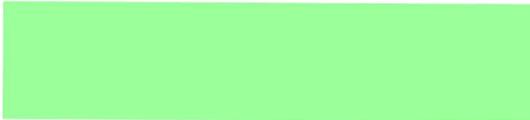




U.S. Citizenship  
and Immigration  
Services

(b)(6)

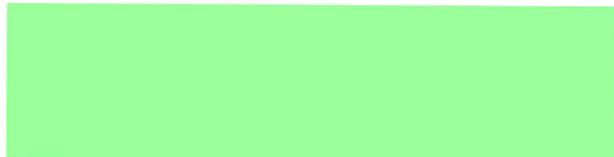


DATE: **SEP 19 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE 

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:

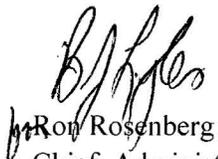


INSTRUCTIONS:

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,



Roy 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 self-petitioner seeks classification 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 youth minister<sup>1</sup> for [REDACTED] in Jamaica, New York. Part 1 of the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, identifies [REDACTED] as the petitioner. Review of the petition form, however, indicates that the alien is the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 10 of the Form I-360, "Signature," has been signed not by any official of the church, but by the alien himself. Thus, the alien, and not the employer, has taken responsibility for the content of the petition. The petition was properly filed, because the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(6) allows the alien to file the Form I-360 petition on his or her own behalf.

The director determined that the petitioner failed to establish how the prospective employer intends to compensate him and that he had the required two years of continuous qualifying work experience immediately preceding the filing date of the petition. The director also determined that the petitioner had failed to establish his qualifications as a minister.

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;

(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

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<sup>1</sup> Although the petition lists the proffered position title as "Music Minister," all other submitted documentation identifies the position as that of a youth minister.

(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 first issue to be discussed is whether the petitioner has established the prospective employer's ability and intent to compensate the petitioner.

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 [Internal Revenue Service (IRS)] documentation, such as IRS Form W-2 [Wage and Tax Statement] 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.

Accompanying the Form I-360 petition, the petitioner submitted an undated letter entitled "Evidence Pertaining to the Religious Occupation" from the pastor of [REDACTED] (the church), indicating that the position of youth minister is a non-salaried position. The pastor stated that the petitioner's housing would be provided by a church member [REDACTED]<sup>2</sup> and that the church would provide the petitioner with "basic care which includes, but [is] not limited to, food, clothing, transportation and medical necessities."

The director issued a Request for Evidence (RFE) on April 10, 2013 asking, in part, that the petitioner submit verifiable evidence of how the prospective employer intends to compensate the petitioner. In response to the RFE, the petitioner resubmitted the letter from the church described above. The petitioner also submitted a June 3, 2013 letter from the church's accountant, [REDACTED] which stated that the church was a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code and was exempt from filing informational tax returns. Additionally, the petitioner submitted two June 4, 2013 statements from [REDACTED] providing information about the church's bank accounts. The first account showed a balance of \$7,676.81, with an average balance of \$897.00 over the past 12 months, and the second account showed a balance of \$12,241.98, with an average balance of \$1,743.00

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<sup>2</sup> The pastor stated that a February 4, 2011 letter from [REDACTED] was attached. However, a review of the record indicates that no such letter was submitted with the petition.

over the past 12 months. In addition, the petitioner submitted an unsigned document entitled "Information About the Religious Organization" stating, in part, that the church only pays its senior pastor, and that its "Assistant Pastors and other Ministers/Leaders" are "not compensated."

Finally, the petitioner submitted a May 31, 2013 letter from [REDACTED] which stated that he would provide room and board for the petitioner at his residence, located at [REDACTED] NY, and that the petitioner currently occupies a room there. Mr. [REDACTED] stated that the petitioner's room includes an eat-in kitchen, full bathroom and other housing amenities such as water, heat and electricity.

On September 3, 2013, the director denied the petition. The director found, in part, that the petitioner failed to submit verifiable evidence of how the church would compensate him. Specifically, the director stated that Mr. [REDACTED] letter, without corroborative evidence, was insufficient to establish his ability to support the petitioner, and that the submitted bank statements were insufficient to establish that the church had the necessary funds for the provision of food, clothing, transportation or medical expenses to the petitioner.

