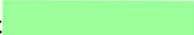
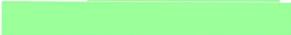


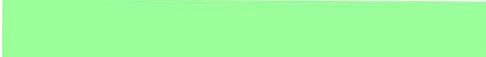


U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JUN 18 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE:   


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,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the decision to us at the Administrative Appeals Office (AAO). We subsequently remanded the petition to the director for a new decision based on revised regulations. The director determined that the petitioner had failed to submit required evidence, and therefore the director again denied the petition and certified the decision to us. We affirmed the director's decision, stating that the petitioner had not submitted a brief in response to the certified decision. A timely brief having surfaced, we moved to reopen the matter in order to consider the brief. Having reviewed the petitioner's brief on certification, we will affirm the denial of the petition.

The petitioner is a Sunni Islamic mosque. 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 an imam and as director of the petitioner's Islamic school. The director determined that the petitioner had not submitted information required on an employer attestation, and that the petitioner had failed to submit required evidence regarding the beneficiary's past work experience and compensation.

The petitioner filed the Form I-360 petition on May 1, 2006. While the petition was pending, U.S. Citizenship and Immigration Services (USCIS) published new regulations for special immigrant religious worker petitions. Supplementary information published with the new rule specified: "All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). Thus, the new regulations apply to the present petition.

The petitioner filed the Form I-360 petition on May 1, 2006. The director originally denied the petition on November 16, 2009. The director based that decision on the prior version of the regulations. The petitioner appealed that decision, and we remanded the petition on April 9, 2010, for a new decision based on the current, applicable regulations.

Subsequently, the director issued a new denial on January 10, 2012, but did not certify the decision to us as instructed in the remand notice. The director then reopened the matter and certified the denial to us on March 16, 2012. The USCIS regulation at 8 C.F.R. § 103.4(a)(2) indicates that the petitioner may submit a brief within 30 days after the director serves notice of a certified decision. The petitioner submitted a brief, which had not reached the record of proceeding at the time we issued a decision on May 24, 2012.

When we reopened the proceeding on December 19, 2012, in order to consider the brief, we allowed the petitioner 30 days to supplement the record, as required by the USCIS regulation at 8 C.F.R. § 103.5(a)(5)(ii). The record contains no further supplement, and we therefore consider the record to be complete as it now stands.

We note that the brief does not address several of the stated grounds for denial of the petition. It does, however, purport to rebut a finding that the director did not make. Specifically, the brief contains this passage: “Service claims that the Beneficiary as Imam does not meet the requirements of a ‘minister’ and authorized duties of a minister as defined in 8 CFR 204(m)(3)(ii)(A) and (B).” The director’s certified decision does not contain such a finding.

The brief also includes a discussion of USCIS’s purported “refusal to abide by the ruling set forth by the 9<sup>th</sup> Circuit Court of Appeals in Ruiz-Diaz v. United States, No. C07-1881 RSL (W.D. Wash. June 11, 2009),” which concerned the right of the beneficiaries of special immigrant religious worker petitions to file concurrent applications for adjustment of status. The matter now before us is a visa petition, not an adjustment application, and the certification brief does not explain the relevance of the issue to the outcome of the petition.

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).

In the brief submitted on certification, the petitioner asserts that “each and every requirement under INA 101(a)(27)(C) has been met and therefore the Service has denied the I-360 petition in error.” The regulatory requirements are the means by which USCIS determines whether the petitioner has

satisfied the statutory requirements, and therefore it is necessary to discuss those regulatory requirements.

### I. Attestation Issues

Three of the director's five cited grounds for denial concern elements of the employer attestation. The USCIS regulation at 8 C.F.R. § 204.5(m)(7) requires the petitioner to submit a detailed employer attestation, containing information about the employer, the beneficiary, and the job offer. Any information submitted is subject to verification under the regulation at 8 C.F.R. § 204.5(m)(12). On August 11, 2010, the director issued a request for evidence (RFE), instructing the petitioner to submit the required attestation and other required evidence. On April 21, 2011, the director issued a second RFE, instructing the petitioner to clarify issues regarding its response to the 2010 RFE.

The first issue under consideration regards the regulation at 8 C.F.R. § 204.5(m)(7)(iii), which requires the employer to attest to the number of employees who work at the same location where the beneficiary will be employed and a summary of the type of responsibilities of those employees.

In the employer attestation, the petitioner stated that five employees work at the same location where the beneficiary will be employed. When instructed to list them, the petitioner listed a groundskeeper, two teachers and an imam, providing brief summaries of the duties of each. [REDACTED] general secretary of the petitioning entity, signed an accompanying letter indicating that the beneficiary "serves the English speaking congregants," while a second imam "serves the non-English speaking congregants of the community."

In the 2011 RFE, the director stated that the attestation "does not include specific information regarding these five employees." The director instructed the petitioner to provide the names and other details of its five claimed employees, supported by documentary evidence including Internal Revenue Service (IRS) Form W-2 Wage and Tax Statements issued to "all employees identified in the employer attestation." The petitioner's response did not address or acknowledge this request. The director cited this omission in the un rebutted denial notice.

