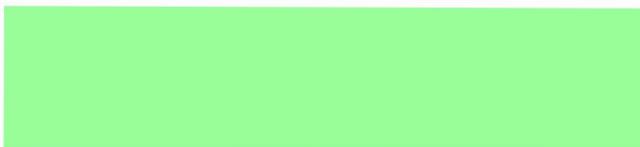




U.S. Citizenship
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Services

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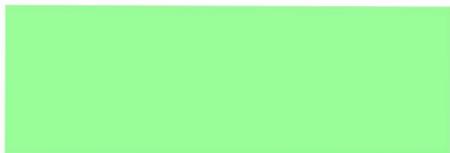


DATE: **MAR 16 2015** OFFICE: CALIFORNIA SERVICE CENTER FILE:

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 on appeal. We will dismiss the appeal.

The petitioner is a Roman Catholic 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 catechist. The director determined that the petitioner had not established (1) how it intends to compensate the beneficiary, and (2) that the beneficiary had the required two years of continuous work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits a legal brief with supporting exhibits including background documentation and a statement from the beneficiary.

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,

(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).

II. Facts and Analysis

a. Compensation

The regulation at 8 C.F.R. § 204.5(m)(7) requires the prospective employer to attest:

(xi) That the alien will not be engaged in secular employment, and any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer; and

(xii) That the prospective employer has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges.

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 [U.S. Citizenship and Immigration Services]. If IRS [Internal Revenue Service] 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 filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on December 18, 2013. The petitioner indicated that the beneficiary has a spouse and five dependent children. The petitioner attested that it has the ability and intention to compensate the beneficiary at a level at which he and his accompanying family members will not become public charges.

Rev. Fr. James Schumacher, pastor of the petitioning church, stated:

In exchange for his services, [the petitioner] will be providing [the beneficiary] and his family with non-salary compensation in the form of grocery assistance and free tuition at St. Laurence O'Toole School to [the beneficiary's] children. The Parish has sufficient funds with which to support [the beneficiary]. . . . Please refer to the Financial Report . . . in particular the line item J(4) entitled "Mission Work" in an amount of \$13,665.00, which supports assistance to [the beneficiary] and his family.

The "financial report" is actually the petitioner's 2013-2014 budget. The petitioner also submitted copies of report cards showing that the beneficiary's children attend the parish school. The petitioner did not claim to provide the beneficiary with any compensation other than grocery vouchers and tuition for his children. The petitioner did not directly document the tuition

arrangement or establish that the entire amount budgeted for “Mission Work” was used for groceries for the beneficiary and his family.

The petitioner submitted documents showing the beneficiary’s monthly expenses, including \$1,200 for rent, \$46 for telephone service, and utilities of at least \$70. The petitioner did not document the source(s) of the funds the beneficiary used to make those payments.

The director issued a request for evidence (RFE) on March 4, 2014. The director acknowledged the petitioner’s assertions regarding grocery assistance and tuition, but stated that the petitioner had not established “how the beneficiary is expected to meet expenses of daily living.”

In response, [REDACTED] leader of the beneficiary’s [REDACTED] Community in Poland, stated:

[O]ur [REDACTED] Community supports [the beneficiary and his spouse] financially in their mission as Catechists in the United States, and have done so since they have arrived in the United States. Our community regularly takes up monetary collections specifically for the [beneficiary’s family]. . . . I transfer [the money] to [the beneficiary’s P]olish account, then he transfer[s] it via [REDACTED]. . . In 2013, for instance, we sent [the beneficiary] close to \$30,000.00.

Mr. [REDACTED] stated that the community sending these donations “is a group [of] about 65 persons,” indicating that each member of the community contributed, on average, between \$400 and \$500 to support the beneficiary’s family in 2013. Printouts from the beneficiary’s [REDACTED] account show multiple transfers between August 2010 and December 2012.

In a statement accompanying the RFE response, the petitioner’s prior counsel¹ stated that these “regular monetary collections . . . will continue to be taken up in [the beneficiary’s] [REDACTED] community for as long as he is in the United States. . . . These collections by his [REDACTED] community are a feature of the [REDACTED] Way and appear in the Statutes of the [REDACTED] Way.” In response to the RFE, the petitioner’s present counsel also stated that these “regular monetary collections . . . will continue to be taken up in [the beneficiary’s] [REDACTED] community for as long as he is in the United States.” The petitioner has sought permanent immigration benefits for the beneficiary; counsel’s assertion, therefore, is that the [REDACTED] Community intends to support the beneficiary as long as he remains a member of the community. To support this contention, prior counsel quoted Article 4, section 2 of the Statutes of the [REDACTED] Way, which states that “collections may be made to answer different needs.”

