**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: OCT 10 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 director then denied a subsequent motion to reopen and motion to reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a 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 an "Associate Pastor/Children's Ministry Director." The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition.

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, 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
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> > (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
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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 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 petition was filed on May 10, 2013. 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 that date.

The 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.
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> > (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.
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> > (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.

The petitioner submitted, in part, with the filing of the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, a May 18, 2013 letter from its presiding bishop, [redacted] The letter stated that the beneficiary had been working for the petitioner as an associate pastor since October 2010.

On August 22, 2013, the director issued a Request for Evidence (RFE) asking, in part, that the petitioner submit evidence pertaining to the beneficiary's work history. Specifically, the director noted that the beneficiary entered A-1 status on May 11, 2010, and received employment authorization permitting her to work from August 12, 2010 to January 29, 2013. Subsequent employment authorization was granted to the beneficiary from March 28, 2013 through May 31, 2014. The director stated that additional evidence was needed to determine if the beneficiary had been working in a qualifying position for at least the two-year period immediately preceding the filing of the petition (from May 10, 2011 to May 10, 2013). Specifically, the petitioner was asked to submit experience letters from employers, and if employed in the United States during the qualifying

two-year period, IRS documentation of the beneficiary's salaried and/or non-salaried compensation. If the beneficiary received no salary and provided for her own support, the petitioner was asked to submit evidence of how the beneficiary provided for her support and that of any dependents.

In response to the director's RFE, the petitioner stated that the beneficiary had been employed "for a number of years as an Assistant Pastor under a[n] A-2 visa for which she received no salary," while being supported by her husband. The petitioner stated that the beneficiary's visa status changed to A-1 in August 2010 and she was granted employment authorization from August 12, 2010 to January 29, 2013. According to the beneficiary's affidavit dated November 7, 2013, she became a salaried employee of the petitioner in October 2010 and was then paid an annual salary of $2,000 per month. According to the petitioner, the beneficiary's salary was increased to $4,000 per month effective August 13, 2013. The petitioner states that the beneficiary's employment authorization was renewed and she was granted work authorization from March 27, 2013 to May 31, 2014. According to the petitioner, from January 29, 2013 to March 26, 2013, while the beneficiary had no work authorization, she worked without compensation and was supported by her husband. The petitioner submitted the beneficiary's IRS tax transcript from 2010, a 2010 IRS Form 1099-MISC, Miscellaneous Income, and an unsigned copy of the beneficiary's 2010 federal tax return indicating that the beneficiary was paid $6,000 by the petitioner in that year. The beneficiary's 2011 IRS transcript, an unsigned copy of the beneficiary's 2011 tax return and an amended 2011 Form 1040X state income for the petitioner of $24,000 were also submitted. The 2011 IRS tax returns and transcript were accompanied by a copy of the beneficiary's 2011 Form 1099-MISC which reported miscellaneous income of $24,000 paid to the beneficiary by the petitioner. The petitioner further submitted a copy of a 2012 Form 1099-MISC reflecting income paid to the beneficiary by the petitioner of $24,000. A separate 2012 Form 1099-MISC was also submitted indicating income paid to the beneficiary by [redacted] of $10,667.50. The petitioner submitted no documentation of any income that it paid to the beneficiary from January 2013 to May 10, 2013, when the petition was filed.

The petitioner submitted a November 7, 2013 affidavit from the beneficiary which stated that during her three years of employment as an assistant pastor, she "engaged in part[-]time activities from [her] home in trading apparel goods with Nigerian friends and acquaintances who were living temporarily in the [United States]." The beneficiary stated that she earned from $8,000 to $10,000 per year in these part-time trading endeavors in 2010 and 2011, and that she reported the income on her federal tax returns. The beneficiary also states that in 2012 she worked part-time for another church [redacted] as a substitute teacher earning $10,667.

The director denied the petition on December 3, 2013, and denied a subsequent motion to reopen and reconsider on January 16, 2014, finding that the petitioner failed to establish that the beneficiary worked continuously as a minister for at least the two-year period immediately preceding the filing of the petition. The director specifically noted that the beneficiary was not authorized to work for any entity from January 29, 2013 through March 28, 2013, which was during the two-year qualifying period.

On appeal, the petitioner asserts that it continuously employed the beneficiary during the two-year qualifying period, and that while not authorized to work from January 29, 2013 to March 28, 2013, the beneficiary received no salary and provided for her own support as permitted by 8 C.F.R. § 204.5(m)(11)(iii). The petitioner states that the beneficiary was supported by her husband during this time period. In support of this assertion, the petitioner submitted, a copy of two bank statements (account ending belonging to the beneficiary's husband. A statement covering the time period January 12, 2013 through February 12, 2013 shows bank accounts with a total ending balance of $2,782.41. A statement covering the time period December 13, 2012 through January 11, 2013 shows bank accounts with a total ending balance of $6,221.84. Additional documents entitled show checks payable to the beneficiary's husband as a "payee" from December 28, 2012 through March 12, 2013. No explanation was provided as to what these documents represent and it cannot be determined that the reports reference assets belonging to the beneficiary's husband. The referenced bank statements cover only the time period of December 13, 2012 to February 12, 2013; they do not cover the entire period that the petitioner states the beneficiary was working in an uncompensated position, from January 29, 2013 to March 28, 2013. Thus, the statements are insufficient to establish how the beneficiary's support was maintained during that entire period.

