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

DATE: NOV 0 4 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 Administrative Appeals Office (AAO) rejected an appeal from the denial. The District Director, Baltimore, Maryland, certified the petition to the AAO. The AAO rejected the certification, because the district director had no jurisdiction over the petition. The AAO subsequently reopened the petition on service motion, and advised the petitioner our intent to dismiss the appeal based on derogatory information. We will dismiss the appeal.

The petitioner is a Pentecostal Christian church. 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 its assistant coordinator of Bible studies and small group ministries. The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner asserts that the beneficiary worked as a full-time volunteer, and therefore there are no payroll records.

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).

The 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 regulation at 8 C.F.R. § 204.5(m)(11) reads:

> *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 [Internal Revenue Service] documentation that the alien received a salary, such as an IRS Form W-2 [Wage and Tax Statement] 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 [U.S. Citizenship and Immigration Services].
>
> If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

The petitioner filed Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on November 2, 2009. [redacted] senior pastor of the petitioning church, signed part 10 of the petition form, thereby certifying under penalty of perjury that the petition and the information submitted with it are all true and correct.

On Form I-360, asked whether the beneficiary had "ever worked in the U.S. without permission," the petitioner answered "No." The petitioner stated the beneficiary's "Current Nonimmigrant Status" as H-4, a dependent family member of an H nonimmigrant worker. An H-4 nonimmigrant may not accept employment unless he or she is the beneficiary of an approved petition filed in his or her behalf and has been granted a nonimmigrant classification authorizing his or her employment. *See* 8 C.F.R. § 214.2(h)(9)(iv). Any unauthorized employment by a nonimmigrant constitutes a

failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act. 8 C.F.R. § 214.1(e).

Furthermore, although the petitioner listed "H-4" as the beneficiary's "Current Nonimmigrant Status," the petitioner indicated that the beneficiary's H-4 nonimmigrant status expired on July 30, 2009, more than three months before the petition's filing date. Thus, the petitioner indicated, in effect, that the beneficiary was out of status at the time of filing.

In an accompanying letter, Pastor asserted that the beneficiary had "two (2) years of experience and training with [the petitioning] church organization." He did not specifically state whether this claimed work took place during the two years immediately preceding the filing date.

The petitioner's initial submission included no evidence of salaried or non-salaried compensation, and no evidence to show that the beneficiary was authorized to work in the United States during the two-year qualifying period immediately preceding the petition's filing date.

The director denied the petition on June 1, 2010, finding that "the evidence is insufficient to establish that the beneficiary has been performing" qualifying religious employment during the two-year eligibility period. On appeal, the petitioner submitted a July 27, 2010 letter from Pastor stating: "since July 7, 2007, [the beneficiary's] job is strictly a voluntary position without pay." A subsequent legal brief, dated September 10, 2010, includes the following assertions:

> A break in employment if significant is allowed when it is beyond the person's control[. S]ee Letter, Acting Assistant Commission[er] Adjudication[s] Co 204.26-c (May 8, 1992). This policy will allow for cases, such as the instant case, where the person is unable to take paid employment because for example their immigration status would be violated. If this is coupled with the argument regarding voluntary work found in Soltane v. DOJ, 381 F.3d 143, 150 (3rd [C]ir. 2004) (rejection ADO ruling that the position must be paid) see Fed. Reg. 6965 (Dec. 27, 1991) stating that the regulations have been "revised to account more clearly for [un]compensated volunteers whose services are engaged but who are not technically employees. Therefore someone like the [beneficiary] who worked previously in a religious capacity, attended religious school and then travelled to the US on an H-4 visa which does not allow him to work, but who also engages heavily in voluntary labor would seem to represent the perfect example of the exception to the rule.

All of the sources cited in the above excerpt relied on an outdated version of the regulations governing special immigrant religious worker petitions. Revised regulations took effect before the filing of the present petition. *See* 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). Therefore, all of the cited sources are obsolete.

The current regulation at 8 C.F.R. § 204.5(m)(4) states that a break in the continuity of the work during the preceding two years will not affect eligibility so long as:

(i) The alien was still employed as a religious worker;

(ii) The break did not exceed two years; and

(iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States.

Here, the petitioner has not shown that any of the above three conditions apply. There is no evidence that the beneficiary has ever been employed as a religious worker, much less that the beneficiary was "still employed as a religious worker" at the time of filing, or that the break did not exceed two years. Furthermore, even if the beneficiary had been employed as a religious worker, ending his employment due to a lack of qualifying immigration status is not a break for further religious training or sabbatical. As we shall discuss further below, the beneficiary also performed unauthorized work in the United States during the period in question.

