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: DEC 29 2014 OFFICE: CALIFORNIA SERVICE CENTER

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,

for 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 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 youth pastor and music director. 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).

I. QUALIFYING WORK EXPERIENCE

The issue to be discussed is whether the beneficiary performed the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition.

A. The Law

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 December 16, 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)(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 [U.S. Citizenship and Immigration Services].
>
> If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

B. Analysis

According to evidence submitted with the Form I-360 petition, the beneficiary most recently entered the United States on March 5, 2012, in R-1 nonimmigrant status authorizing his employment with the petitioner. In an October 1, 2013 letter, the administrator for the petitioning church, stated that the beneficiary "has [been an] employee of our church uninterrupted since August 2011 until the present time." The petitioner also submitted an October 3, 2011 letter from the board of directors of , stating that the beneficiary

served as that organization's worship director, audio director, and assistant youth pastor "for the past 8 years." The letter further stated, "We have over 150 churches under ministerial coverage, from Tijuana to Chiapas, and our church not only offers doctrinal support but also technical support, and [the beneficiary] provides support in those areas to all. . . ." The petitioner submitted a copy of a theology license presented to the beneficiary by the Texas, in April 2010.

As evidence of compensation received by the beneficiary, the petitioner submitted a copy of the beneficiary's 2012 IRS Form W-2, indicating $17,500.00 in compensation from the petitioner.

On February 12, 2014, the director issued a Request for Evidence (RFE), in part requesting additional evidence of continuous employment during the two-year qualifying period immediately preceding the filing of the petition. The notice 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. The director noted that each experience letter "must be written by an authorized official from the specific location at which the experience was gained," and further stated, "Please be sure that the experience letters submitted covers for [sic] at least the two-year period immediately preceding the filing of the petition."

In response to the RFE, the petitioner submitted an April 28, 2014 letter from its administrator, Mr. stating that he was previously mistaken in asserting that the beneficiary began working for the petitioner in August 2011. Mr. stated that the beneficiary "was in fact only offered employment in August 2011," but did not begin working for the petitioner until May 4, 2012. As evidence of the beneficiary's start date, the petitioner submitted internal payroll records indicating that the beneficiary's first paycheck was issued on May 4, 2012, as well as an IRS Form W-4, Employee's Withholding Allowance Certificate, signed by the beneficiary on April 27, 2012. In a March 31, 2014 affidavit, the signatory of the petition, , stated, "From August 2011 to October 2011 [the beneficiary] continued his work in Mexico City, and then beginning in November 2011 until May 2012 he served our five churches in the Tijuana-Tecate-Ensenada region." Mr. indicated that he serves as "Apostle, the chief leadership position, for the approximately 100 churches located throughout the United States, Mexico, Guatemala, El Salvador, Honduras, Colombia, Ecuador, and Argentina."

As additional evidence of the beneficiary's compensation during the qualifying period, the petitioner submitted a copy of his 2013 Form W-2, indicating $26,000 in compensation from the petitioner. The petitioner also submitted the beneficiary's Tax Return Transcripts from 2012 and 2013, which matched the figures on the submitted Forms W-2 for those years. In addition, the petitioner submitted a bank record showing a transfer of $1,000 from account ending in 4259, to the beneficiary on April 24, 2012. Mr. signed the above-mentioned October 3, 2011 letter from as an "Elder." The petitioner also submitted copies of the beneficiary's account statements for January 2012 and April 2012, which included third party deposits of $10,000.00

MXN each from the account ending in 4259 on January 3, January 10, January 16, April 2, April 9, April 16, April 24, and two deposits on April 30.

The director denied the petition on May 20, 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 of the petition. The director found that the petitioner had not established the continuity of the beneficiary's qualifying experience between December 2011 and May 2012 because it failed to submit an experience letter from the beneficiary's employer or verifiable evidence of his compensation during that period.

On appeal, the petitioner asserts that the beneficiary was continuously employed by its affiliated churches in both Mexico City and Tijuana between December 2011 and May 2012. The petitioner submits an undated letter from in (hereafter), stating that the beneficiary worked full time ("35-50 hours every week") as "Interim Youth Ministry and Worship Music Director and Advisor" from September 1, 2011, to May 2, 2012, and was paid a cash stipend of approximately 500 pesos per week. The letter asserts that, even after the beneficiary "travelled to reside in the United States in late January 2012," he continued to work full time, completing a strategic youth ministry plan and communicating daily with church leadership and youth leaders via The petitioner also submits a July 15, 2014 letter from (hereafter), stating that the beneficiary began working for the church in August 2011, but continued to work full time for the ("about 40 hours a week") as "Director and Producer of the Praise Department and Assistant Pastor for Youth Ministry" until May 2012. The letter states that the paid him a salary of approximately $10,000.00 MXN per week through deposits by check and transfers from the church's bank account. The petitioner submits the beneficiary's statements for December 2011 through May 2012, highlighting deposits by check and from the account ending in 4259. The petitioner also submits a July 14, 2014 letter from stating that the account ending in 4259 belongs to the and that is authorized for all financial transactions related to the account.