The regulatory language at 8 C.F.R. § 204.5(m)(7)(iii) plainly gives the director discretion to "request a list of all employees" as well as "their titles," meaning that a list of titles alone (which the petitioner provided) cannot suffice. The petitioner, therefore, failed to provide required evidence upon request. On that basis alone, the petition may not be approved. 8 C.F.R. § 103.2(b)(14). In our May 2012 decision, we affirmed the director's finding that the petitioner failed to provide requested evidence regarding its claimed employees.

The brief on certification does not address this issue, and therefore our previous finding remains undisturbed.

The second issue relates to two related requirements, requiring the prospective employer to attest to the number of aliens holding special immigrant or nonimmigrant religious worker status currently

employed or employed within the past five years by the prospective employer's organization (8 C.F.R. § 204.5(m)(7)(iv)) and the number of special immigrant religious worker and nonimmigrant religious worker petitions and applications filed by or on behalf of any aliens for employment by the prospective employer in the past five years (8 C.F.R. § 204.5(m)(7)(v)). We withdrew this finding in our May 2012 decision, stating that the information provided by the petitioner was sufficient for the director to draw the necessary conclusions.

The third issue under consideration regards the regulation at 8 C.F.R. § 204.5(m)(7)(viii), which requires the employer to attest to the specific location(s) of the proposed employment. The brief on certification addresses this issue, but it requires no further discussion because we withdrew that finding in our May 2012 decision. The petitioner provided a street address and documentation relating to the property. The petitioner failed to provide some documentation relating to the site, but the director did not establish that the requested documentation was necessary in order to identify the specific location of the proposed employment.

## II. Past Employment

The fourth issue concerns evidence of the beneficiary's prior employment. 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. The USCIS regulation at 8 C.F.R. § 204.5(m)(11) reads, in pertinent part:

*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.

The relevant two-year period immediately preceded the filing of the petition on May 1, 2006.

Prior to the initial denial of the petition, the petitioner had submitted copies of IRS Form 1099-MISC Miscellaneous Income statements, showing that the petitioner paid the beneficiary \$20,416.67 in 2004 and \$30,000 in 2005. Uncertified copies of the beneficiary's income tax returns for those two years showed corresponding amounts.

In the 2010 RFE, the director requested copies of the beneficiary's tax and payroll documentation from 2004 onward. In response, the petitioner submitted copies of IRS Forms 1099 for 2005-2007 and uncertified copies of the beneficiary's federal income tax returns for 2005-2008, indicating that the beneficiary earned \$30,000 in 2005, \$23,950 in 2006, \$22,000 in 2007 and \$22,250 in 2008. The uncertified tax returns indicate that the beneficiary reported this income as wages and salaries, rather than as business income.

The director, in the 2011 RFE, noted that the petitioner had not submitted the requested payroll records. The director requested the beneficiary's IRS-certified federal tax records, and an itemized record from the Social Security Administration (SSA). The director also noted that the petitioner reported payments to the beneficiary as nonemployee compensation on IRS Forms 1099-MISC, rather than as wages or salaries on IRS Forms W-2. The director observed that professional preparers prepared the beneficiary's income tax returns, but misreported the beneficiary's compensation as wages and salaries rather than as business income as is standard practice with Forms 1099-MISC. The director instructed the petitioner to submit "a letter from the petitioner indicating why the beneficiary received a Form 1099 rather than a W-2," as well as "a letter from [the] tax preparers that explains why the beneficiary reported [his] earnings" as salary rather than as business income.

The petitioner claimed that its response to the 2011 RFE included the "Beneficiary's Social Security Card Record," but that documentation is not in the record, and the petitioner did not submit it on appeal, on certification, or after we reopened the proceeding on our own motion. With respect to the beneficiary's tax returns, the petitioner contended: "Any discrepancy in regards to where income was listed on the Tax Returns is not a basis for denial. . . . Petitioner's practice is to pay employees via 1099."

The relevant issue here is one of credibility and corroboration. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92.

The petitioner did not submit the independent objective evidence that the director had requested, specifically the IRS-certified tax returns that the director requested under the regulation at 8 C.F.R. § 204.5(m)(11)(i). The petitioner has submitted only uncertified copies. The record, therefore, does not establish that the returns submitted match those that the IRS ultimately accepted for processing. Likewise, the director requested SSA documentation to shed further light on the issue of the beneficiary's prior compensation. The record does not support the claim that the petitioner has submitted that evidence. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. 8 C.F.R. § 103.2(b)(14).

In our May 2012 decision, we affirmed the director's finding that the petitioner failed to submit requested evidence relating to the beneficiary's past employment. The brief on certification discusses some of the IRS documentation, but in the context of the petitioner's ability to compensate the beneficiary. The brief does not acknowledge, address, or resolve the director's stated concerns regarding the beneficiary's prior compensation. We affirm our May 2012 finding in this regard.

