

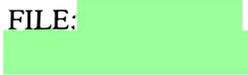
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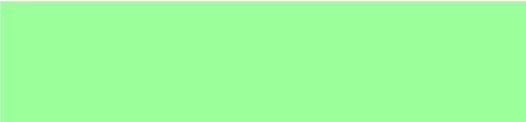
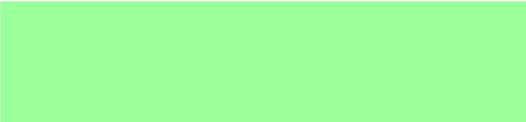
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Service  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

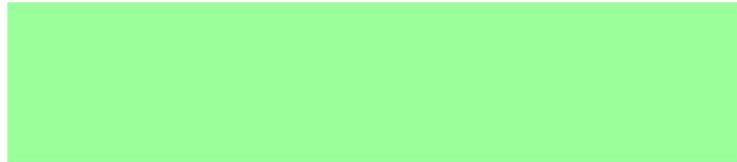


DATE: **MAR 04 2015** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition. We dismissed the petitioner's appeal. The petitioner then filed three motions to reopen and to reconsider. In each instance, we granted the motion to reopen, dismissed the motion to reconsider, and affirmed the previous decision. The matter is now before us on a fourth motion to reopen. We will grant the motion to reopen and **affirm** the denial of the petition.

The petitioner is a Sikh temple. It filed Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on August 28, 2009, seeking 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). The petitioner states that the beneficiary will perform services as a *hirtankar*, or devotional hymn singer and priest. The director denied the petition on January 12, 2010, having 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. We dismissed the appeal on April 23, 2012, affirming the director's decision and finding an additional ground for dismissal based on the lack of required evidence regarding the beneficiary's compensation. We issued our subsequent decisions on June 24, 2013; December 3, 2013; and August 29, 2014.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

With the current motion, the petitioner submits a statement, a new affidavit from the beneficiary, copies of property records, a letter from a member of the petitioning congregation, and copies of Internal Revenue Service (IRS) documents. Except where necessary for context, this decision will not repeat details about the chronology of the proceeding that appeared in earlier decisions. In the present decision, we will generally limit discussion to issues raised or addressed in this latest motion.

### I. Law

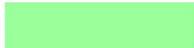
Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(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 . . . ; 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 the petitioner to show that the beneficiary has been working as a minister or in a qualifying religious occupation or vocation continuously for at least the two-year period immediately preceding the filing of the petition. The regulation at 8 C.F.R. § 204.5(m)(11) reads, in pertinent part:

*Evidence relating to the alien's prior employment. . . .* 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 [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.

The regulation at 8 C.F.R. § 204.5(m)(10) states:

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.

## II. Compensation

### A. Housing

As discussed in our previous decisions, the petitioner and the beneficiary have offered conflicting assertions regarding the beneficiary's past housing arrangements. Our August 29, 2014, decision reads, in pertinent part:

At various times, the petitioner and/or the beneficiary have claimed that the beneficiary resided: (1) in "an apartment located in the Temple . . . at [REDACTED] (2) in an apartment owned by the petitioner at [REDACTED] and (3) at [REDACTED]. The petitioner and the beneficiary have made conflicting claims regarding the third listed address. In a statement submitted with the first motion, the beneficiary noted the similarity between the two addresses, [REDACTED] and stated: "It is obvious from being only one street number off that a

typographical error occurred somewhere. I have always lived at the Temple since I entered the United States.” Subsequently, the petitioner contradicted the beneficiary’s claim by submitting a copy of a lease for an apartment at [REDACTED] [REDACTED] stating that the beneficiary moved to that address in order to provide room for his family. The petitioner also provided conflicting dates for the beneficiary’s claimed use of that address, with some documents indicating the beneficiary planned to move to the apartment in September 2008, and others placing him there as early as 2004. . . .

The petitioner . . . acknowledges “a discrepancy” but does not directly address it, and submits nothing to resolve it or to explain the petitioner’s and the beneficiary’s contradictory claims. The discrepancy relating to the beneficiary’s past housing, therefore, remains as a factor that casts doubt on the petitioner’s claim to have compensated the beneficiary with housing prior to the filing of the petition. The petitioner, on motion, has not overcome the finding that the petitioner has not submitted adequate evidence of non-salaried compensation as required by the regulation at 8 C.F.R. § 204.5(m)(11)(ii).

