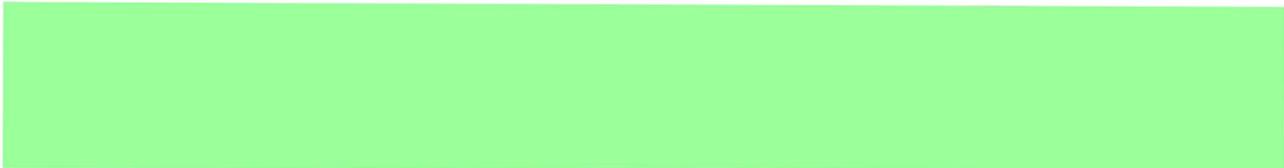
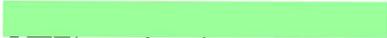


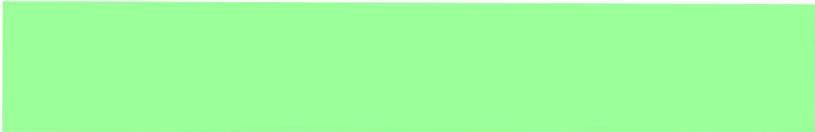


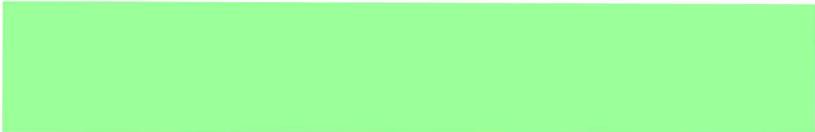
U.S. Citizenship
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Services

(b)(6)



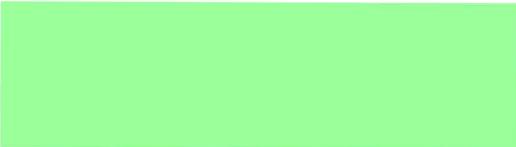
DATE: **FEB 11 2014** OFFICE: CALIFORNIA SERVICE CENTER 

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.

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 rabbi. 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 from counsel, printouts of articles from various websites, and copies of the beneficiary's bank statements.

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 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, 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 24, 2012. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work in lawful immigration status throughout the two-year period immediately preceding that date.

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 evidence accompanying the petition, the beneficiary was admitted to the United States as an H-1B nonimmigrant worker on July 31, 2012. His status as an H-1B nonimmigrant authorized him to work for the petitioner until January 18, 2014. In a December 7, 2012 letter accompanying the petition, [REDACTED] President of the petitioning synagogue, stated that the petitioner currently employs the beneficiary as a Rabbi. In Part 5.c. of the petition, describing the beneficiary's qualifications for the position offered, the petitioner stated that the beneficiary was "the Associate Rabbi of the [REDACTED] Chile, from 09/20/2006 until July 2012."

The petitioner submitted paystubs indicating that it paid the beneficiary \$20,796.99 in wages and \$12,000.00 as parsonage between August 1, 2012, and November 1, 2012. Regarding his work outside of the United States, the petitioner submitted an April 3, 2012 letter from [REDACTED], stating that the beneficiary worked as "the associated Rabbi" since September 20, 2006.

On March 5, 2013, USCIS issued a request for evidence (RFE), in part requesting additional evidence of the beneficiary's work history during the two-year qualifying period immediately preceding the filing of the petition. The RFE specifically instructed the petitioner to submit experience letters written by previous and current employers providing details about the dates of his employment, duties, schedule, and compensation. The director also instructed the petitioner to submit Internal Revenue Service (IRS) evidence of compensation or evidence of self-support for employment in the United States during the qualifying period, as well as evidence that the beneficiary was employed while in lawful status. Additionally, the director stated: "If the alien was employed outside of the United States during the two years, the petitioner must submit comparable evidence of the religious work."

In response to the RFE, the petitioner submitted a copy of the beneficiary's 2012 IRS Form W-2, Wage and Tax Statement, indicating that it paid him \$43,729.32 for the year, including \$27,729.32 in wages and \$16,000 in parsonage. The petitioner also submitted an April 22, 2013 letter from [REDACTED] providing details about the beneficiary's employment with that organization from September 20, 2006 until May 31, 2012, including descriptions of his duties and schedule. [REDACTED] also stated that "[t]he amount of his compensation was 3.150.000 (equivalent to [US \$] 6,500) paid monthly by electronic transfer the last day of each month."

On June 5, 2013, the director denied the petition. The director found that the petitioner failed to submit evidence that the beneficiary received salaried or non-salaried compensation or provided for his own support during his employment with [REDACTED]. Accordingly, the director found that the petitioner failed to establish that the beneficiary had the requisite two years of continuous, qualifying employment immediately preceding the filing of the petition.

On appeal, counsel for the petitioner contends that the March 5, 2013 request for "comparable evidence of religious work" outside the United States did not specify that the petitioner should submit evidence of compensation, and that the petitioner instead submitted an experience letter and documentation of the beneficiary's credentials. As additional evidence of the beneficiary's religious work in Chile, the petitioner submits copies of the beneficiary's bank statements from [REDACTED] bank from January 2010 to May 2012. The statements indicate monthly deposits, described on the statements as "[REDACTED]". The petitioner also submits copies of articles from various sources, some of which describe the beneficiary's work as a Rabbi in Chile.

On appeal, the petitioner submits evidence that is consistent with the prior assertions of [REDACTED], demonstrating that the beneficiary was compensated for his employment with that organization. Accordingly, the petitioner has established that the beneficiary was engaged in continuous, qualifying religious work for the two years immediately preceding the filing of the petition.

The petitioner has overcome the only stated basis for denial of the petition; however, review of the record shows an additional issue that precludes approval of the petition. The AAO conducts 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). In this case, there is no evidence that the petitioner has satisfied the requirements relating to inspections, evaluations, verifications, and compliance reviews.

The 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 petition is remanded in order for the director to determine whether or not the petitioner has satisfied the regulatory requirements at 8 C.F.R. § 204.2(m)(12).

On remand, the director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position 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).

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.