On appeal, the petitioner submits a statement of "MONTHLY INCOME & EXPENDITURE FOR [REDACTED]" The statement includes \$300.00 in monthly "Income," described as a voluntary contribution from church members, and \$230 in monthly expenditures by the church for food (\$100.00), clothes (\$50.00), basic necessities (\$25.00), transportation (\$30.00) and telephone (\$25.00). The statement also indicates expenditures in the form of room and board (\$200.00) and utilities (\$40.00) provided by [REDACTED]. The statement has a line item for medical expenses covered by the church but no sums were listed for those expenses.

The petitioner also submits a letter dated October 9, 2013 from [REDACTED] again indicating that the petitioner currently resides at his property, and stating that Mr. [REDACTED] will continue to allow the petitioner to live there at no cost to him or the church. Submitted with the letter is a deed indicating that the subject property was granted to Mr. [REDACTED] on March 7, 2003. Finally, the petitioner submits additional copies of the bank statements previously submitted in response to the director's RFE.

The evidence of record fails to establish how the prospective employer will compensate the petitioner as required by 8 C.F.R. § 204.5(m)(10). Evidence accompanying the Form I-360 stated that the church would provide non-salaried compensation, and evidence submitted in response to the RFE indicated that only the church's senior pastor is compensated. The statement of monthly income and expenditure indicates that the petitioner receives \$300.00 in monthly income from church members. The petitioner provides no explanation as to why this monthly income was not included in the description of proposed compensation either at filing or in response to the RFE. 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). Further, the petitioner does not provide any evidence that he has

been receiving such income, nor does he provide a list of the monthly donors, pledge cards or any other documentation which would verify that the \$300.00 sum listed as income on the statement is income which the church can reasonably rely on to compensate the petitioner. 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)). In addition, the petitioner failed to submit a budget or verifiable documentation of how the church would provide the petitioner's nonmonetary compensation in accordance with the regulation at 8 C.F.R. § 204.5(m)(10). The petitioner stated in response to the director's RFE that the church has six ministers and one senior pastor. While the church states that the senior pastor is the only employee who receives monetary compensation, the record is unclear as to whether the other ministers of the church receive nonmonetary compensation. The petitioner has not submitted any documentation showing that the church provides nonmonetary compensation for other ministers, although specifically asked to do so in the director's RFE.

The regulation at 8 C.F.R. § 204.5(m)(10) indicates that, if the employer intends to provide salaried or non-salaried compensation, IRS documentation "such as IRS Form W-2 or certified tax returns," or an explanation for its absence along with comparable, verifiable documentation, is required. The petitioner indicated that the church will provide non-salaried compensation, but no IRS documentation has been submitted regarding the finances of the organization or its ability to provide the stated non-salaried compensation. The church's senior pastor states that the petitioner's housing will be provided by a church member. This arrangement does not meet the requirements of 8 C.F.R. § 204.5(m)(7)(xi) and (10). The regulation at 8 C.F.R. § 204.5(m)(10) requires a petitioner to submit initial evidence of "how the petitioner intends to compensate the alien," and the regulation at 8 C.F.R. § 204.5(m)(7)(xi) requires the petitioning employer to attest to the statement that "any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer." The cited regulations repeatedly specify the petitioner, *i.e.*, the employer, as the entity that will "compensate the alien." The regulation does not state that the employer can discharge this responsibility by arranging for a third party to compensate the alien.

The petitioner has failed to submit sufficient documentation to establish the prospective employer's ability and intent to compensate him.

The second issue to be discussed is whether the petitioner established that he had the requisite two years of qualifying work experience immediately preceding the filing of the petition.

The USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that he 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 he was continuously performing qualifying religious work throughout the two-year period immediately preceding December 31, 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:

- (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.

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

Accompanying the petition, the petitioner submitted evidence that he was admitted to the United States on September 8, 2011 in R-1 nonimmigrant status authorizing his employment with the church until December 1, 2013. In a letter dated September 25, 2012, the church's senior pastor stated, "For the past twelve months [the petitioner] has been assigned to oversee and coordinate activities in the ministry's Youths Department, he has contributed immensely to its progress."

The director's April 10, 2013 RFE asked, in part, that the petitioner submit evidence pertaining to his work history during the two-year period immediately preceding the filing of the petition. The director specifically instructed the petitioner to submit experience letters providing detailed information about his schedule and the work performed during the qualifying period. The director also instructed the petitioner to submit IRS documentation of any salaried or non-salaried compensation for work performed in the United States, if available, and comparable evidence of employment outside the United States.

