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

[redacted]

DATE: JUL 3 1 2014 OFFICE: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[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. The matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner describes itself on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, as "an independent Hawaii State and federally recognized religious institution." 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 religious missionary. The director determined that the petitioner failed to submit the required evidence to establish that it qualifies as a bona fide non-profit religious organization in the United States or a bona fide organization that is affiliated with the religious denomination.

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;
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> (ii) seeks to enter the United States--
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> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
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> > (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
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> > (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
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> (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, in order to be eligible for classification as a special immigrant religious worker, an alien 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) provides the following definitions:

> *Bona fide non-profit religious organization in the United States* means 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.
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> *Bona fide organization which is affiliated with the religious denomination* means an organization which is closely associated with the religious denomination and which is 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.
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> *Tax-exempt organization* means an organization that has received a determination letter from the IRS establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the Internal Revenue Code . . .

The regulation at 8 C.F.R. § 204.5(m)(8) requires the following initial evidence:

> (i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or
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> (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
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> (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:
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> > (A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;
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> > (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;
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> > (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 petitioner filed the Form I-360 petition on April 23, 2012. The Religious Denomination Certification, included in the Employer Attestation portion of the petition, was signed by the International Staff Director of the petitioning organization and identified the petitioner as affiliated with the denomination.

Submitted with the petition was a July 2, 2002 letter from the IRS, confirming the petitioner's exemption from taxation under section 501(c)(3) of the Internal Revenue Code (the Code). The letter further stated that the petitioner was determined to be "an organization described in sections 509(a)(1) and 170(b)(1)(A)(ii)." While section 170(b)(1)(A)(i) of the Code refers specifically to churches and related organizations, section 170(b)(1)(A)(ii) of the Code refers to certain educational organizations. The petitioner also submitted a copy of its State of Hawaii Charter of Incorporation as a nonprofit organization which stated its intent to establish "an international, interdenominational Christian university to instruct men and women in the ways of God . . ." Additionally, the petitioner submitted a copy of its Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, filed in 1985 under the organization's previous name, On the Form 1023, the petitioner described both educational and religious activities and purposes.

On September 4, 2012, the director issued a Request For Evidence (RFE) asking, in part, that the petitioner provide evidence regarding its religious denomination.

In a letter responding to the RFE, the petitioner stated:

> Please see attached documents showing the ecclesiastical government of Petitioner has submitted evidence that it holds its own status as a [sic] IRS §501c3 non-profit, tax-exempt religious organization. There is no denominational government other than an informal agreement to shared creed, statement of faith, and informal codes of doctrine and discipline. Please see the attached central values documents from for more detail.

The petitioner submitted informational materials on its own letterhead regarding the Foundational Values," and the core beliefs and history of In describing the governance of the petitioner stated that there is no international administrative headquarters:

> All locations are expected to uphold the values of the movement and are held accountable to these corporate principles and convictions by relationship with local

leadership teams. is comprised of regional and global ministry representatives.

All locations share a common statement of faith, vision and values.

On January 3, 2013, the director issued a Notice of Intent to Deny (NOID) the petition. The director stated that the petitioner claimed to be a bona fide organization affiliated with a religious denomination and that, to qualify under 8 C.F.R. 214.2(r)(9)(iii), the petitioner must meet the requirements of subparagraphs (A), (B), (C) and (D). The director stated that the petitioner had submitted evidence to meet the requirements of subparagraphs (A), (B) and (C), but had not met the requirements of subparagraph (D).[1] The director noted that the petitioner had submitted a religious denomination certificate stating that it was affiliated with but that the certificate was completed and signed by a representative of the petitioning organization rather than by a representative of the religious organization/denomination. The director specifically noted that subparagraph (D) requires the religious denomination certificate to be completed, signed, and dated by a religious organization with which the petitioning organization is affiliated. The director therefore instructed the petitioner to submit the required evidence to establish that it qualifies as a bona fide organization that is affiliated with the religious denomination.

