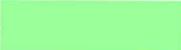


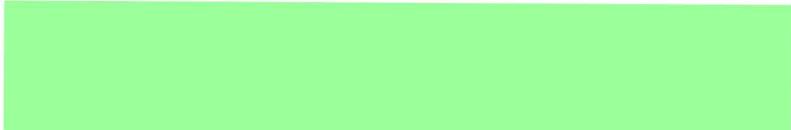
(b)(6)



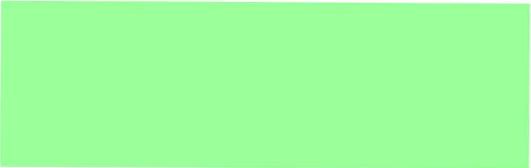
U.S. Citizenship
and Immigration
Services



DATE: **SEP 26 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

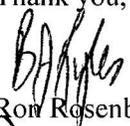
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

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 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 a priest. 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 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
 - (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 U.S. Citizenship and Immigration Services (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 August 5, 2013. Therefore, the

petitioner must establish that the beneficiary was continuously performing qualifying religious work throughout the two-year period immediately preceding that date.

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 [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.

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's initial evidence included a July 25, 2013 letter from the petitioner's head administrator, which stated that it presently employed the beneficiary as a full-time priest pursuant to an R-1 visa. According to the petitioner's head administrator, the beneficiary was then earning \$1,000 per month plus living accommodations.

The petitioner further submitted a letter dated April 25, 2012, from the secretary of the [redacted] Oregon (Oregon church). That letter stated that the beneficiary served the Oregon church from July 12, 2011 through April 30, 2012, and that the beneficiary was then transferred to the petitioning church. An April 18, 2012 letter from the archbishop of the petitioner's diocese stated that beginning May 1, 2012, the beneficiary was being assigned to serve the petitioner in Dallas, Texas.¹

¹ As the petitioner failed to establish the continuity of the beneficiary's qualifying experience, we do not need to reach the issue of the lawfulness of the beneficiary's experience under 8 C.F.R. § 204.5(m)(4) and (11). In

On October 21, 2013, the director issued a Request for Evidence (RFE) asking the petitioner to submit, in part, evidence pertaining to the beneficiary's work history from August 5, 2011 to August 5, 2013. Specifically, the petitioner was asked to provide experience letters from the beneficiary's past employers, IRS documentation to establish the beneficiary's employment in the United States during the two-year period immediately preceding the filing of the petition, or comparable evidence for any period of employment outside the United States during the relevant two-year time frame.

In response to the RFE, the petitioner submitted a letter dated July 31, 2012 from the petitioner's head priest and administrator which stated that the beneficiary served its Oregon church in R-1 nonimmigrant visa status before being transferred to work as a priest for the petitioning organization. The letter sets forth the beneficiary's weekly work hours and states that he will be paid "\$1,000 (One Thousand) per month plus food, rent, utilities, telephone and transportation." The petitioner resubmitted the April 25, 2012 letter from the secretary of the Oregon church and the April 18, 2012 letter from the petitioner's archbishop. A copy of the petitioner's 2012 budget was submitted which showed that the sum of \$1,000 per month had been budgeted for monthly salaries. Although the petition was filed in August 2013, the petitioner submitted no documentation that the salaries were actually paid.

On November 16, 2013, the director issued a Notice of Intent to Deny (NOID) stating that the petitioner had failed to submit verifiable evidence showing the beneficiary had been receiving salaried or non-salaried compensation while employed as a minister in the United States during the two-year period immediately preceding the filing of the petition.

In response to the NOID, the petitioner submitted a December 6, 2013 letter from the archbishop of its diocese stating that the beneficiary was transferred from its Oregon church to the petitioner. A letter dated December 7, 2013 from the Secretary of the [REDACTED] of the Oregon church stated that the beneficiary had worked as its head priest from July 12, 2011 until May 1, 2012 earning a monthly stipend of \$500 plus rent. In a letter dated December 10, 2013, the petitioner's head administrator stated that the beneficiary arrived in the United States on July 12, 2011 in R1 nonimmigrant status and subsequently worked at the Oregon church and then for the petitioner earning a monthly stipend of \$500 plus room and board while employed at both churches.