The evidence submitted on appeal indicates that the continued to deposit funds into the beneficiary's bank account until at least May 21, 2012. However, the petitioner has not resolved inconsistencies in the record regarding the timeline of the beneficiary's purported employment history during the qualifying period. 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).

According to the letters submitted on appeal, the beneficiary began a full time position with the in either August or September of 2011 and was paid a weekly cash stipend of 500 pesos. The petitioner submitted no documentation of this payment and no other documentation to establish that the beneficiary worked for the In its July 15, 2013 letter, the

stated that while the beneficiary worked for the he continued to work full time for the Although the petitioner provided evidence of deposits to the beneficiary's account, the petitioner provided no documentation of any work actually performed by the beneficiary and does not explain why these two distinct, full time roles were not mentioned in the initial October 3, 2011 letter from the In that October 2011 letter, the indicated only that the beneficiary "provides support" to all "150 churches under ministerial coverage."[1] The petitioner provided no documentary evidence of the support provided by the beneficiary to the 150 churches mentioned in the letter. Further, Mr. stated in his March 31, 2014 affidavit that the beneficiary worked for the until October 2011, and subsequently worked for "five churches in the Tijuana-Tecate-Ensenada region" from November 2011 until May 2012. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id*, at 591. If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

We note that the beneficiary entered the United States in R-1 nonimmigrant religious worker status on March 4, 2012 but did not begin his employment with the petitioner until May 2, 2012. Additionally, according to the letter from the the beneficiary entered the United States in January 2012 but continued to work for the until May 2. The petitioner also does not explain the deposits to the beneficiary's account from the on May 7 and May 21, 2012, after purportedly beginning his employment with the petitioner.

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.

II. COMPENSATION

As an additional matter, the petitioner has not established how it intends to compensate the beneficiary. 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).

A. The Law

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

[1] The October 3, 2011 letter also stated that the beneficiary had served as the worship director, audio director, and assistant youth pastor "for the past 8 years," indicating that he held those "leadership" roles beginning at age 16.

> *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.

B. Analysis

On the Form I-360 petition, the petitioner indicated that it would provide compensation of $500 per week. In an October 1, 2013 letter accompanying the petition, the petitioner stated that the beneficiary's compensation would also include "$600 (Six Hundred) Housing Allowance to pay for [the beneficiary's] lodging/rent as part of our employment package." The petitioner's December 13, 2013 cover letter also stated that the beneficiary's compensation would include a housing allowance in addition to the proposed salaried compensation.

In response to the director's RFE, the petitioner indicated that the beneficiary's housing is provided by the petitioner's senior pastor and founder The petitioner submitted a May 6, 2014 letter, stating:

> Mr. owns the 5-unit apartment complex where the [beneficiary's] family resides. Mr. provides housing to the beneficiary rent free; therefore, there is no evidence of this non-salaried housing compensation. The monthly rental for the two bedroom apartment has a $1200.00 market value. [The beneficiary] and his father (also an employee of petitioner) receive in-kind compensation of $600.00 each.

The petitioner also submitted an affidavit from Mr. attesting to his ownership of the property where the beneficiary lives, and stating that the beneficiary does not pay rent.

The petitioner's letters indicate that in addition to a $500 salary, the beneficiary will receive a housing allowance valued at $600 per month. However, in its May 6, 2014 letter submitted in response to the RFE, the petitioner stated that the beneficiary would be sharing an apartment with his father, and that the apartment is offered to them rent-free by the petitioner's pastor. The petitioner, therefore, indicated that rather than receiving a housing allowance, as initially stated, the beneficiary would instead receive housing in the form of free rent.

The above-cited regulation requires the petitioner to provide verifiable documentation of room and board, if offered as non-salaried compensation. To the extent that non-salaried compensation will be provided by an individual, this arrangement does not meet regulatory requirements. The regulation at 8 C.F.R. § 204.5(m)(10) requires the petitioner to submit initial evidence of "how the *petitioner* intends to compensate the alien," and the regulation at 8 C.F.R. § 204.5(m)(7)(xi) requires the

petitioning employer to attest to the statement that "any salaried or non-salaried compensation for the work will be paid to the alien *by the attesting employer*" (emphasis added). The regulations do not state that the petitioner can discharge this responsibility by arranging for a third party to compensate the alien.

III. CONCLUSION

As discussed above, the petitioner failed to establish that the beneficiary has the required two years of continuous, qualifying work experience immediately preceding the filing of the petition. *See* 8 C.F.R. § 204.5(m)(4). Further, the petitioner did not establish how it intends to compensate the beneficiary. *See* 8 C.F.R. § 204.5(m)(10).

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