012 letter from [REDACTED] submitted as initial evidence, did not indicate current employment, instead stating that he had worked “for one year” from March 2011 to March 2012. 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).

There are also discrepancies with regard to the purpose of the beneficiary’s purported sabbatical. While the petitioner indicated in its November 11, 2013 letter that “religious education” of the beneficiary was one purpose of his trips, it has not submitted evidence to support the assertion that the beneficiary was engaged in religious training during the period in question. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, at 165. Further, while [REDACTED] stated that the beneficiary took a sabbatical in April 2012 “to perform at various religious functions overseas,” the beneficiary indicated in his affidavit that he went to India “to visit family” from March 2012 to July 2012. Because the petitioner has not resolved these inconsistencies, it has not established that the beneficiary’s purported sabbatical constitutes an acceptable break under 8 C.F.R. § 204.5(m)(4).

For the reasons discussed above, the petitioner has not established that the beneficiary has the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition.

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 appeal is dismissed.