Even allowing for a break of up to two years in the continuity of the beneficiary's employment, the provision cited above does not absolve the petitioner of the obligation to submit IRS documentation of past compensation. It simply displaces the time period covered by that obligation.

In the absence of documentation of compensation from the employer, the regulation at 8 C.F.R. § 204.5(m)(11)(iii) includes specific documentary requirements to show self-support, and the petitioner has not provided that documentation. The beneficiary's lack of lawful immigration status does not relieve the petitioner of the requirement to provide verifiable documentation of continuous employment.

Furthermore, additional inquiry into the beneficiary's employment activities casts serious doubt on the claim that the beneficiary has engaged in qualifying religious work and intends to continue in such work. As noted above, when asked, on Form I-360, whether the beneficiary had worked in the United States without authorization, the petitioner answered "No," and Pastor signed the petition form, thereby certifying its truthfulness under penalty of perjury. The appellate brief dated September 10, 2010 contains the following passages:

> [The beneficiary's H-4 nonimmigrant status] does not allow him to work, but [he] engages heavily in voluntary labor. . . .
>
> The [beneficiary] has taken his time in the US to further his religious studies and become an integral member of his faith based team.
>
> The commitment should not be taken lightly, as it is demonstrated that the [beneficiary] spends the majority of his working hours either "working" in the church or attending church related meetings and functions.

USCIS has the authority to verify, by any means it deems appropriate, the petitioner's material claims made in support of the petition. *See* 8 C.F.R. § 204.5(m)(12). Therefore, we reviewed related filings and public records to verify the material claim that the beneficiary has devoted himself primarily to religious work in the United States.

Concurrently with the filing of Form I-360, the beneficiary filed Form I-485, Application to Register Permanent Residence or Adjust Status. As part of the application package, the beneficiary signed Form G-325, Biographic Information, dated July 16, 2009. Just below the signature line, Form G-325 advised: "Severe penalties are provided by law for knowingly and willfully falsifying or concealing a material fact." Part of that form instructed him to list his employment over the previous five years. Information regarding the beneficiary's employment during that period is a material fact. The beneficiary claimed to have worked in "PC Support" for Maryland, from October 2000 to August 2002, and as a "Field Service Tech" for based in California, from January 2004 to February 2006. The beneficiary claimed no employment between February 2006 and July 2009; he left blank the line marked "Present Time." These two claimed positions are secular in nature, and contradict the claim that the beneficiary has devoted his time in the United States to religious pursuits.

Furthermore, records from the Maryland Department of Assessments and Taxation show that the beneficiary filed Articles of Organization for on January 24, 2005; for on February 27, 2008; for , on September 25, 2002; and for on May 24, 2010.

Also, the web site for formerly[1] showed the same telephone number that later appeared on a March 18, 2014 facsimile message from the beneficiary. As of November 5, 2013, the web site indicated that the company was "established in November " page for shows the beneficiary's home address.

Because the above information originated outside the record of proceeding, the regulation at 8 C.F.R. § 103.2(b)(16)(a) required that we advise the petitioner of our intention to take that information into account when rendering our decision. In a notice dated June 20, 2014, we advised the petitioner of the above information, and stated:

> We intend to dismiss your appeal, based in part on the above information which indicates that the beneficiary has been involved in secular business ventures before, during, and after the two-year period immediately preceding the petition's November 2009 filing date. This information contradicts the claim that the beneficiary devoted himself to religious activity during that period, and also raises doubt that the beneficiary intends to perform religious work in the future as required by section 101(a)(27)(C)(ii) of the Act.

[1] The web site, , is now a placeholder site with "dummy" content.

> In order to shed further light on the beneficiary's past earnings in the United States, please submit the beneficiary's most recent Social Security Statement, issued annually by the Social Security Administration. This statement includes a record of earnings reported in association with the beneficiary's Social Security Number. . . .
>
> If the Social Security Statement shows that the beneficiary earned income during 2007, 2008, or 2009, please submit documentary evidence (such as pay receipts and/or Internal Revenue Service Forms W-2 or 1099) to establish the source(s) of that income.

In response to the June 2014 notice, Pastor states: "secular work within our denomination is permitted for religious workers and Ministers as long as it does not interfere with their church responsibilities or otherwise contravene church policy." The denomination's position regarding secular work, however, is not relevant to the question of eligibility under the statute and regulations.