The director denied the petition on July 21, 2014, stating:

¹ A different attorney represents the petitioner on appeal, and the previous attorney is referred to as “prior counsel” in this decision.

The record of evidence [*sic*] shows that although the beneficiary is being supported by both the petitioner and a Catechists' organization abroad, there is no definite source of funds to ensure the beneficiary's permanent income for his full time services. . . .

There has been no mention of health care provisions or a steady and permanent flow of monies from the petitioner to cover . . . the beneficiary's daily living expenses. Moreover, the record shows that the beneficiary has been dependent on monetary collections taken up abroad.

(Emphasis in original.) In its appellate brief, the petitioner states:

The Act requires that the Petitioner merely demonstrate how it intends to compensate the alien, which can either be salaried or non-salaried. (*See* 8 C.F.R. 204.5(m)(10).

Neither the Act nor the USCIS Regulations require that the Petitioner demonstrate a "definite source of funds to ensure the beneficiary's permanent income," as stated in the denial letter.

The regulation at 8 C.F.R. § 204.5(m)(8)(xi) requires the prospective employer to attest that the beneficiary's compensation "will be paid to the alien by the attesting employer." The attesting employer is the petitioning organization and the prospective employer. The prospective employer, in this instance, has indicated it will provide only a fraction of the beneficiary's intended compensation.

The director found that the petitioner had not submitted evidence to corroborate the assertion that payments from Poland "will continue . . . for as long as [the beneficiary] is in the United States," The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). On appeal, the petitioner does not dispute this finding or submit evidence to the contrary, but instead contends that the payments need not continue into the future. The petitioner does not explain the prior assertion that the beneficiary would receive support payments "for as long as he is in the United States."

The regulation at 8 C.F.R. § 204.5(m)(8)(xii) requires the intending employer to attest that it "has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges." The petitioner has not shown that a family of seven will not become public charges at the level of compensation provided by the petitioning church. The 2014 poverty guideline for a family of seven is \$36,030 per year,² which is substantially higher than the \$13,665 in groceries that the petitioner states the beneficiary receives in a year. The petitioner, therefore, does not compensate the petitioner at a level at which the beneficiary and his accompanying family members will not become public charges.

² Source: [http://\[REDACTED\]](http://[REDACTED]) (printout added to record February 12, 2015).

The petitioner's appellate brief cites Article 33 of the Statutes of the [REDACTED] Way, which states: "The family in mission . . . accepts to live its mission in precariousness." Counsel states: "The beneficiary's mission as a religious worker envisages 'precariousness,' and not 'permanent income.'" The controlling issue here is not whether the beneficiary adheres to the Statute of the [REDACTED] Way, but whether the petitioner has satisfied the regulatory requirements pertaining to a secular immigration benefit.

Determining the status or the duties of an individual within a religious organization is one thing; determining whether that individual qualifies for status or benefits under our immigration laws is another. Authority over the latter determination lies not with the [petitioning] Church or any other ecclesiastical body but with the secular authorities of the United States. See *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

Matter of Hall, 18 I&N Dec. 203, 207 (BIA 1982). The regulations require the beneficiary's compensation to come directly from the employer, at a level sufficient to ensure that the beneficiary and his family will not become public charges. The petitioner has not met these requirements.

The petitioner maintains that it "has adequately complied with the evidentiary standards set forth, and it is an abuse of discretion for the Agency to expand the standard by adding the requirement of ensuring 'permanent income' when that requirement is mentioned nowhere in the Act." Nevertheless, the regulation at 8 C.F.R. § 204.5(m)(2) requires that the beneficiary must be coming to the United States to work in a full time, compensated position. Compensation is a fundamental requirement of the regulation rather than an extraneous burden arbitrarily imposed by the director.

The petitioner states:

The USCIS regulations . . . state that an *exception to the compensation requirement* is made for those who have taken a vow of poverty or "similar commitment." (See attached Federal Register Vol. 73, No. 229 p. 72277). In the present case, Beneficiary's [sic] have taken on a similar commitment akin to a vow of poverty as outlined in Article 33 of the Statute of the [REDACTED] Way, and can avail themselves of the exception to the compensation requirement on the part of the Petitioner.