In response to the NOID, the petitioner resubmitted a copy of its Form 1023 application and submitted printouts from its website discussing the organization's mission and the foundational values, beliefs, and history of The petitioner also submitted an uncertified copy of the petitioner's 2005 Form 990, Return of Organization Exempt From Income Tax, on which the petitioner indicated that its primary exempt purpose is "UNIVERSITY/MISSIONARY TRAINING" and described its purpose as follows:

> This is a university serving seven different areas of education including field work in countries around the world. There are 4 quarters per year of 250 students per quarter.

In a letter responding to the NOID, the petitioner asserted that "[a]n educational institution can be a Religious Organization, and that is [the] case, even though IRC §170(b)(1)(A)(ii) doesn't expressly say 'religious.'" The petitioner additionally argued that the petitioner "meets most of the legal requirements to be designated as a 'church,'" under section 170 of the Internal Revenue Code, citing the analyses used in decisions by the Third and Eighth Circuit Courts of Appeals.

On April 1, 2013, the director denied the petition. The director stated that, as the petitioner was designated as a non-profit organization as something other than a religious organization, the petitioner may qualify as a bona fide religious organization only by submitting the appropriate documentation to establish its affiliation with a religious denomination. The director found that the petitioner did not supply a Religious Denomination Certification signed by an authorized signatory

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[1] The director incorrectly cited the regulation at 8 C.F.R. § 214.2(r)(9)(iii), relating to the requirements for petitions for nonimmigrant religious workers, rather than the regulation at 8 C.F.R. § 204.5(m)(8)(iii). However, both regulations set forth the same evidentiary requirements regarding qualifying tax-exempt documentation.

of the denomination as requested and therefore that the petitioner failed to submit the required evidence to establish that the petitioner qualified as a "bona fide organization that is affiliated with a religious denomination."

On appeal, the petitioner again states that section 170(b)(1)(A)(ii) of the IRC does not exclusively apply to non-religious organizations, but can apply to both religious and secular educational institutions, and that the petitioner meets many of the IRS criteria for designation as a church. The petitioner states that the petitioner has submitted sufficient evidence of its religious purpose and activities to demonstrate that it is a religious organization. The petitioner cites a December 17, 2003, USCIS memorandum providing guidance regarding the "tax exempt status requirements" for religious organizations.

The petitioner argues that the petitioner is a "nondenominational, religious, educational Christian missions organization" which is "organized principally for the advancement of religion - specifically, advancing the religious effectiveness of Christian missionaries through an educational structure, is tax-exempt under IRC § 501(c)(3), [and] thus is [a] bona fide religious organization for immigration purposes."

At issue in this matter is not whether the petitioner is able to meet the definition of a religious organization under the IRC, but whether the petitioner has satisfied the USCIS evidentiary requirements to qualify as a bona fide non-profit religious organization or a bona fide organization that is affiliated with the religious denomination under 8 C.F.R. § 204.5(m)(8). The USCIS memorandum cited by the petitioner predates the current regulations for special immigrant religious workers. Accordingly, the guidance and analysis in the memorandum applied to regulations which are no longer in effect. The current regulations governing eligibility for classification as a special immigrant religious worker were published on November 26, 2008. In the preamble to the proposed rule, USCIS stated the following:

> USCIS proposes to clarify the existing definition of "bona fide nonprofit religious organization in the United States" to mean a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. 501(c)(3), or subsequent amendment, as a religious organization and possessing a currently valid determination letter from the IRS confirming such exemption. A church must petition as a bona fide nonprofit religious organization and may not petition as a bona fide organization which is affiliated with a religious organization as a means to avoid the evidentiary requirements applicable to churches. USCIS has determined that this letter is the best means for a petitioner to provide immediate and certain documentation at the time of the initial application that the religious organization is exempt from taxation under section 501(c)(3). The agency welcomes public comments on alternative means for the initial petition to include such documentation.
>
> USCIS also proposes to add to the existing definition of "bona fide organization which is affiliated with the religious denomination in the United States" to include entities such as educational institutions, hospitals, or private foundations . . . Such

> entities may qualify as a petitioning employer organization for immigration purposes even if their purpose is not exclusively religious, if documentation is provided to establish the organization's religious purpose and the religious nature of its activities. The eligibility of each organization will be determined on a case-by-case basis. **An organization granted 501(c)(3) status by the IRS as something other than a religious organization must submit the Religious Denomination Certification contained in the Forms I-360 and I-129, signed by the attesting religious organization in the denomination to confirm the petitioning organization's affiliation with the religious denomination.** Additionally, the bona fide nonprofit religious organization attesting to the petitioning organization's affiliation with the denomination must be exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 and as evidenced by a currently valid determination letter from the IRS confirming the bona fide nonprofit religious organization's exemption. A church may not present itself as a bona fide organization affiliated with a religious denomination as a means of avoiding the requirement that churches present an IRS tax-exempt letter as a religious organization.

