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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: AUG 2 8 2015

FILE #:
PETITION RECEIPT #:

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 is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition and a subsequent motion to reopen and to reconsider that decision. The matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The 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 senior pastor and chairman of The director determined that the petitioner had not established that he 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, an affidavit, and three promotional flyers for events held by the prospective employer.

RELEVANT LAW AND REGULATIONS

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

[1] Part 1 of the Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) identifies as the petitioner. Review of the petition form, however, indicates that the foreign national is the petitioner. An applicant or petitioner must sign his or her own 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 foreign national. Thus, the foreign national, and not has taken responsibility for the content of the petition. The petition was properly filed, because the regulation at 8 C.F.R. § 204.5(m)(6) allows the foreign national to file the Form I-360 petition on his or her own behalf. Also, the attorney who filed the appeal represents the foreign national, and therefore the appeal has also been properly filed.

(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 [IRC] 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 a 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 was filed on November 8, 2010. Therefore, the petitioner must establish that he was continuously performing qualifying religious work throughout the two-year period immediately preceding that date.

On April 7, 2015, the Court of Appeals for the Third Circuit held that the lawful immigration status requirement in 8 C.F.R. 204.5(m)(4) and (11) is *ultra vires* and impermissibly conflicts with section 245(k) of the Act with respect to adjustment of status. *See Shalom Pentecostal Church v. U.S. Dep't of Homeland Sec.*, 783 F.3d 156, 165-67 (3d Cir. 2015). In accordance with this decision, U.S. Citizenship and Immigration Services (USCIS) will no longer deny special immigrant religious worker petitions based on the lawful status requirements at 8 C.F.R. 204.5(m)(4) and (11) in the Third Circuit. As a result of this decision and other district court cases, USCIS implemented a policy to apply the *Shalom Pentecostal Church* decision nationally, pending the issuance of amended regulations that will remove the lawful status requirements in 8 C.F.R. 204.5(m)(4) and (11). *See* USCIS Policy Memorandum PM-602-0119, *Qualifying U.S. Work Experience for Special Immigrant Religious Workers*, (July 5, 2015), http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2015/2015-0705_Lawful_Status_PM_Effective.pdf [hereinafter July 15 Policy Memorandum]. Accordingly, USCIS no longer requires that the qualifying religious work experience for the two-year period preceding the submission of a Form I-360 be in lawful immigration status.

The regulation at 8 C.F.R. § 204.5(m) provides that to be eligible for classification as a special immigrant religious worker, the alien 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:

(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. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

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:

(i) Received salaried compensation, the petitioner must submit [Internal Revenue Service] (IRS) 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.

ISSUE

The issue is whether the petitioner has the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition

PERTINENT FACTS AND PROCEDURAL HISTORY

The petitioner stated on the Form I-360 that he has "over nine years experience as an ordained pastor and operating a church." No documentary evidence accompanied the petition.

On February 24, 2011, the director issued a request for evidence (RFE) requesting, in part, additional evidence regarding the petitioner's work history during the two-year period immediately preceding the filing of the petition. The RFE specifically instructed the petitioner to submit experience letters providing detailed information about his schedule and the work performed during the qualifying period. The petitioner was also instructed to submit evidence of compensation received and, if the experience was gained in the United States, evidence that he was authorized to accept employment.

In response to the RFE, the petitioner submitted evidence that he entered the United States on December 9, 2008, in B-2 nonimmigrant visitor status and was later granted R-1 nonimmigrant status authorizing his work for from October 13, 2009, until March 31, 2011. The petitioner submitted a copy of a March 28, 2010, letter from terminating his employment on that date.

In a November 5, 2010, affidavit submitted in response to the RFE, the petitioner stated that he founded in Togo in 2001 and remains the executive director while in the United States. The petitioner states that he continues to manage and operate the church in Togo from the United States, and seeking to expand to the United States, he incorporated Inc. in Nebraska. According to his affidavit, the church has been in existence since May 2010. The petitioner asserted that the church began paying his salary as pastor "this month" and that he supports himself with his savings and the assistance of former colleagues. The petitioner further asserted:

> I have always been compensated by the church, thanks to the generosity of the congregation. It is difficult for me to provide you with evidence of my salary in Togo, because my country doesn't require the type of recordkeeping for taxes that the U.S. does. I am giving you my bank statements, but I don't have payroll records from Togo, because of the informal way the church paid me there. . . .
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> When my wife and I came to the United States, I always dreamed of expanding here. We came with tourist visas to scout prospective locations. During this time I spoke at engagements before other nondenominational congregations in New York. Throughout my time in New York, I remained Executive Pastor of
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> I started working for in October of last year. I was an Associate Pastor there. I enjoyed the opportunity to spread the work of God, and help the congregation there with their spiritual connection to God, however, I did not feel my talents were respected, as I was often not paid the compensation they promised. During this time, I also remained Executive Pastor of
>
> I considered it a blessing when terminated my employment in late March this year.

A July 3, 2011, letter from the church administrator and treasurer of indicates that "[t]he church is taking care of [the petitioner's] car insurance, gas and House Rent for an amount of $900 a month from July to December 2010 which is not a salary." The petitioner provided no documentation of this assistance from the church.