Pastor states that the petition "was filed with guidance of attorney . . . who[] (it was our understanding) was an expert in immigration cases." Ms. did prepare the Form I-360 petition, as shown by her signature on Part 11 of that form, but Pastor also signed Part 10 of the form, and thereby took responsibility for its contents, regardless of who prepared it. *Cf. Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.*, 498 U.S. 533 (1991) (Represented party who signs his or her name to documents filed in court bears personal, nondelegable responsibility to certify truth and reasonableness of document).

The beneficiary's employment history is material to this proceeding, because it is a basis for granting the benefit that the petitioner seeks on the beneficiary's behalf. Rather than disclose that history, the petitioner claimed, falsely, that the beneficiary had never worked in the United States without authorization, and said nothing about the beneficiary's secular employment until confronted with evidence about it.

The extent of that secular employment is evident from the materials that the petitioner submitted in response to the June 2014 notice. The beneficiary's Social Security Statement shows the following earnings:

2000	$769	2003	$855	2006	$10,288	2009	$27,570
2001	$40,350	2004	$52,852	2007	$21,114	2010	$5,005
2002	$24,131	2005	$64,806	2008	$59,024	2011	$1,082

IRS Forms W-2 show the sources of most of the petitioner's income during the relevant years 2007-2009 (with a small omission in 2007):

2007		$782.40
		$1,593.33
		$1,696.00
		$8,010.00

		$8,325.80
2008		$14,306.78
		$20,430.79
		$24,286.61
2009		$27,570.56

In his statement, the beneficiary claims that his failure to disclose the above employment "was an oversight and not an intentional omission," and he states:

> In 2007 I submit that I worked approximately 30 hours a week and in the years 2008 and 2009 I worked approximately an average of 10 hours per week. It was during this time that my church work expanded and although it is true that I was engaged in limited employment outside of my church work, it did not interfere with my time spent engaged in volunteer work for the church.
>
> Further regarding the three LLCs filed by me, these companies were never activated. I never derived income from any of them nor was any time spent beyond a very few hours in their creation. Many ideas never go beyond the development stage and that is the case with these LLCs. . . .
>
> I am very apologetic regarding the misstatement made on my application; thinking that such employment was not significant and was undertaken only for the benefit of my family and not personal gain.

With respect to the beneficiary's assertion that his secular "employment . . . was undertaken only for the benefit of [his] family," supporting oneself and one's family is one of the primary reasons for seeking and securing employment. The beneficiary claims that his employment "was not significant," 30 hours per week in 2007 and 10 hours per week in 2008 and 2009, but the figures shown above do not support that claim. The beneficiary earned over $59,000 in 2008, a sum consistent with full-time employment.

The petitioner does not substantiate the assertion that the beneficiary's limited liability companies never conducted business. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Even if the beneficiary's assertion is true, it does not explain why the beneficiary initially established and registered those companies. Those actions imply an intention to engage in secular business; the beneficiary identified no other reason why he formed the companies. Furthermore, apart from the limited liability companies, the evidence indicates that the beneficiary ran a computer repair business out of his home. Neither the petitioner nor the beneficiary addressed the information regarding

The petitioner has not submitted any evidence that the beneficiary performed qualifying religious work during the two years immediately preceding the filing of the petition. The evidence does, however, show that the beneficiary engaged in substantial secular employment during that time, as well as before and after that time, both for third party employers and in his own businesses. The petitioner's failure to disclose this employment, answering in the negative when asked if such employment had taken place, raises significant issues of credibility. 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).

A beneficiary who seeks to enter the United States pursuant to section 101(a)(27)(C)(ii) of the Act must perform qualifying religious work. The available evidence fails to establish this intention. Rather, the beneficiary has long worked for a series of secular employers and started his own secular businesses, all while claiming a primary career in religious work that has left no evidence. The weight of the evidence does not suggest a series of inadvertent errors, but rather intentional omissions designed to obscure the beneficiary's secular employment and create the appearance of a dedication to qualifying religious work.

The beneficiary's Form I-485 adjustment application is not before us, but we note that the beneficiary's omission of information relating to his employment after 2006 on Form G-325 appears to constitute willful misrepresentation of a material fact under section 212(a)(6)(C)(i) of the Act, because the beneficiary executed Form G-325 as part of an effort to procure admission or other benefits under the Act. This information, therefore, may result in a finding of inadmissibility in any future proceeding in which the beneficiary's admissibility is at issue.

The petitioner has not submitted evidence of continuous, qualifying experience throughout the two years immediately preceding the filing of the petition. The director properly denied the petition on this basis. The petitioner has not overcome this basis for denial. The evidence of non-qualifying secular employment indicates that the petitioner is not, and has not been, a religious worker.

The AAO will dismiss the appeal for the above stated reasons. 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 appeal is dismissed.