Furthermore, the petitioner's claim that the beneficiary was self-supporting during part of the two-year period preceding the filing of the petition is disqualifying. In the supplementary information for the final rule, as it relates to self-support, the rule stated:

*Compensation Requirements*

> USCIS proposed to add a requirement that the alien's work, under both the immigrant and nonimmigrant programs, be compensated by the employer. Specifically, the rule proposed amending the definition of "religious occupation" to require that an occupation be "traditionally recognized as a compensated occupation within the denomination." Commenters were concerned that the proposed rule would exclude many religious workers who do not receive salaried compensation, but may receive stipends, room, board, or medical care, or who may rely on other resources such as personal savings, rather than salaried or non-salaried compensation.
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> In response to the commenters' concerns, USCIS is clarifying that compensation can include either salaried or non-salaried compensation. Under the Internal Revenue Code, non-salaried support, such as stipends, room, board, or medical care, qualifies as taxable compensation unless specifically excluded.
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> Several commenters stated that the proposed compensation requirement would exclude programs that traditionally utilized only self-supporting religious workers from participating in the R-1 visa program. The comments noted that religious workers who

> are self-supporting receive neither salaried nor non-salaried compensation; instead, they may rely on a combination of resources such as personal or family savings, room and board with host families in the United States, and donations from the denomination's local churches. Additionally, the comments noted that self-supporting religious workers are currently admitted under the R-1 visa program. In response, the final rule will continue to allow these aliens to be admitted under the R-1 visa classification. USCIS will, however, to preserve its ability to prevent fraud, permit self-supporting religious workers only under very limited circumstances, and, consistent with other provisions of the final rule, require specific types of documentation.
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> The change provides that if the nonimmigrant alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work within the organization, which is part of a broader, international program of missionary work sponsored by the denomination.
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> USCIS again notes that the religious worker visas are not the exclusive means by which an alien may be admitted to the United States to peform self-supported religious work, including missionary work. Current regulations specifically provide for the admission of missionaries under the general visitor for business visa . . . .

73 Fed. Reg. at 72281-72282. *See also* Fed. Reg. at 72278.

As specifically provided for in the final rule, the only religious workers who may rely on self-support rather than actual salary or in-kind support as evidence of their prior employment are those workers in an established missionary program under an R-1 or B-1 nonimmigrant visa. In this instance, the record does not establish that the beneficiary was in a missionary program or that she was an R-1 or B-1 nonimmigrant. The petitioner's voluntary work in the United States is not qualifying. As indicated in the supplementary information for the proposed rule:

> USCIS recognizes that legitimate religious work is sometimes performed on a voluntary basis, but allowing such work to be the basis for an R-1 nonimmigrant visa or special immigrant religious worker classification opens the door to an unacceptable amount of fraud and increased risk to the integrity of the program.

72 Fed. Reg. 20442, 20446 (Apr. 25, 2007).

The petitioner further asserts, on appeal, that any break in the beneficiary's employment as a religious worker during the two-year qualifying period does not affect the beneficiary's eligibility for the immigration benefit sought under 8 C.F.R. § 204.5(m)(4). The regulation states that to be classified as a special immigrant religious worker, the worker must:

> (4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed. A break in the continuity of the work during the preceding two years will not affect eligibility so long as:
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> (i) The alien was still employed as a religious worker;
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> (ii) The break did not exceed two years; and
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> (iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

The petitioner submits, on appeal, a supplemental affidavit from the beneficiary wherein she asserts, for the first time, that during the period she worked for the petitioner in an unpaid status, the petitioner permitted her to "enroll in college workshop courses in special education gaining field experience to better [her] skills since [her] work with the church involves youth activities." The petitioner submitted a document from [redacted] entitled "Master of Science in Education & Special Education Field Experience Verification Form," for the spring semester of 2013. The document states that:

> [The beneficiary] has been observing since this is her first introduction to special education. She has also been working with individual students, one to one and accompanies the class to their specials [sic]. Ms. [redacted] has indicated that she would be open to [the beneficiary] teaching some lessons.

The petitioner submitted a time sheet showing that the beneficiary completed 6 hours and 45 minutes of field experience in general education between January 30, 2013 and May 17, 2013, and approximately 6 hours in field experience in special education from April 4, 2013 to April 5, 2013. During the period for which the petitioner claims that the beneficiary was on a qualifying break from her religious work (from January 29, 2013 – March 28, 2013), the beneficiary completed only 90 minutes of field experience. The petitioner submitted no evidence that the general education and special education field experience was "further religious training.".

The petitioner has failed to submit sufficient evidence in accordance with the regulation at 8 C.F.R. § 204.5(m)(11) to establish that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition. The appeal must, therefore, be dismissed.

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.