In response to the RFE, the petitioner submitted an unsigned letter dated June 20, 2013 from Pastor [redacted] resident pastor of [redacted] Nigeria, stating that the petitioner served that organization without compensation as a volunteer youth pastor for "the past ten years." The letter does not include the specific duties of the petitioner during that time

frame, the time devoted to those duties on a weekly basis, or the specific dates of service. It is noted that Pastor [REDACTED] June 20, 2013 statement that the petitioner had been performing services in Nigeria for “the past ten years” is inconsistent with the evidence that the petitioner has been in the United States since 2011. The petitioner must resolve any inconsistencies in the record by independent objective evidence. *See Matter of Ho*, at 591. The petitioner also provided a January 20, 2011 letter of recommendation from Pastor [REDACTED] stating that the petitioner was a foundational member of [REDACTED] Nigeria and that she had “a close watch of him for the [p]ast ten years.”

The director found that the petitioner failed to establish that he had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition. Specifically, the director stated that evidence of the petitioner’s employment in Nigeria described his duties in such vague and nonspecific terms that it could not be determined whether he had been engaged in qualifying work. The director further stated that the volunteer work does not satisfy the regulatory requirements of 8 C.F.R. § 204.5(m)(11) for qualifying work experience.

On appeal, the petitioner submits an October 10, 2013 letter from Pastor [REDACTED] stating that the petitioner served as youth pastor with [REDACTED] Nigeria, from August 6, 2005 until leaving for the United States on September 8, 2011, and describing the petitioner’s weekly schedule of duties.

The documentation submitted fails to establish that the petitioner had the requisite two years of qualifying work experience immediately preceding the filing of the petition. The petitioner worked as an uncompensated volunteer youth minister from January 3, 2011 through September 8, 2011, during the requisite two-year period, at the [REDACTED] in Nigeria. This uncompensated volunteer work is not considered to be qualifying experience. During the rulemaking process of the 2008 regulation, USCIS recognized in the preamble to the proposed rule that although “legitimate religious work is sometimes performed on a voluntary basis . . . allowing such work to be the basis for . . . special immigrant religious worker classification opens the door to an unacceptable amount of fraud and increased risk to the integrity of the program.” *See* 72 Fed. Reg. 20442, 20446 (April 25, 2007). The regulation at 8 C.F.R. § 204.5(m)(11) specifically requires that the alien’s prior experience have been compensated either by salaried or non-salaried compensation (such as room and board), but can also include self-support under limited conditions. In elaborating on this issue in the final rule, USCIS determined that the sole instances where aliens may be uncompensated are those nonimmigrant aliens “participating in an established, traditionally non-compensated, missionary program.” *See* 73 Fed. Reg. at 72278. *See also* 8 C.F.R. § 214.2(r)(11)(ii). The petitioner has neither claimed nor established that he was participating in such a program. Accordingly, any time the petitioner may have spent “working” as a volunteer cannot be considered qualifying employment.

In addition, the petitioner has not submitted sufficient evidence of past compensation from the his prospective employer during the qualifying period. The petitioner submits no IRS documentation or other verifiable evidence to establish that the church provided him with either salaried or non-salaried

compensation.<sup>3</sup> Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, at 165.

The petitioner has therefore failed to submit sufficient documentation to establish that he worked in qualifying religious work for the two years immediately preceding the filing of the petition.

The final issue to be considered is whether the petitioner has established his qualifications as a minister.

The USCIS regulation at 8 C.F.R. § 204.5(m)(5) provides the following definitions:

*Minister* means an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct such religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and
- (D) Works solely as a minister in the United States, which may include administrative duties incidental to the duties of a minister. . . .

*Religious worker* means an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister.

Additionally, if the alien is a minister, the regulation at 8 C.F.R. § 204.5(m)(9) requires the petitioner to submit the following:

- (i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and
- (ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally

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<sup>3</sup> Although church member [REDACTED] asserts that he has been providing the petitioner with housing since his arrival in the U.S., the petitioner has not submitted documentary evidence to support that assertion.

required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological institution is accredited by the denomination, or

(iii) For denominations that do not require a prescribed theological education, evidence of:

- (A) The denomination's requirements for ordination to minister;
- (B) The duties allowed to be performed by virtue of ordination;
- (C) The denomination's levels of ordination, if any; and
- (D) The alien's completion of the denomination's requirements for ordination.