72 Fed. Reg. 20442, 20445 (April 25, 2007). (Emphasis added).

Although the petitioner asserts on appeal that the petitioner is recognized as a tax-exempt religious organization under section 501(c)(3), the submitted determination letter indicates that the petitioner was granted 501(c)(3) status as an educational organization. Therefore, the IRS determination letter is evidence of the petitioner's tax-exempt status but it is not evidence of the petitioner's religious nature or purpose. The director correctly noted that the petitioner must therefore establish that it qualifies as a bona fide organization which is affiliated with the religious denomination by submitting the additional evidence required under 8 C.F.R. § 204.5(m)(8)(iii).

The petitioner's submission of its IRS determination letter is sufficient to satisfy the regulation at 8 C.F.R. § 205.4(m)(8)(iii)(A). The petitioner's Charter of Incorporation establishes its religious nature and purpose to satisfy the requirements of 8 C.F.R. § 205.4(m)(8)(iii)(B). The petitioner's catalogue and website printouts describe the religious purpose and nature of its activities and, therefore, meet the requirements of 8 C.F.R. § 204.5(m)(8)(iii)(C).

Regarding the regulation at § 204.5(m)(8)(iii)(D), the international staff director of the petitioning organization signed the Religious Denomination Certification asserting the petitioner's affiliation with the [redacted]' denomination. The regulation at 8 C.F.R. § 204.5(m)(8)(iii)(D) states that "[t]he **religious organization** must complete, sign and date a religious denomination certification certifying that the **petitioning organization** is affiliated with the religious denomination" (emphasis added). The regulation clearly differentiates between the religious organization and the petitioning organization. The form instructions contain identical language. As the regulation specifically applies to a petitioner that is "something other than a religious organization," the "religious organization" which must sign the certification is an organization other than the petitioner. The petitioner has not submitted a certification signed by an

official of the religious organization attesting to the petitioner's affiliation with the denomination. Accordingly, the petitioner has not met the requirement at 8 C.F.R. § 204.5(m)(8)(iii)(D).

As an additional matter, the petitioner has failed to establish its ability to compensate the beneficiary as required by applicable regulation. As we conduct our appellate review on a *de novo* basis, an application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *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).

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

> *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.

Additionally, the regulation at regulation at 8 C.F.R. § 204.5(m)(7) requires an authorized official of the prospective employer to complete, sign and date an attestation providing specific information about the employer, the alien, and the terms of proposed employment, including the following:

> (vi) The title of the position offered to the alien, the complete package of salaried or non-salaried compensation being offered, and a detailed description of the alien's proposed daily duties;
>
> (xi) That the alien will not be engaged in secular employment, and any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer; and
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> (xii) That the prospective employer has the ability and intention to compensate the alien at a level which the alien and accompanying family members will not become public charges, and that funds to pay the alien's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization.

In the Employer's Attestation of the Form I-360, Part 8, Section 5(d), the petitioner is instructed to describe the proposed salaried and/or non-salaried compensation the beneficiary is to receive. In response to this instruction the petitioner stated:

> Mr. Avakian is currently receiving around $3,100.00 per month in compensation for his work with [the] [redacted]

In a letter accompanying the petition, the petitioner stated that "[h]e will continue to receive this amount throughout his employment." The petitioner submitted an uncertified copy of its Form 990 tax return from 2005, indicating net assets of $13,473,024. The petitioner also submitted uncertified copies of the beneficiary's Forms 1040, U.S. Individual Income Tax Returns, from 2008, 2009, and 2010, listing joint gross income for the beneficiary and his wife of $10,984, $18,489, and $14,599, respectively. The tax returns were not accompanied by Forms W-2, Wage and Tax Statements, or Forms 1099-MISC, Miscellaneous Income, and did not otherwise identify the source of the reported income.