The petitioner submitted an uncertified copy of his 2009 IRS Form 1040, U.S. Individual Income Tax Return (Form 1040), reporting total income of $10,158 for the year, including $1,278 in wages and $8,880 in business income. An IRS Form 1099-MISC, Miscellaneous Income (Form 1099-MISC), indicates that the petitioner received $1,278 in income from in 2009. No evidence was provided to show the source of the $8,880 in business income the petitioner reported on his Form 1040 during 2009. An uncertified copy of his 2010 Form 1040 reported total income of $11,055 for the year, including $2,400 in wages and $8,655 in business income. A Form 1099-MISC from indicated that it provided the petitioner with $2,800 in nonemployee compensation and $2,600 in other income during 2010. A second Form 1099-MISC for 2010 indicated that the petitioner received $1,800 from The petitioner offered no explanation for the difference between the amounts listed on his Forms 1099-MISC and the business income reported on his tax returns, or the source of the other income reported. *Id.*

The petitioner submitted copies of his personal bank account statements for each month of the year 2010. However, none of the deposits listed on the statements could be identified as coming from an organization in Togo. Further, the petitioner submitted a copy of his résumé on which he indicated that he served from "07/2001 to 12/2008." The résumé did not indicate any employment after that date.

In denying the petition, the director noted that despite the request in the RFE, the petitioner provided no experience letters "to establish full time work during the required two-year period." Further, the director found that the petitioner only held lawful status and employment authorization from October 13, 2009, to March 28, 2010, when his employment was terminated by Accordingly, the director found that the petitioner did not establish that he had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition.

On appeal, the petitioner, through counsel, asserts that the time he spent without lawful status in the United States constitutes a qualifying break under 8 C.F.R. § 204.5(m)(4):

> During the time period in question, from approximately November 2008 to October 2009, and from March 2010 to November 2010, clearly less than two years; the [petitioner] took a sabbatical break for further training and religious education, while still being employed. Simply put, the employed the [petitioner] to learn and study now, so that [he] could be a better pastor in the future. The [petitioner] could not have know [sic] then the future. As a result of leaving as a pastor, [the petitioner] had to continue to

> train and study in order that he could be senior pastor at . Thus, during these time periods, before and after [he] took a religious sabbatical in order to prepare himself to be a better pastor, missionary, and counselor. To date, the [petitioner] is still working for

In an August 29, 2011, affidavit, the petitioner stated:

> In November of 2008 both myself and had discussed employment in the United States, and in fact by then, I had begun religious training for my future employment with
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> In December of 2008 I was admitted to the United States on a valid B visa. I continued my religious training when I arrived here in the United States, to be an associate pastor. In October of 2009, I was granted a work permit after had petitioned for me.
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> Unfortunately in March of 2010, let me go, and I immediately began my religious preparations and further training to be a senior pastor for that I had previously founded. There was a good deal of preparations and further religious training that was required.

ANALYSIS

The petitioner states that he was employed as an R-1 religious worker by the from October 13, 2009, through March 28, 2010. In support of that assertion, he submitted IRS documentation showing that he was paid $1,278 by the in 2009 and $1,800 in 2010. The petitioner alleges that he was not paid the promised compensation by the which contributed to his termination from the organization in March 2010. The petitioner submitted no additional evidence of his employment during the qualifying period

The petitioner asserts that he has been continually employed by in Togo since he founded the organization in 2001, and that his periods of unemployment in the United States, from December 2008 to October 12, 2009, and from March 29, 2010, to November 7, 2010, occurred while he was on "sabbatical" and for training while still employed with in Togo. The petitioner, however, has provided no documentary evidence of employment with in Togo, either before or after his arrival in the United States. 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 has also submitted insufficient evidence to establish that his periods of unemployment are qualifying breaks in experience under 8 C.F.R. § 204.5(m)(4). The regulation requires the petitioner to still be employed as a religious worker during the break" and that the purpose of the break "was for further religious training or for sabbatical that did not involve unauthorized work in the United States." The evidence does not support the petitioner's assertion of continued employment by in Togo during the qualifying period. Accordingly, the petitioner has not established that he was employed prior to and after his work with .

Furthermore, the petitioner provided no evidence to support his assertion that he was engaged in religious training either before, or after, his employment with the or that the church required additional training prior to entering employment. In response to the director's RFE, the petitioner submitted certificates regarding his religious training. However, with the exception of an August 1, 2010, Certificate of Ordination from in Nebraska, none of the submitted certificates apply to the period in question. Additionally, the assertion that the petitioner was engaged in religious training beginning in November 2008 to prepare for his future employment with contradicts the petitioner's statement in his previous affidavit that he entered the United States to "scout prospective locations" for his expansion of *Matter of Ho*, at 591-92.

Additionally, the petitioner's assertion that following his termination by the he immediately began "religious preparations and further training to be a senior pastor for is unpersuasive. According to the petitioner, he founded the in Togo, served as its "Executive Pastor," and still serves as its "Executive Director." Thus it is unclear as to the nature of the "further religious training" that was required of him to serve as pastor of Furthermore, the petitioner stated that was not established until May 2010. 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.

The petitioner has not established that he was engaged in qualifying religious work during the period before or after his employment with nor has he submitted sufficient evidence to demonstrate that those periods constituted a qualifying break in the continuity of his work. Accordingly, the petitioner has not established that he has the requisite two years of continuous qualifying work experience immediately preceding the filing of the petition.

Beyond the decision of the director, the petitioner has not established his prospective employer's ability to provide the proffered 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 regulation at 8 C.F.R. 204.5(m)(10) provides:

> *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.

On the Form I-360, the petitioner indicated that would compensate him in the amount of $1,200 per month.

In response to the February 24, 2011, RFE, the petitioner provided a copy of his 2010 Form 1099-MISC from showing $5,400 in total compensation for that year. The petitioner also submitted copies of two bank statements for an account held by the church. The first, from September 2010, showed daily balances between $102.47 and $1,252.47. The second, from February 2011, showed daily balances between $39.14 and $1,206.14. This evidence is insufficient to demonstrate how the church intends to compensate the petitioner the proffered salary of $1,200 every month or $14,400 per year.

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.