



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: **JUL 23 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:  
[Redacted]

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. We withdrew the director's decision and remanded the matter for a new decision. The director again denied the petition and certified it to us at the Administrative Appeals Office (AAO) for review. We will affirm the denial of the petition.

The self-petitioner seeks classification 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 an imam at the [REDACTED]. The director determined that the petitioner had not established: (1) that [REDACTED] qualified as a tax-exempt organization at the time of the petition's filing; (2) [REDACTED] ability or intention to compensate the alien. The director also cited inconsistencies in the petitioner's documentation, and the petitioner's failure to respond to a notice of intent to deny the petition (NOID).

As required by the regulation at 8 C.F.R. § 103.4(b)(2), the certified decision included a notice that the petitioner could respond to the decision within 30 days. The response period has elapsed and, to date, the record contains no further correspondence from the petitioner. We consider the record to be complete.

The petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on October 8, 2010. The director denied the petition February 15, 2011, based on the revocation of the alien's R-1 nonimmigrant religious worker visa. Noting that withdrawal of the visa itself, after the alien had already entered the United States, is not equivalent to withdrawal of nonimmigrant status, we withdrew that decision on June 14, 2012, and remanded the petition for a new decision.

In our remand order, we recognized the alien as the self-petitioner, because he, rather than any [REDACTED] official, signed Part 10 of Form I-360. Later U.S. Citizenship and Immigration Services (USCIS) correspondence dated January 22, 2014 disputed this action, stating "there is no Part 10 to the I-360 petition" and noting that an official of the [REDACTED] signed the employer attestation comprising Part 8 of Form I-360. Part 10 of Form I-360 appears on page 11 of the December 30, 2009 revision of that form, which is the edition the petitioner filed in October 2010. It is the signature on Part 10, not the signature on the employer attestation, that satisfies the requirement at 8 C.F.R. §§ 103.2(a)(2) and 204.5(m)(6).

The same attorney represents both the self-petitioning alien and the [REDACTED] and therefore all relevant notices have been served through the attorney of record.

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).

### I. Tax-Exempt Status

The first issue in this proceeding concerns the prospective employer's tax-exempt status. The USCIS regulation at 8 C.F.R. § 204.5(m)(8) requires the petitioner to submit a currently valid determination letter from the Internal Revenue Service (IRS) establishing that the intending employer is a tax-exempt organization.

The record included a copy of an IRS determination letter dated September 25, 2001, stating that the [REDACTED] is tax-exempt under section 501(c)(3) of the Internal Revenue Code (the Code) as "an organization of the type described in section[s] 509(a)(1) and 170(b)(1)(A)(vi)" of the Code. The letter refers to the [REDACTED] obligation to file IRS Form 990, Return of Organization Exempt From Income Tax. IRS determination letters do not expire, but the IRS can revoke tax-exempt status. In this instance, on May 15, 2010, the IRS automatically revoked the [REDACTED] s tax-exempt status for failure to file a Form 990 return for three consecutive years. The director added printouts from the IRS's web site to the record to substantiate this information.

On January 22, 2014, the director issued a NOID, in which the director reported the details of the revocation and stated: "As the revocation occurred prior to the filing of the I-360 petition, the petitioner, at the time of filing, was no longer eligible to file the special immigrant religious worker petition on behalf of the beneficiary."

The record contains no response to the NOID. The director denied the petition on April 16, 2014, and certified the decision to us, as instructed in our June 2012 remand order. The record contains no response to the certified decision. Therefore, the petitioner has not contested or addressed the evidence, directly from the IRS, showing that the [REDACTED] was not a 501(c)(3) tax-exempt organization as of the petition's October 2010 filing date.

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. 8 C.F.R. § 103.2(b)(1). Because the [REDACTED] was not tax-exempt at the time of filing, it was not an eligible employer, and the petition may not be approved.

We affirm the director's uncontested finding that the [REDACTED] was not a qualifying tax-exempt organization at the time the petitioner filed the petition.

## II. Compensation

The second issue concerns how the [REDACTED] intends to compensate the self-petitioning alien. The USCIS regulation at 8 C.F.R. § 204.5(m)(10) provides:

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 line 5d of the employer attestation, the [REDACTED] indicated that the alien's monthly compensation would consist of \$2,000 in salary, \$1,600 for housing, and a \$500 "Family Health Allowance." This compensation amounts to \$4,100 per month, or \$49,200 per year.

A cover letter submitted with the petition indicated that the alien "began working with the [REDACTED] upon his arrival to the United States on May 18, 2008." Copies of IRS Form W-2 Wage and Tax Statements show that the [REDACTED] paid the alien \$13,000 in 2008; the 2009 Form W-2 shows \$33,125 in salary, \$17,550 for "Housing," and \$5,500 for "Health." These amounts add up to \$56,175 paid to the alien in 2009, exceeding the stated rate of compensation by nearly \$7,000.

IRS Forms W-3, Transmittal of Wage and Tax Statements, showed that [REDACTED] paid compensation totaling \$13,000 in 2008 and \$56,175 in 2009. An uncertified copy of the alien's 2009 federal income tax return showed salaries in the amount of \$37,525, with the annotation "excess allowance \$4400."

