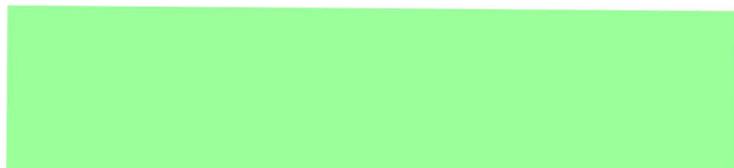


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Date: **OCT 29 2014** Office: CALIFORNIA SERVICE CENTER

FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center (the director), denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) rejected a subsequent appeal as improperly filed and, in the alternative, dismissed the appeal. On April 15, 2013, the petitioner filed a complaint in the United States District Court Southern District of New York (District Court) seeking judicial review of our decision. On September 13, 2013, by stipulation and agreement between the parties, the matter was remanded to U.S. Citizenship and Immigration Services (USCIS) to further develop the record. We subsequently reopened the matter on motion pursuant to 8 C.F.R. § 103.5(a)(5)(ii), and provided the petitioner with notice of derogatory information and an opportunity to submit additional information, evidence or arguments in support of the petition. We now affirm the denial of the petition.

The petitioner is a Buddhist temple. 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 Buddhism preacher. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing date 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).

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 Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, was filed on July 20, 2010. In support of the Form I-360 petition, the petitioner asserted that the beneficiary was continuously employed by [REDACTED] throughout the two years immediately preceding the filing of the petition.

The director denied the petition on March 28, 2012, finding that the petitioner had not established that the beneficiary was continuously engaged in qualifying religious work throughout the two years immediately preceding the filing of the petition. The director stated that the petitioner failed to establish the continuity of the beneficiary's employment during her visits to the United States, and failed to submit sufficient evidence to support its assertions that the beneficiary was compensated by the [REDACTED]. In our January 30, 2013 decision, we agreed with the director's findings.

On April 15, 2013, the petitioner filed a complaint in District Court seeking judicial review of our decision. On September 13, 2013, the District Court remanded the matter to USCIS to further develop the record, including consideration of the beneficiary's Form DS-156, Nonimmigrant Visa Applications, filed with the U.S. Department of State. On October 22, 2013, we reopened the matter on motion pursuant to 8 C.F.R. § 103.5(a)(5)(ii) to enter these documents into the record.

The Form DS-156 applications were signed by the beneficiary on September 4, 2008, and April 9, 2009, respectively. On each DS-156 application, the beneficiary indicated that she was living in [REDACTED] in mainland China. On the September 4, 2008 application, the beneficiary indicated that she was working as "Manager of HR" at [REDACTED] in [REDACTED] China." On the April 9, 2009 application, she indicated that she was working as "Vice President" of [REDACTED] China. The beneficiary did not list the [REDACTED] as one of her "Last Two Employers" on the Supplemental Nonimmigrant Visa Application submitted with each application. Further, on each of the Forms DS-156, the beneficiary indicated that "Tourism" was the purpose of her trip, that she was paying for the trip herself, and that she would be staying at the [REDACTED] New York.

Our review of the Form DS-156 applications revealed information that contradicted evidence and assertions offered in support of the Form I-360 petition. Accordingly, we provided the petitioner with notice of derogatory information (notice) and an opportunity to submit additional information, evidence or arguments pursuant to 8 C.F.R. § 103.2(b)(16)(i). Specifically, we noted that the information on the beneficiary's Form DS-156 applications contradicted statements by the petitioner, the [REDACTED], and the beneficiary, regarding the beneficiary's full-time employment with the [REDACTED] the purpose of her visits to the United States, and the payment of her travel expenses by the [REDACTED] as compensation. Regarding the beneficiary's residence and employment information provided on the Form DS-156 applications, we stated:

This information contradicts assertions by the petitioner and the [REDACTED] that the beneficiary was employed by the [REDACTED] in a full time (35 hour

per week) position from February 2008 until the filing of the petition. Further, it contradicts information provided by the beneficiary on her Form G-325, Biographic Information, filed concurrently with the Form I-360 petition along with her Form I-485, Application to Register Permanent Residence or Adjust Status. On the Form G-325, the beneficiary indicated that she had worked at the [REDACTED] in [REDACTED] China since March 2008, and that she lived at the [REDACTED] address in [REDACTED] from January 2008 until February 2010. The petitioner also listed the [REDACTED] address as the beneficiary's foreign address on the Form I-360 petition.

In addition, we stated that the beneficiary's assertions on her Form DS-156 applications regarding her trips to the United States were in conflict with assertions by the petitioner and the [REDACTED] that the beneficiary came to the United States to do religious work and training for the [REDACTED], that the temple paid for her travel expenses, and that she came to participate in programs at the petitioner's location in [REDACTED], New York. We further stated that it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, citing *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In a January 12, 2014 brief responding to our notice, the petitioner objected to our consideration of "derogatory information" from the visa applications in the adjudication of the instant petition:

There is no indication in the law that a derogatory site visit, or in the instant case "derogatory" DS-156 record results may be applied to subsequent petitions. Herein, in contrast to the even-handed approach suggested by the Service and [the] Religious Freedom Restoration Act [(RFRA)], AAO is seeking to deny a subsequent petition because of allegedly "derogatory information" from visa interviews conducted before the petition was filed. This would present a situation that is indeed an excessive burden upon the religious life of the temple, and which presents the petitioner with an irresolvable prospect of denial.

The petitioner cited the RFRA, which holds that the government cannot substantially burden a person's exercise of religion except by the least restrictive means in furtherance of a compelling governmental interest.