The cited passage from the *Federal Register* is not a regulation. Rather, it is from a summary of "[s]ome of the changes proposed under the NPRM" (notice of proposed rulemaking) published at 72 Fed. Reg 20442 (April 25, 2007). Furthermore, the record documents no "vow of poverty" by the beneficiary. Article 33 of the Statutes of the [REDACTED] Way does not indicate that "families in mission" are bound by vows. Rather, that document indicates that "the family accepts to live its mission in precariousness . . . remaining free to discontinue it at any moment."

In his statement submitted on appeal, the beneficiary does not claim to have taken a vow of poverty or any similar commitment. Rather, he stated that his "family was picked by lottery to be sen[t] to

[the] USA, to Wyoming,” owing to an asserted shortage “of priests and catechists” in that state, and that his family chooses to live “in this kind of poverty” rather than a “consumery live [*sic*] to dream only about [a] new car or career.”

The petitioner states that the regulation at 8 C.F.R. § 214.2(r)(1)(ii) provides an “exception to the compensation rule for self-supporting R-1 workers.” The cited regulation pertains to nonimmigrant petitions: there is no parallel provision for special immigrant petitions. The petitioner does not seek the beneficiary’s admission as a nonimmigrant for temporary, uncompensated missionary work. Rather, the petitioner seeks to employ the beneficiary permanently as a catechist. The regulation at 8 C.F.R. § 214.2(r)(11)(ii) is not relevant to the proceeding at hand, and it does not exempt the petitioner from the regulatory requirements that the petitioner compensate the beneficiary and document how it will do so.

The petitioner did not provide IRS documentation relating to compensation, and it did not account for the absence of such evidence as required by 8 C.F.R. § 204.5(m)(10). The petitioner has therefore not established how it intends to compensate the beneficiary at a level at which he and his family members will not become public charges.

b. Qualifying Experience

The regulation at 8 C.F.R. § 204.5(m)(11) provides:

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.

In his introductory letter, Rev. [REDACTED] stated that the beneficiary “has been working full-time at [the petitioning] parish as a Catechist since his arrival in May of 2010.” The record shows that the beneficiary was in the United States from August 7, 2011, to February 25, 2013, and from April 8, 2013 through the date of filing. As described above, the petitioner submitted a copy of its 2013-2014 budget showing \$13,665 in “mission support,” but this document does not show that the

beneficiary received that amount. Similarly, evidence of the beneficiary's admission as an R-1 nonimmigrant religious worker is not evidence that he subsequently performed the work for which he was hired, or that he received compensation for that work.

The petitioner also cited the beneficiary's "utility bills, lease, etc." as "evidence of non-salary remuneration," but these documents show only that the beneficiary met those expenses, not that the petitioner provided the means for him to do so. The initial submission contained no IRS documentation of the beneficiary's compensation, and no explanation for its absence.

In the March 2014 RFE, the director instructed the petitioner to submit documentary evidence to meet the requirements outlined at 8 C.F.R. § 204.5(m)(11). In response, the petitioner cited a new letter from Rev. [REDACTED] [REDACTED] documentation showing transfer of funds between the beneficiary's bank accounts in Poland and the United States, and copies of previously submitted documentation relating to the beneficiary's nonimmigrant status and his children's attendance at the petitioner's school. Rev. [REDACTED] stated that the petitioner "has employed [the beneficiary] since May 30, 2010 to the present date of May 21, 2014." Rev. [REDACTED] stated:

The form of compensation for [the beneficiary] was unsalaried. Since [the petitioner] is exempt under a group exemption for the Catholic Church as a 501(c)(3) organization, there is no IRS documentation of the non-salaried compensation. . . .

[The beneficiary] was initially compensated by provision of a house to live in with his family, and a car. The lease for the house is attached, as is a copy of the title to the car. [The beneficiary] later moved out of that house when his family grew, and he rented another home from the money collected by his community in Poland. . . .

[The beneficiary] has also been compensated by grocery assistance in the form of a monthly grocery gift card. [The beneficiary] has also been compensated with free Catholic School tuition for his sons.