Subsequent USCIS notices have stated that there are inconsistencies in the documentation of the alien's compensation, but the amounts shown on the various IRS documents described above are all internally consistent. The totals shown on the IRS Forms W-3 match the total compensation paid to the alien in 2008 and 2009 as reflected on the IRS Forms W-2, and the salary figure shown on the 2009 income tax return matches the salary shown on Form W-2 plus an additional \$4,400 in surplus housing allowance (which must be reported as taxable income).

A table of "Transactions by Payroll Item" purports to list several paychecks issued to the alien between July 2008 and June 2010. It shows seven paychecks, totaling \$14,100, in the second half of 2008; 16 paychecks, totaling \$33,125, in 2009; and eight paychecks, totaling \$24,000, in the first half of 2010. The amount shown for 2008 differs from that year's IRS Forms W-2 and W-3 by \$1,100, whereas the amount shown for 2009 matches the salary shown on the 2009 IRS Form W-2.

The June 2012 remand notice included the following passage:

Regarding evidence that it has compensated the self-petitioner in the past, the employer showed only that it compensated the self-petitioner in this amount in 2009. The self-petitioner's employer also submitted a document entitled "transaction by payroll item" for the self-petitioner from January 2008 through September 2010. It also submitted an unaudited copy of its assets, liabilities and capital, a copy of its general ledger trial balance as of December 31, 2009, and a copy of the instructions to the [IRS] Form I-990 but not the Form I-990 itself. The self-petitioner's reliance on unaudited financial records is misplaced. As there is no accountant's report accompanying these statements, and state on the documents that they are unaudited, the AAO cannot conclude that they are audited statements. Unaudited financial statements are the representations of management. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the proffered wage. Therefore, on remand, the director may inquire into whether the self-petitioner's employer has the ability to compensate the self-petitioner.

In the January 2014 NOID, the director stated that there were several discrepancies between the compensation claimed on Form I-360 described above and the evidence submitted to show past payments. The director noted, for instance, that the list of paychecks does not show consistent payments from month to month, instead showing checks varying in both frequency and amount. In 2009, the smallest checks were for \$1,000 each, while the largest was for \$10,000.

The director stated that the amounts paid to the alien "are contrary to what the petitioner claimed on Form I-360." Inconsistencies in the petitioner's documentation are always of concern, but the IRS documentation (to which the regulations give the greatest weight) shows that the [redacted] paid the alien more than the amount stated on Form I-360. The preponderance of the available evidence indicates that the [redacted] has both the ability and the intention to pay the alien at least as much as it claimed on Form I-360. We therefore withdraw the director's finding that the intending employer has not established how it intends to compensate the alien.

### **III. Inconsistent or Missing Evidence**

The third and final stated ground for denial concerns the petitioner's failure to resolve inconsistencies and submit requested evidence.

In the January 2014 NOID, the director stated: "The beneficiary was first admitted in R-1 status on August 6, 2008 yet the payroll transaction item list shows he received a pay check for \$2,000 on July 29, 2008 and a \$3,600 [paycheck] on August 14, 2008. . . . Please explain why the beneficiary received salary payments of \$5,600 before his employment began." The date of the second

paycheck, August 14, 2008, fell after the alien's August 6, 2008 admission as an R-1 nonimmigrant religious worker, not before.

The director requested a complete copy of the alien's passport; a copy of his driver's license "as evidence that the beneficiary is residing at the claimed residence provided"; IRS documentation of the alien's compensation from 2008 through 2013; and "an itemized record from the Social Security Administration that shows the beneficiary's earnings and the employers he or she has worked for since the date the Social Security Card was issued." The NOID did not specify a reason for many of these requests. As noted previously, the record contains no response to the January 2014 NOID.

In the certified denial notice, the director stated:

Petitioner was informed that documentation submitted in support of the beneficiary's employment records show that he received salary payment before his lawful employment began with the petitioner. Petitioner was also informed of inconsistencies in transactions on petitioner's payroll item list for 2008 and 2009. USCIS requested for the petitioner to explain these inconsistencies and to provide the beneficiary's passport pages, driver's license, tax documents, and social security card record.

. . . USCIS has not received any communication from the petitioner concerning this matter.

As such, the petitioner has not established that . . . the beneficiary is qualified as a minister or in the religious occupation.

The director's notice fails to explain how the conclusion follows from the stated premises. Issues regarding the alien's compensation prior to the filing date address the two-year experience requirement at 8 C.F.R. § 204.5(m)(4) and (11), but not the separate question of whether "the beneficiary is qualified as a minister." The only support for the assertion that the alien received payment before he began working for the employer is a list of paychecks, prepared two or more years after the fact, which the director has, in other contexts, found to be lacking in credibility.

Nevertheless, failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the benefit request. 8 C.F.R. § 103.2(b)(14). Evidence of the alien's international travel and compensation are material to the proceeding insofar as such evidence may support or undermine the claim that the [redacted] continues to employ the alien. Evidence of the alien's residential address is material because housing is part of the alien's claimed compensation.

The record contains no response to the NOID, and the petitioner has not contested the director's finding that the petitioner failed to respond to that notice. The record, therefore, supports this finding by the director.

We will affirm the denial of the petition 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, the petitioner has not met that burden.

**ORDER:** The director's denial of April 16, 2014 is affirmed. The petition is denied.