In further response to the NOID, the petitioner submitted an unsigned copy of the beneficiary's 2011 and 2012 federal tax return. The 2011 tax return stated the beneficiary earned wages of \$2,790. The petitioner did not submit a Form W-2 or IRS Form 1099-MISC, Miscellaneous Income, supporting payment of the reported wages. The beneficiary's 2012 federal tax return reports wages of \$2,000 plus \$4,000 in business income earned as a priest working at the petitioner's address in Garland, Texas. The petitioner did not submit either a Form W-2 or a Form 1099-MISC for the reported

any subsequent proceeding, this issue may require further discussion as the petitioner provides no evidence that the beneficiary was authorized to work for the petitioner prior to May 1, 2012.

wages. A payroll register for the Oregon church was submitted from Business Payroll Services which indicates that the beneficiary was paid monthly salary checks of \$500 as follows:

- November 1, 2011 Manual Check Number 1
- November 1, 2011 Manual Check Number 3
- November 1, 2011 Manual Check Number 4
- November 1, 2011 Regular Check Number 1
- November 30, 2011 Regular Check Number 2
- December 30, 2011 Regular Check Number 3
- January 31, 2012 Regular Check Number 4
- January 31, 2012 Regular Check Number 8
- February 29, 2012 Regular Check Number 5
- February 29, 2012 Regular Check Number 9
- March 30, 2012 Regular Check Number 6
- March 30, 2012 Regular Check Number 10
- April 30, 2012 Regular Check Number 7
- April 30, 2012 Regular Check Number 11

The payroll register documentation also indicates a year-to-date salary earned of \$2,000 as of December 30, 2011 and April 30, 2012.

The petitioner further submitted copies of the front side only of rent checks made payable to [REDACTED] (Portland Oregon) in the amount of \$730.00 dated November 2, 2011, November 30, 2011, December 31, 2011, February 3, 2012, and March 2, 2012. A complete copy of the front and back side of the checks was not presented and it cannot be determined that the checks were actually negotiated in the normal banking process. A check dated April 1, 2012 showed rent paid in the amount of \$770.00 and a check dated September 25, 2011 was written for \$150.00 and noted "security deposit." Finally, the petitioner submitted check book register carbon copies of 16 checks dated from June 1, 2012 through September 29, 2013 made payable to the beneficiary in the amount of \$500, and four checks in the amount of \$1,000 from September 1, 2013 to December 1, 2013.

The director denied the petition on January 7, 2014 determining 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 states that the director erred in denying the petition, and that the record establishes that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition. In support of the appeal, the petitioner resubmitted the December 6, 2013 letter from the petitioner's archbishop, a December 7, 2013 letter from the secretary of the parish council with the Oregon church, and the December 10, 2013 letter from the petitioner's head administrator. The petitioner also submitted complete copies of checks (front and back showing the checks had been negotiated in the normal banking process) made payable to the beneficiary by the petitioner. Checks in the amount of \$500.00 are dated June 1, 2012, June 30, 2012, July 30, 2012, August 30, 2012, October 8, 2012, November 4, 2012, December 2, 2012, December 30, 2012, January 27, 2013, February 24, 2013, March 25, 2013, April 28, 2013, May 27, 2013, June 30, 2013, and July 28, 2013. A check dated September 1, 2013 is in the amount of \$1,000. A copy of the beneficiary's IRS transcript for 2011 and 2012 was submitted showing wages earned of \$2,790 in 2011 and \$2,000 in 2012, with additional business earnings in 2012 of \$4,000. The transcripts are consistent with unsigned copies of the beneficiary's tax returns submitted in response to the director's NOID. Finally, the petitioner submitted a copy of a rental agreement effective October 1, 2011 between the beneficiary and [REDACTED] in Portland, Oregon. A letter dated September 22, 2011 from the petitioner to [REDACTED] affirms the obligation of the Oregon church to pay the beneficiary's rent [REDACTED].