The petitioner's designation under section 501(c)(3) of the Internal Revenue Code exempts the petitioner from paying federal income tax, but it does not exempt the petitioner from reporting the compensation paid to its employees. "Generally, churches and religious organizations are required to withhold, report, and pay income and Federal Insurance Contributions Act (FICA) taxes for their employees." IRS Publication 1828, *Tax Guide for Churches and Religious Organizations*, p. 18.³

Exempt Organizations: What Are Employment Taxes?, a page on the IRS's web site, contains the following information:

Generally, meals, lodging, clothing, services and other payments in kind are subject to Social Security and Medicare taxes, as are wages paid in cash. However, meals are not taxable wages if furnished for the employer's convenience and on the employer's

³ Available at <http://www.irs.gov/pub/irs-pdf/p1828.pdf> (partial printout added to record February 12, 2015).

premises. Lodging is not taxable if furnished for the employer's convenience, on the employer's premises and as a condition of employment.

The organization, as the employer, must withhold and deposit the employee's part of the taxes and pay a matching amount.⁴

The petitioner has not claimed that the beneficiary resided or took meals on the employer's premises. Therefore, any compensation, whether salaried or in some other form, would have constituted taxable income, reportable to the IRS.

The record contains copies of two Certificates of Title, one identifying the beneficiary as the owner of a [REDACTED] as of September 1, 2010, and the other identifying the beneficiary and his spouse as joint owners of a [REDACTED] as of December 10, 2012. A copy of an auto insurance bill is, likewise, in the beneficiary's name, indicating that the beneficiary was responsible for paying the insurance premium. The record contains no documentation showing that the petitioning church purchased either vehicle or owned it before transferring title to the beneficiary

The lease for the home where the beneficiary lived at the time of filing is in the names of the beneficiary and his spouse and indicates that they are responsible for rent payments. The petitioner did not submit documentary evidence showing where the beneficiary lived before June 1, 2013 (the effective date of the lease), or that the petitioner provided that housing. The first page of the 2013 lease defines the term "previous lease" as referring to a "lease from September 2, 2011 . . . ending on May 31, 2012," but the document contains no other references to the "previous lease." It is not clear, therefore, whether the beneficiary resided at the same property during that earlier period. The record does not establish that the beneficiary resided in housing owned by the petitioner, or that the petitioner made any rent payments on the beneficiary's behalf.

The record does not document the petitioner's purchase or distribution of grocery gift cards. 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 director, in denying the petition, acknowledged the beneficiary's R-1 nonimmigrant status, but found "there is nothing in the record to show that the beneficiary received salaried compensation such as an IRS Form W2 or certified copies of income tax returns during the qualifying period."

On appeal, the petitioner states:

In this case, the IRS documentation is not available because the beneficiary's earnings were not sufficient [to] require the filing of a tax return. Furthermore, the petitioner provided an explanation for its absence along with other documentation

⁴ Source: <http://www.irs.gov/Charities-&-Non-Profits/Exempt-Organizations:-What-Are-Employment-Taxes%3F> (printout added to record February 12, 2015).

showing how the beneficiary was being supported, as provided by 8 C.F.R. § 204.5(m)(10).

The petitioner's previous explanation for the unavailability of IRS documentation was based on the incorrect assumption that 501(c)(3) tax-exempt organizations are entirely exempt from IRS reporting requirements. The director, in the denial notice, informed the petitioner that the beneficiary's compensation is subject to IRS reporting requirements even if it did not take the form of salaried compensation. The petitioner has not responded to this information except to assert that "the beneficiary's earnings were not sufficient [to] require the filing of a tax return."

With respect to the assertion that the petitioner has provided other evidence of compensation, that evidence is incomplete and does not meet the petitioner's burden of proof. The petitioner states that the beneficiary received grocery gift cards, but the record does not document their purchase or distribution. The petitioner claims to have provided housing to the beneficiary, but the only documentation of his past housing is a lease indicating that the beneficiary, not the petitioner, was responsible for rent payments. Automobile titles do not show that the petitioner purchased cars for the beneficiary.

The petitioner has documented the beneficiary's children's attendance at the petitioner's school, but the record does not support the petitioner's other assertions regarding the beneficiary's compensation. The director correctly found that the petitioner had not met its burden of proof.

III. Conclusion

We will dismiss the appeal 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, the petitioner has not met that burden.

ORDER: The appeal is dismissed.