In the director's September 4, 2012 Request for Evidence (RFE), the petitioner was asked to submit evidence of its ability to compensate the beneficiary, including the beneficiary's IRS Transcript of Records for the years 2010 and 2011. The notice also stated: "The record of evidence shows that the beneficiary received minimal compensation for services rendered to the petitioner. Please explain where the beneficiary received other compensation in order to meet his living expenses."

In response to that request, the petitioner stated that the beneficiary has been working with the petitioner "since March 2007 in a nonprofessional, R-1 religious worker capacity for an uninterrupted two years immediately preceding the underlying petition's date of receipt." The petitioner provided a letter from its vice chancellor, stating:

> As a frequent International Speaker and as citizen of Germany, [the beneficiary] and his family receive gifts and donations from Europe. This income is processed and taxed in Germany and retrieved through an ATM. This income is used to cover monthly expenses. [The beneficiary] has been with [redacted] for over 25 years, 20 of them in Germany. This has created a basis for income over the years that continues to be the larger part of their income. The following listing are the yearly amount received to them personally on the basis of the non Professional and Religious work they do. [The beneficiary] does receive Donations/Honorariums from his lecturing engagements internationally. These also go straight into account in Germany and is an added source of income.
>
> 2008
> [redacted] $02,400.00
> OTHER Income $24,865.00
> Total Income USA/GERMANY: $26,865.00
>
> 2009
> [redacted] $03,418.00
> OTHER Income $26,329.00
> Total Income USA/GERMANY: $29,807.00

2010	
[redacted]	$09,002.00
OTHER Income	$24,086.00
Total Income USA/GERMANY:	$33,088.00
2011	
[redacted]	$05,405.00
OTHER Income	$28,510.00
Total Income USA/GERMANY:	$33,915.00

In response to the January 3, 2013 NOID, the petitioner submitted uncertified copies of the beneficiary's Form 1040 tax returns from 2011 and 2012 indicating gross income of $1,609 and $8,200, respectively. The returns were not accompanied by Forms W-2 or Forms 1099-MISC, and did not otherwise identify the source of the reported income. The petitioner did not provide an explanation for the discrepancies between the income indicated on the beneficiary's uncertified tax returns and the amounts indicated in the letter from the petitioner's vice chancellor. 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 regulation at 8 C.F.R. § 204.5(m)(10) requires IRS documentation or an explanation for its absence along with comparable, verifiable documentation. The petitioner has submitted only uncertified copies of tax returns with no evidence to establish that the returns were filed, and the petitioner has provided no explanation for the lack of IRS documentation.

Further, although the petitioner stated at the time of filing that the beneficiary would receive compensation of $3,100 per month and attested to its intent and ability to compensate the beneficiary, the petitioner has not established that it intends to provide the proffered compensation. Instead, the petitioner has indicated that "the larger part" of the proffered compensation will come from "gifts and donations from Europe." The USCIS regulation at 8 C.F.R. § 204.5(m)(10) and the attestation require the petitioner to state how the petitioner intends to compensate the alien and to "submit verifiable evidence explaining how the petitioner will compensate the alien." The cited regulations specify the petitioner, *i.e.*, the employer, as the entity that will "compensate the alien." The regulation does not state that the petitioner can discharge this responsibility by arranging for third parties to compensate the alien. Even if third party compensation were allowed in this instance, the petitioner has not identified the third parties who would consistently contribute to the beneficiary's compensation and provided no evidence of their intent and ability to do so.

Finally, the petitioner has not submitted sufficient evidence to establish that the beneficiary has been working as a religious worker either abroad or in lawful immigration status in the United States for at least two years preceding the filing of the petition.

The 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. 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 April 23, 2012.

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:
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> > (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.
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> If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

As discussed previously, the petitioner indicated that it employed the beneficiary in a compensated position throughout the two-year qualifying period immediately preceding the filing of the petition. However, the petitioner failed to submit IRS documentation of the beneficiary's compensation as required under 8 C.F.R. § 204.5(m)(11).

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.