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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: FEB 20 2015 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. We will dismiss the appeal.

The petitioner is a Roman Catholic diocese. 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 at New York. The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits a brief and additional evidence.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (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).

I. QUALIFYING EXPERIENCE

The issue to be discussed is whether the petitioner submitted sufficient evidence to establish that the beneficiary was engaged in continuous, qualifying religious work during the two years immediately preceding the filing of the petition.

A. Law

The regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working as a minister or in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, was filed on March 21, 2014. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work throughout the two-year period immediately preceding that date. The regulation at 8 C.F.R. § 204.5(m)(4) also sets forth the requirements for an acceptable break in the continuity of an alien's religious work as follows:

> 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...

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 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 [U.S. Citizenship and Immigration Services].
>
> If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

B. Facts and Analysis

In a March 7, 2014 letter accompanying the petition, the petitioner stated that the beneficiary was ordained as a Roman Catholic priest on June 4, 2011, and "has been continuously serving in his capacity as an ordained minister since that time." The petitioner submitted a copy of the beneficiary's certificate of ordination and copies of the beneficiary's IRS Forms W-2, Wage and Tax Statements, for the years 2012 and 2013. The Forms W-2 indicated that in 2012 the beneficiary earned $13,648.05 from and $13,648.02 from New York, and that in 2013 he earned $27,380.10 from

The director issued a Request for Evidence (RFE) on April 8, 2014. The director stated, "It appears that there is a break in the beneficiary's employment from the end of his EAD [Employment Authorization Document] (06/09/2012) to the start of when he entered his R-1 status in the US (09/06/2012). The director instructed the petitioner to submit additional evidence regarding the beneficiary's work history during the two-year qualifying period, including an explanation for any break in the continuity of the beneficiary's work.

In response to the RFE, the petitioner submitted a June 18, 2014 letter from the administrator of stating that the beneficiary "was assigned as Parroquial Vicar to our Parish as of July 1, 2011 until June 30, 2012." The petitioner also submitted a June 19, 2014 letter from the pastor of stating that the beneficiary "has been assigned to this parish since June 2012."

The director denied the petition on July 14, 2014, finding that there was a break in the continuity of the beneficiary's work from June 9, 2012 to September 6, 2012 and that "the nature of the break was not for further religious training or for sabbatical that did not involve unauthorized work in the United States." The director therefore found that the petitioner did not establish the beneficiary's qualifying experience.

On appeal, the petitioner states that "[d]uring the period of the alleged break in [the beneficiary's] employment between June 9, 2012 and September 6, 2012, there was a pending I-129 petition filed on behalf of [the beneficiary]." The petitioner further states:

> [The beneficiary] did not engage in unauthorized employment during the pendency of such application. Therefore, [the beneficiary] is eligible for tolling of unlawful presence under INA 212(a)(9)(B)(iv).

There are unresolved inconsistencies in the record regarding the dates of the beneficiary's employment during the qualifying period. The employment letters submitted in response to the

director's RFE indicated that the beneficiary was "assigned to" parish until June 30, 3012, and "has been assigned to parish since June 2012." The beneficiary's authorization to work in the United States ended on June 9, 2012. The petitioner's representative asserts on appeal that the beneficiary did not engage in unauthorized employment while awaiting approval of his R-1 nonimmigrant status. The petitioner must 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).

Regarding the petitioner's contention that the beneficiary is eligible for tolling of unlawful presence, section 212(a)(9)(B)(iv) of the Act refers to the accumulation of unlawful presence as it relates to inadmissibility. The provision does not alter or negate the eligibility requirement under 8 C.F.R. § 204.5(m)(4) that a beneficiary must have two years of continuous, qualifying experience.

To the extent that the beneficiary was not working during the period in question, the petitioner has not established that this break meets the requirements of 8 C.F.R. § 204.5(m)(4). That regulation requires in part that the alien "was still employed" and that the "nature of the break was for further religious training or for sabbatical." As stated above, the petitioner's representative asserts on appeal that the beneficiary was not employed while the Form I-129 petition filed on his behalf was pending. Further, the petitioner has not asserted or submitted documentation to establish that the beneficiary was on sabbatical or was engaged in religious training during the break.

As the petitioner did not 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 any subsequent proceeding, this issue may require further discussion as the petitioner has not established that the beneficiary was authorized to work for or between June 9, 2012 and September 6, 2012.

II. CONCLUSION

For the reasons discussed above, the petitioner has not established that the beneficiary has the requisite two years of continuous, qualifying religious work immediately preceding the filing of the petition. Accordingly, we will dismiss the appeal.

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.