We note that the director also found that the petitioner had failed to establish the beneficiary's lawful status after February 18, 2007. The lawful status requirement at 8 C.F.R. § 204.5(m)(4), however, pertains to the two years immediately preceding the petition's filing date. The filing date was May 1, 2006, and therefore the period after February 18, 2007 is not relevant to the lawful status requirement. The beneficiary's subsequent status would be a relevant admissibility issue at the adjustment stage, but this is not an adjustment application and admissibility is not a factor at the petition stage. *See Matter of O*, 8 I&N Dec. 295 (BIA 1959).

Furthermore, the director stated that the petitioner had not submitted sufficient evidence to establish the religious nature of the beneficiary's duties at the petitioner's religious school. The director did not explain why the religious nature of such work was in dispute. Instead, the director stated that the petitioner had failed to submit detailed information such as an organization chart and an explanation as to whether classes are held in the mosque's worship area. The relevance of these inquiries is not apparent. Nevertheless, the unresolved discrepancies discussed above are sufficient grounds to affirm the director's finding regarding the beneficiary's past employment.

### III. Compensation

The fifth and final stated ground for denial concerns the USCIS regulation at 8 C.F.R. § 204.5(m)(10), which reads:

*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.

The August 26, 2003 agreement between the petitioner and the beneficiary indicated that the petitioner would pay the beneficiary \$2,200 per month, and "provide a two-bedroom house," "[m]edical insurance for the entire family" and "passage in and out of [the] United States." The following year, the petitioner executed a new contract, valid from March 1, 2004 to May 26, 2007, indicating that the petitioner would pay the beneficiary \$2,500 per month and up to \$200 per month towards medical insurance.

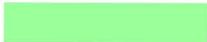
Under the terms of the 2004-2007 contract, the petitioner should have paid the beneficiary \$2,500 per month, or \$30,000 per year, every year from 2004 onward. The IRS materials in the record, however, indicate that the beneficiary received that amount only in 2005, and received as little as \$22,000 in later years.

The director, in the 2011 RFE, observed that “the beneficiary was paid the full salary” for “only one year (2005).” The petitioner has not explained why the beneficiary received lower amounts in other years. The director also instructed the petitioner to submit evidence of the non-salaried compensation specified in the employment agreement and contract, such as health insurance coverage, payment for the beneficiary’s travel to and from the United States, and the “two-bedroom house” mentioned in 2003.

The petitioner’s response included no evidence regarding non-salaried compensation, and no explanation for the fluctuations in the beneficiary’s salary well below the agreed amount. The petitioner asserted that the regulation at 8 C.F.R. § 204.5(g)(2) only requires the petitioner to document its ability to pay the full wage, not to have actually done so in the past. The director, however, did not cite 8 C.F.R. § 204.5(g)(2) in the 2011 RFE. The regulation at 8 C.F.R. § 204.5(m)(10) requires verifiable evidence relating to salaried and non-salaried compensation, and the regulation at 8 C.F.R. § 204.5(m)(11)(ii) requires the petitioner to establish that the beneficiary received non-salaried compensation where applicable (as it clearly is here). The petitioner did not originally claim that the compensation package described above was contingent on approval of the petition. Rather, the petitioner specifically executed an agreement with the beneficiary to provide these benefits between 2003 and 2007. The petitioner’s failure to abide by those terms necessarily reflects on the credibility of any claims regarding future compensation. The evidence leads to one of three conclusions: (1) the beneficiary worked on a less than full-time basis, despite the agreement that he would work full-time; (2) the petitioner was unable to compensate him at the full level; or (3) the petitioner simply declined to pay him the agreed amount, despite its contractual obligations. None of these alternatives supports approval of the petition.

All of the beneficiary’s submitted tax returns, from 2004 to 2008, include an apartment number in the beneficiary’s residential address. This conflicts with the 2003 contract which required the petitioner to “provide a two-bedroom house” to the beneficiary and his family. The petitioner did not address or acknowledge the director’s request to submit evidence to prove that the petitioner owns or rents such a house.

In May 2012, we affirmed the director’s finding that the petitioner failed to provide relevant, material evidence relating to the beneficiary’s compensation. The brief on certification includes a discussion of the regulation at 8 C.F.R. § 204.5(g)(2), which pertains to a prospective employer’s ability to pay the beneficiary of an employment-based immigrant visa. The denial rested not on that regulation, but on the regulation at 8 C.F.R. § 204.5(m)(10). The brief on certification addresses only two specific points, stating, first, that the petitioner has established a sufficient bank balance to cover the beneficiary’s salary, and, second, that a submitted IRS Form 1099 was handwritten



because the petitioning entity “is run largely by volunteers.” These assertions do not address or resolve the points raised in the certified denial notice.

We will affirm the certified decision for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 decision of March 16, 2012 is affirmed. The petition is denied.