In Part 2.d. of the petition, Classification Requested, the petitioner indicated that he would be working as a minister. The petitioner submitted a copy of his Certificate of Ordination which indicates that he was ordained as a "Youth Minister of the Gospel of Jesus Christ" by the [REDACTED] Nigeria on August 6, 2005. In the unsigned letter entitled "Evidence Pertaining to the Religious Occupation," which was submitted with the filing of the petition, the church's pastor stated:

The Youth Minister will have at least five to seven years of training in the teaching and understanding of the Sabbath doctrine. It is a plus to have ordination and/or certification from a Sabbath doctrine Ministry. . . .

The level of responsibility will be at a Minister level in the Church. As the head of the Youth Ministry, the position is thereby considered a Director role. . . .

The pastor stated that the petitioner had been a member of [REDACTED] ( [REDACTED] Nigeria branch) for ten years and had proven to be of sound dedication and commitment to the Church through his long-standing stay and active role in the growth of the ministry. The pastor further stated that he had observed and evaluated the petitioner's determination to grow in his service to God and use his God-given knowledge and understanding of the Bible to be of value to the Church as a whole. Based upon the foregoing, the pastor found the petitioner to be qualified for the position. The petitioner also submitted a copy of the church's Constitution and Bylaws, which included the following section regarding ministers:

Section 1. Ordination and Licensing – The Church may ordain and/or license a person as a minister of the Gospel after first examining the person's background, moral and religious character, and what previous Bible course and/or independent study the person has received. Final determination shall be within the absolute discretion of the Pastor-President.

Section 2. Limitation – The Church may limit any licensee or ordainee to an area of special emphasis. The following areas (and with growth shall expand) are recognized by the Church:

- a) Pastoral Ministry – Senior Pastor
- b) Evangelism Ministry – Minister of Evangelism
- c) Youth Ministry – Youth Minister
- d) Meditation/Prayer Ministry – Prayer Leader
- e) Music Ministry – Minister/Director of Music
- f) Women’s Ministry – Women’s Leader
- g) Men’s Ministry – Men’s Leader

In the April 10, 2013 RFE, the director stated that it was not clear whether the petitioner would be working in a religious occupation, a religious vocation, or as a minister. The director asked the petitioner to indicate that if he would be working as a minister, whether he has authorization to conduct religious worship and perform other services usually performed by members of the clergy, to indicate whether he has been ordained, and to identify the religious organization’s requirements for ordination. The director also instructed the petitioner to submit evidence of his ministerial qualifications in accordance with 8 C.F.R. § 204.5(m)(9).

In response to the RFE, the petitioner resubmitted a copy of his Certificate of Ordination. The petitioner also submitted an unsigned document entitled “Information About the Proffered Position” which stated:

The Church has appointed and ordained [the petitioner] with the responsibility of building and growing the Youth Ministry. . . . Hence, the overall training received by [the petitioner] allows him to duly officiate fellowship services conducted for the youth of the Church, along with other activities related to this group of the Church. In addition, he is able to assist in activities which take place during the Church’s regular service days per the instructions and authorization from the Senior Pastor.

In addition, the petitioner submitted an unsigned document, entitled “Information About the Religious Organization,” which stated, in part:

Volunteer and Paid Ministers: The Church currently pays only the Senior Pastor for services performed. The Assistant Pastors and other Ministers/Leaders of the Church are ordained to serve in their respective capacities; however, they are not compensated by the Church. In total, there is one Senior Pastor/Founder and six Assistant Pastors and Ministers/Leaders for the organization.

The petitioner also submitted an undated letter from the church’s senior pastor with the heading “Re: Traditional Religious Function,” regarding the importance of the youth ministry within the church.

In denying the petition, the director found that the petitioner failed to establish his qualifications as a minister. Specifically, the director found that the petitioner failed to provide sufficient information about the church's criteria for ordination or how he met those requirements. The director further stated that, based on the petitioner's duties, "it appears that he is not authorized to perform duties of a clergy member." On appeal, the petitioner resubmits copies of previously submitted evidence pertaining to this issue.

The regulation at 8 C.F.R. § 204.5(m)(5) indicates that a minister must be "fully authorized" by the denomination to conduct the usual duties of a clergy member. The bylaws of the prospective employer provide that the church "may *limit* any licensee or ordainee to an area of special emphasis," and the petitioner's response to the director's RFE stated that the church's "Assistant Pastors and other Ministers/Leaders of the Church are *ordained to serve in their respective capacities*." (Emphasis added). The submitted Certificate of Ordination specifies that the petitioner was ordained as a "Youth Minister." The record establishes that the petitioner is an ordained youth minister according to the requirements of the church and is, therefore, qualified to perform the duties of the proffered position. The director's decision to the contrary is withdrawn.

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.