In his May 23, 2012, affidavit, the beneficiary stated:

I have lived at an apartment located in the Temple since I began working for the [REDACTED]. The temple is located at [REDACTED]. I was told that USCIS stated that I claimed on a biographic data form to live at [REDACTED]. I do not know if USCIS made an error in stating that in its decision, if my attorney erroneously completed the form, or if I made an error in providing the address to my attorney. It is obvious from being only one street number off that a typographical error occurred somewhere. I have always lived at the Temple since I entered the United States.

When filing the motion that included the beneficiary’s affidavit, [REDACTED] president of the petitioning temple, stated on Form I-290B, Notice of Appeal or Motion, that the motion included:

A statement from the Beneficiary confirming that the address of [REDACTED] [REDACTED] was in fact a typographical error, because he clearly intended to state [REDACTED] which was the address of the Temple where he was employed, and where he was provided living accommodations.

In an accompanying affidavit, Mr. [REDACTED] stated: “The Beneficiary is provided living accommodations at our Temple as part of his compensation. Photographs of the living accommodations are attached.” The May 2012 motion also included several photographs, captioned “Beneficiary’s apartment in temple.”

The latest motion includes a new affidavit signed by the beneficiary and dated September 29, 2014. The new affidavit (submitted in both English and Punjabi) reads, in part:

In Sep./05/2003 I lived in an apartment at [REDACTED] which is the property of [the petitioning] temple . . . with other priests. . . . Although, I was using the mailing address [REDACTED] which [is] the address of Sikh temple.

In Sep./08/2008 I moved to [an] apartment at [REDACTED] rented by Sikh temple for me and my family. . . .

In Sep./01/2010: [I] moved back to the old apartment at [REDACTED] with the family. . . . Since then I am here in this apartment with my family.

I don't remember signing any letter saying that I had always lived at the Temple. If I did sign such a statement I couldn't've understood it if it was in English. Sometimes people give me papers to sign written in English telling me that "the lawyer wanted me to sign it." I should have insisted that these papers were translated into Punjabi but I did not.

The beneficiary has, thus, disavowed his earlier affidavit, stating that he does not remember signing it; he would not have been able to read it; and that it contained erroneous information about his address. A statement submitted with the motion contends: "Any contradiction between this and prior statement made by the beneficiary can be explained by the fact that this is the first time that the beneficiary is providing a statement in Punjabi, the only language he understands."

The beneficiary's new affidavit refers to unnamed "people" and an unidentified "lawyer" who may have been involved in the preparation of his statement. When the beneficiary executed his first affidavit on May 20, 2012, the petitioner did not claim any legal representation. The first motion, filed May 23, 2012, included a reference to "previous counsel," indicating that the petitioner had dismissed its previous attorney. The May 2012 filing included no Form G-28, Notice of Entry of Appearance as Attorney or Representative, and no other evidence that any attorney was involved with preparing or filing the May 2012 motion. Therefore, the record indicates that there was no attorney involved at the time of the beneficiary's May 20, 2012, affidavit. This leaves the question of who prepared the 2012 affidavit, if the beneficiary was not capable of preparing or understanding it on his own.

Whatever the beneficiary's language skills, it is the petitioner, not the beneficiary, who submitted the affidavit to USCIS in support of the first motion. By signing part 10 of Form I-360, temple president [REDACTED] predecessor) certified under penalty of perjury, on the petitioner's behalf, that all of the evidence submitted with the petition was true and correct. Therefore, the petitioner is responsible for the truth and accuracy of all documents submitted in support of the petition. In the latest motion, the petitioner repudiates the beneficiary's 2012 affidavit

but does not explain why it previously submitted the beneficiary's sworn affidavit that, it now claims, contained false information.

Furthermore, if the beneficiary's 2012 affidavit contained an error about his living arrangements, then Mr. [REDACTED] repeated that error on Form I-290B and in an accompanying affidavit. The beneficiary's assertion of a language barrier does not explain Mr. [REDACTED] statements or the captions on the photographs, all of which conveyed the same information as the disavowed affidavit.

The petitioner has repeatedly submitted contradictory statements from multiple sources regarding the beneficiary's claimed arrangements, and the latest motion offers an explanation does not account for the materials previously submitted. Doubt cast on any aspect of the petitioner's proof may 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. 582, 591 (BIA 1988). It is incumbent upon 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. *Id.* at 582, 591-92.