The evidence of record does not establish that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition. During the referenced period, the beneficiary was employed by the Oregon church from July 11, 2011 through April 30, 2012. During this time frame, the petitioner states that the beneficiary earned \$500 per month plus payment of his rent. Thus, during the relevant time frame (August 5, 2011 through August 5, 2013), the beneficiary should have been paid the sum of approximately \$4,500 by the Oregon church (\$500 per month from August 5, 2011 until the beneficiary's transfer to the petitioner on May 1, 2012), plus monthly rent. The documentation submitted by the petitioner concerning the beneficiary's compensation while employed by the Oregon church is conflicting. According to the payroll register prepared by Business Payroll Services, with entries detailed above, the beneficiary was issued fourteen \$500 checks between November 1, 2011 and April 30, 2012. These checks would total \$7,000 and exceed the beneficiary's stated income. The record does not contain evidence of any payments to the beneficiary by the Oregon church during the months of August, September and October 2011.²

It is further noted that there is no evidence showing the beneficiary was compensated throughout the term of his employment with the Oregon church. The record reflects no payments to the beneficiary until November 1, 2011 when he was issued four separate checks dated November 1, 2011. It is

² This brings into question where the beneficiary earned the additional income which exceeds the income that the petitioner states was paid by the Oregon church.

incumbent on 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The petitioner did not submit any IRS documentation, or explain the absence of such documentation as required by 8 C.F.R. § 204.5(m)(11), of the beneficiary's wages with the Oregon church. In a NOID and an RFE, the director specifically requested IRS documentation of the beneficiary's income during the two-year period preceding the filing of the petition. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The petitioner also states that the beneficiary's rent was paid by the Oregon church during the beneficiary's term of employment there, from July 2011 through April 2012. The submitted rental agreement for the beneficiary's apartment in Oregon was not effective until October 1, 2011. The petitioner submitted only copies of the front side of checks made payable to the beneficiary's landlord for the months of November 2011 through April 2012. The copies of the checks submitted do not establish that the checks were actually negotiated through normal banking channels. There is no evidence that the beneficiary's rent was paid for the months of August, September or October of 2011 as stated by the petitioner. The petitioner provided no independent objective evidence to resolve inconsistency. *Matter of Ho*, 19 I&N Dec. at 591.

The petitioner submitted evidence of wages paid to the beneficiary in 2011 of \$5,400 earned in Portland, Oregon, as set forth on the Business Payroll Services payroll register. The payroll register submitted by the petitioner reflects wages paid to the beneficiary in 2012 of \$3,200. The petitioner submitted copies of payroll checks on appeal showing wages paid to the beneficiary from June 1, 2012 through December 30, 2012 of \$4,000. This evidence is inconsistent. Again, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Id.* It cannot be determined from the documentation submitted what, if any, income the beneficiary received during these time frames as the inconsistencies between the petitioner's statements of income paid to the beneficiary and the income stated on the Business Payroll Services payroll register have not been explained.

For the foregoing reasons, the evidence submitted is insufficient to establish that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition

Beyond the decision of the director, the petitioner has failed to provide verifiable documentation of how it intends to provide the beneficiary's nonmonetary compensation. The AAO conducts appellate review on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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 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 petitioner states that it will provide the beneficiary with nonmonetary compensation of food, rent, utilities, telephone and transportation in addition to a monthly stipend. While the petitioner states that its facility contains living quarters for the beneficiary, no evidence has been submitted establishing that any such living quarters actually exist or that the beneficiary has been provided with food, utilities, telephone or transportation. 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)). For this additional reason, the petition may not be approved.

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.