The petitioner has not established that our consideration of the beneficiary's visa applications imposes a significant burden on the organization's religious beliefs or exercise under the RFRA. Further, the instant matter was reopened for the specific purpose, by order of the District Court and stipulation of the parties, of allowing USCIS to consider the "relevant evidence" of the beneficiary's visa applications and providing the petitioner an opportunity to respond to that evidence. Our October 22, 2013 notice provided such an opportunity in compliance with the court order.

The petitioner additionally contended that, as an appellate body, the AAO should not be "working with facts not initially in the record." The petitioner asserted that we are violating the remand order by adjudicating the matter, and that the matter should instead be returned to the director for adjudication.

The District Court's stipulated remand and order of dismissal provided that the matter would be "remanded to USCIS." USCIS is governed by the Administrative Procedure Act (APA) at 5 U.S.C. § 557(b), which states: "On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule." USCIS regulations do not limit our review to a closed record or otherwise set limits on our ability to adjudicate new grounds supported by evidence developed by us. See 8 C.F.R. § 103.3. Accordingly, as the appellate body for USCIS, we have the same powers and duties as the service center that adjudicated the underlying petition.

In response to the inconsistencies in the beneficiary's work history discussed in our notice, the petitioner stated that the Chinese government restricts travel to [REDACTED] by Chinese citizens and suppresses Tibetan forms of Buddhism such as that practiced by the petitioning organization and the [REDACTED]. The petitioner asserted that the beneficiary therefore maintained a [REDACTED] residence and "spent over half of her time" in [REDACTED] during the relevant period, secretly forming and operating a temple there on behalf of the [REDACTED]. The petitioner provided documentation of the Chinese government's intolerance of Tibetan forms of Buddhism, but did not provide documentary evidence regarding the purported restrictions on travel to [REDACTED]. 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)).

The petitioner asserted that the beneficiary was hired by [REDACTED] prior to being ordained in February 2008 and that, because she was in a "one-year transition or initiation period" and the [REDACTED] hoped to find a location for a branch temple in [REDACTED] she continued working there part time until October 2008. Regarding the beneficiary's employment with [REDACTED] the petitioner asserted that the company "is involved with of [sic] our organization" and is owned by the beneficiary's family. In its brief, the petitioner stated that the beneficiary worked for [REDACTED] to provide her "with the outwards appearance of employment so that she could maintain her efforts in promoting the petitioner's denomination of Buddhism in China." The petitioner stated that, while in [REDACTED] the beneficiary "was supported by funds from the company, which really were donations to the [REDACTED]." The petitioner also stated in its letter that the beneficiary paid her own travel expenses "as a form of donation to our temple." The petitioner submitted a January 2, 2014 letter from the General Manager of [REDACTED] stating that the beneficiary worked about two to three hours per week and that "[t]he money that was provided to her was used by her to develop and run a small temple in [REDACTED]."

A December 20, 2013 letter from [REDACTED] also stated that the beneficiary maintained part-time employment in [REDACTED] "to appear 'normal,'" and that she used "money from her employment" to pay for her travel expenses and to "support the small [REDACTED] branch" that she secretly founded. The petitioner submitted copies of photographs of the [REDACTED] including photographs of a bedroom and bathroom purportedly used to provide housing to the beneficiary when in [REDACTED]. The petitioner also submitted a letter from an individual, [REDACTED] who stated that he attended religious services held by the beneficiary in secret in [REDACTED].

In its brief, the petitioner stated that the beneficiary's visa applications were "not thorough or accurate in many respects." In its letter, the petitioner asserted that the beneficiary did not list the [REDACTED] as an employer on her visa application because she "understood the question to mean secular employment." The petitioner further stated that the beneficiary originally intended to visit as a tourist when she applied for her first visa, that it was only decided after the issuance of the visa that she should spend time at the petitioning temple, and that she "simply repeated much of the information from the first visa" when she applied for the second visa. Additionally, the petitioner asserted that the Forms DS-156 were filled out by a Chinese applications services agency that "apparently completed the applications in the way they felt was most safe for protecting her identity as a Buddhist nun and helping her to obtain the visa."

The petitioner has offered no explanation as to why the beneficiary's acknowledged residence, activities, and employment in [REDACTED] were not previously disclosed to USCIS by the petitioner, the beneficiary, or the [REDACTED]. In a September 28, 2011 Request for Evidence (RFE), the director specifically requested evidence regarding "the beneficiary's residence and work location" during the qualifying period. Further, we find that the assertion that the beneficiary supported herself through income from her employment as a "donation" to the temple contradicts previous assertions that the [REDACTED] provided the beneficiary's board, food, clothes and transportation expenses equivalent to \$500 per month as non-salaried compensation. In addition, although the petitioner contended in its January 6, 2014 letter that "monks do not accept payment in terms of salary, according to the vows of poverty that are followed in our tradition," the petitioner stated at the time of filing the petition that the beneficiary would receive "an annual salary of \$6,000.00 plus free board, food and travel allowance." Doubt cast on any aspect of the petitioner's proof may, of course, 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. at 591. We find that the petitioner failed to resolve these inconsistencies in the record, and the denial of the petition will be affirmed on that basis.

Further, as the petitioner has submitted conflicting evidence regarding the nature, location, and terms of the beneficiary's purported employment during the qualifying period, we find that the petitioner failed to establish that the beneficiary was continuously engaged in qualifying religious during the two-years immediately preceding the filing of the petition.

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, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the petition will remain denied.

ORDER: The denial of the petition is affirmed.