For the reasons discussed above, the petitioner has not resolved the credibility issues surrounding its prior filings.

### **B. Salary**

On the employer attestation that accompanied the petition, the petitioner stated that the beneficiary would receive an "annual salary [of] \$25000 plus free boarding & lodging." [REDACTED] claimed in an accompanying letter that the beneficiary "receives an annual salary of \$25,000 including free lodging and boarding valued at \$15,400." If the \$25,000 figure includes lodging and boarding, then the beneficiary's remaining compensation would have been \$9,600 per year.

On appeal from the denial of the petition, Mr. [REDACTED] stated that the \$25,000 salary figure "includes free boarding and lodging valued at \$15,400," leaving an "annual cash salary [of] approximately [\$]10,000 per annum." He also stated: "our organization has fixed his salary at \$10,400 per annum from 2009 onwards. . . . Previously [the beneficiary] was receiving lesser salary but he has always been our full time employee since April 2003."

Earlier decisions have described evidence that the petitioner has submitted, at various times, to establish the beneficiary's past and intended future compensation. Our August 29, 2014, decision included the following finding:

As detailed in our earlier decisions, the IRS documentation of the beneficiary's compensation has been incomplete and inconsistent. The petitioner does not address this point on motion. The assertion that the petitioner was able to fully compensate the beneficiary does not establish that the petitioner actually did so.

The petitioner's present motion addresses two specific issues. First, the petitioner contests "[t]he claim that the petitioner submitted a 'fraudulent' form W-2 in support of an R-1 petition upon the beneficiary's behalf." However, the word "fraudulent" did not appear in any prior AAO decision relating to this matter. Rather, we stated that the form was "altered." In a June 28, 2013, decision on an appeal from the nonimmigrant petition, we stated:

The petitioner also submitted a photocopied IRS Form W-2, purporting to indicate that the petitioner paid the beneficiary \$16,250 [in wages] in 2012. The document is altered; the final "2" is handwritten on the otherwise printed year "2012." There are marks on lines 1 through 6, 16, and 18 of the form that are consistent with erasure and replacement of information. The dollar amounts on those lines are all handwritten on the otherwise typed or printed form.

In our August 2014 decision, we stated:

When we dismissed the petitioner's appeal of the denial of the Form I-129 petition, we found that the petitioner had submitted an altered IRS Form W-2. Our decision of June 28, 2013 describes the alterations. The petitioner has, therefore, made conflicting claims and submitted altered documentation in seeking immigration benefits for the beneficiary.

On motion, the petitioner submits a letter from Dr. [REDACTED] who describes himself as a volunteer accountant for the petitioning temple. Dr. [REDACTED] acknowledges that the "form contains multiple alternations [*sic*], such as the year on the form is changed to 2012 by hand altering the last number." Dr. [REDACTED] does not explain why the forms were altered. Dr. [REDACTED] states: "The form, as altered[,] contains correct information, including that [the beneficiary] was paid wages of \$16,250 in 2012." The petitioner submits copies of several forms containing similar alterations for the beneficiary and other employees.

The petitioner submits an IRS transcript, stating that it shows "the form W-2 . . . [was] not fraudulent at all." The newly-submitted IRS transcript shows that the 2012 Form W-2 reported \$6,800 in wages. This amount is nearly \$10,000 less than the \$16,250 shown on the admittedly altered Form W-2 that the petitioner has submitted more than once. The petitioner offers no explanation as to why the admittedly altered document does not match the corresponding IRS transcript.

The materials submitted on motion confirm our prior finding that the 2012 Form W-2 was altered; Dr. [REDACTED] admits this in his new statement. The major discrepancy between the altered form and the newly submitted IRS transcript raises new questions of credibility.

The petitioner's final assertion on motion concerns the "[l]ack of evidence that the petitioner paid the beneficiary a salary during the 2 years prior to the petition being filed." In previous decisions, we observed that the petitioner had not submitted a copy of the beneficiary's IRS Form W-2 for 2007, even though the director had specifically requested that document in October 2009.

