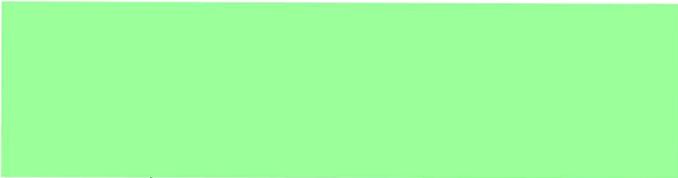
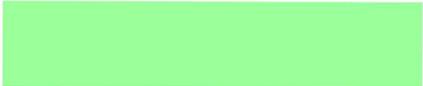




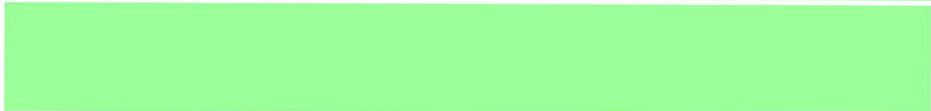
U.S. Citizenship  
and Immigration  
Services

(b)(6)



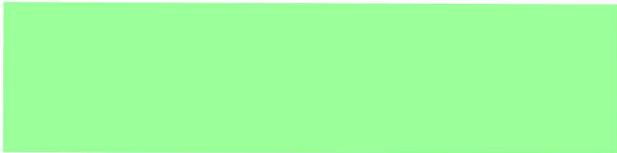
DATE: **JAN 28 2014** OFFICE: CALIFORNIA SERVICE CENTER 

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 Presbyterian church affiliated with the [REDACTED]. 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 the services of a Religious Education Director. The director determined that the petitioner failed to submit required evidence to establish that it qualifies as a bona fide nonprofit religious organization in the United States or that it is included in a group exemption.

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)(3) provides that to be eligible for classification as a special immigrant religious worker, the alien (either abroad or in the United States) must:

Be coming to work for a bona fide non-profit religious organization in the United States, or a bona fide organization which is affiliated with the religious denomination in the United States.

The regulation at 8 C.F.R. § 204.5(m)(5) defines a *bona fide non-profit religious organization* as “a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the IRS confirming such exemption.”

The regulation at 8 C.F.R. § 204.5(m)(8) states that a petition for a special immigrant religious worker shall include the following initial evidence relating to the petitioning organization:

(i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or

(ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or

(iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, as something other than a religious organization:

(A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

The record before the director contained a May 7, 2001, letter from the Internal Revenue Service (IRS) indicating that the [REDACTED] was granted tax exempt status under

section 501(c)(3) of the Internal Revenue Code (IRC) in April 1992, and that the church was further granted a group tax-exemption (3371) for affiliated organizations. The record before the director also contained documentation showing the petitioner was recognized by the IRS as a subordinate organization of the [REDACTED]. The petitioner submitted a March 5, 2012 letter from the General Secretary of the Korean American Presbyterian Church reiterating its recognition by the IRS as a tax exempt organization under section 501(c)(3) of the IRC and its group exemption. The letter further confirmed the petitioner's subordinate status in the [REDACTED].

On appeal, counsel for the petitioner submits additional verification of its recognition as tax-exempt under a group tax exemption, including:

- An IRS website page printout with link to Exempt Organizations Business Master File Extract;
- An IRS Printout of Master File of Group Tax Exempt Organizations showing the parent church, [REDACTED]; exempt status under group number [REDACTED];
- An IRS Printout of Master File of Group Tax Exempt Organizations showing the petitioner's exempt status under group number [REDACTED];
- An IRS Determination Letter affirming the [REDACTED]; tax exempt status under group number [REDACTED]; and
- Its most recent Certificate of Denominational Membership letter from the [REDACTED] [REDACTED] dated June 28, 2013, with a subsidiary organization list.

The record before the director established that the petitioner qualified as a bona fide nonprofit religious organization that is exempt from taxation. The petitioner has, therefore, overcome the only stated basis for denial of the petition.

However, review of the record shows additional grounds of ineligibility. The AAO may deny an application or petition that fails to comply with the technical requirements of the law even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

This matter shall be remanded to the director for additional proceedings addressing concerns set forth in this decision.

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

(10) *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.

On the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, the petitioner stated it would pay "\$43,500 annual compensation." Accompanying the petition, the petitioner submitted copies of its Forms W-3, Transmittal of Wage and Tax Statements, for 2010 and 2011. The 2011 Form W-3 lists two employees being paid total wages of \$75,038. The 2010 Form W-3 lists two employees being paid total wages of \$59,258.<sup>1</sup> The 2010 Form W-3 was submitted on a 2011 Form W-3 dated September 21, 2011, and the date of the tax form has been physically altered to state 2010. 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. See *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The petitioner also submitted a copy of the beneficiary's 2010 federal Tax Return Transcript which lists the beneficiary's salary as \$27,720. The petitioner submitted a copy of the beneficiary's Form 1040X, Amended U.S. Individual Tax Return, amending the beneficiary's salary from \$27,720 to \$43,500, which is the stated compensation for the position as listed on the Form I-360. The following explanation was provided: "HOUSING ALLOWANCE (\$15,780) FROM THE CHURCH WAS OMITTED IN THE ORIGINAL W-2 AND TAX RETURN. AMENDED W-2C WAS FILED SEPARATELY WITH THE SOCIAL SECURITY ADMINISTRATION." Like a delayed birth certificate, the amended tax returns created several years after the fact raise serious questions regarding the truth of the facts asserted. Cf. *Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991)(discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings).

The petitioner has not resolved the above cited discrepancies in the record regarding compensation. 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). The director may request such evidence as deemed necessary in this regard. Such evidence may include, but is not limited to:

- IRS certified copies of the petitioner's Forms W-3 for tax years 2010, 2011 and 2012.

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<sup>1</sup> It is noted that the increase in wages shown between the 2010 and 2011 Forms W-3 is \$15,780, the amount the beneficiary stated in his amended 2010 tax return was his housing allowance from the petitioner.

- Copies of the beneficiary's 2012 W-2 Form to establish wages paid to the beneficiary in that year.

Finally, the USCIS regulation at 8 C.F.R. § 204.5(m)(12) states:

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 record does not contain evidence of a compliance review, onsite inspection or other verification of this petitioner's claims. The director shall determine whether the petitioner has satisfied the regulation at 8 C.F.R. § 204.5(m)(12) and whether a compliance review, onsite inspection or other verification of the petitioner's claims is appropriate in the instant petition. 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). The director shall then issue a new decision as to whether the beneficiary qualifies as a special immigrant religious worker as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C).

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for additional proceedings and the issuance of a new decision in accordance with this decision. If the director's decision is adverse to the petitioner, the matter shall be certified to the AAO for review.