For 2007, the petitioner submitted an uncertified copy of IRS Form 1040, U.S. Individual Income Tax Return, showing that the beneficiary earned \$10,400 in business income. The beneficiary stated that he filed an amended return in 2010, increasing the total business income to \$27,150. For 2008, the petitioner originally submitted an uncertified copy of IRS Form 1040 and a copy of IRS Form W-2, both showing that the petitioner paid the beneficiary \$6,800 in wages. The beneficiary stated he subsequently amended the return to add \$19,810 in business income. A copy of IRS Form W-2 indicated that the petitioner paid the beneficiary \$10,400 in wages in 2009. An uncertified copy of the beneficiary's IRS Form 1040 for 2009 showed the same \$10,400, plus \$24,450 in business income.

In our initial April 23, 2012, dismissal notice, we noted that the beneficiary's initially reported 2008 wages fell "below the petitioner's new stated salary of \$10,000 per year," and that the petitioner had submitted inconsistent evidence regarding the beneficiary's 2007 compensation. We stated that amended tax returns, filed after the director raised concerns about the beneficiary's compensation, have diminished evidentiary weight. These concerns are amplified by other statements in the record that are questionable or unsubstantiated.

In a footnote to our June 2014 motion decision, we stated:

Future submission of the 2007 Form W-2 would not overcome the denial of the petition. *Cf. Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988) (if the petitioner fails to submit specifically requested evidence in response to a request from the director, USCIS will not accept that evidence if submitted later on appeal).

On motion from that decision, the petitioner's "Index of Exhibits" listed copies of the beneficiary's "W-2 Forms for 2007, 2008 and 2009." The motion included only the forms for 2008 and 2009, both submitted previously. In our subsequent decision, issued in December 2013, we repeated the finding that the director had requested the 2007 IRS Form W-2 before denying the petition, and that the petitioner had not accounted for the document's absence from the record.

The 2007 IRS Form W-2 was not a factor in the petitioner's third motion or in our August 2014 decision on that motion. In the instant motion currently before us, the petitioner submits a statement indicating that it "will be supplementing this motion with [IRS transcripts] for 2007 shortly." The petitioner offers no explanation for its failure to provide this documentation at the time the director requested it nearly five years earlier.

The regulation at 8 C.F.R. § 103.3(a)(2)(vii) permits the petitioner to request an extension, for good cause shown, to file a brief in support of an appeal. There is no parallel regulation that would permit the petitioner to supplement a motion to reopen that has already been filed. The record does not contain a copy of the beneficiary's 2007 IRS Form W-2, or any explanation for its continued absence from the record.

The petitioner submits IRS transcripts and [REDACTED] documents for 2008 and 2009, showing amounts consistent with documents submitted previously. The motion includes the following assertion with respect to the IRS documentation:

Petitioner respectfully submits that it is immaterial whether these amount[s] coincide with whatever representations have been made in the past regarding that salary that was or will be paid to the beneficiary. Inasmuch as the Act contains no requirement that [the] religious worker have been paid at all during their qualifying employment, the only apparent purpose of the regulations requiring evidence of payments to the beneficiary is to corroborate his claims to have been employed, which the official IRS documents submitted herewith certainly do.

The petitioner signed Form I-360 under penalty of perjury, and as such, the petitioner has a legal obligation to provide truthful and accurate information throughout the course of the proceeding. If the petitioner makes a claim about the beneficiary's past compensation, and subsequent evidence contradicts that claim, the discrepancy necessarily diminishes the petitioner's overall credibility. See *Matter of Ho*, 19 I&N Dec. 591. Documentation that does not match the petitioner's claims may establish that employment took place, as asserted on motion, but it does not mean that the petitioner's assertions regarding the nature and extent of that employment are credible or reliable. Furthermore, section 101(a)(27)(C)(iii) of the Act and the regulation at 8 C.F.R. § 204.5(m)(4) require the qualifying past experience to have been continuous. Discrepancies in the amount of past compensation raise questions about the continuity of the past employment.

### III. Conclusion

Throughout this proceeding, the petitioner has provided conflicting information regarding the beneficiary's salaried and non-salaried compensation. The petitioner's latest motion confirms rather than rebuts our finding that the 2012 IRS Form W-2 has been altered, and the beneficiary's new affidavit, disavowing his earlier affidavit, does not account for third-party statements attesting to the accuracy of the earlier affidavit.

We will affirm the denial of the petition for the above stated reasons. 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, the petitioner has not met that burden.

**ORDER:** The AAO's decision dated August 29, 2014, is affirmed. The petition remains denied.