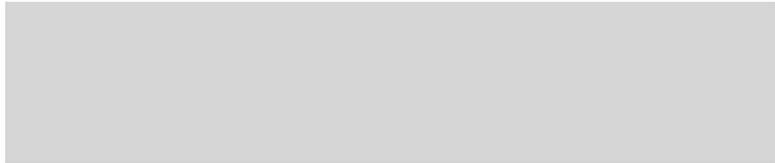




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **MAY 12 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:

SELF-REPRESENTED

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 local conference of the [REDACTED]. 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 literature evangelist. The director determined that the petitioner failed to establish how it intends to compensate the beneficiary and that the beneficiary had been continuously employed as a religious worker for at least two years preceding the filing of the petition.

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

The first issue to be considered is whether the petitioner submitted sufficient evidence to establish how it intended to compensate the beneficiary.

#### 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, 2012, 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, 2012, 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)(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 [Internal Revenue Service (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.

#### PERTINENT FACTS AND PROCEDURAL HISTORY

The petitioner filed the Form I-360, Petition for Amerisian, Widow(er) or Special Immigrant, on April 23, 2013. The petitioner listed the beneficiary's proposed compensation on the Form I-360 as \$2,400 per month (\$28,800 per year). In a March 18, 2013 letter submitted at filing, the petitioner stated that, "[b]ased on his performance, [the beneficiary] is expected to earn a minimum of \$2,400 per month." The petitioner also stated that the [redacted] has more than [redacted] members worldwide and annual contributions exceeding \$1.4 billion dollars

On August 20, 2013, the director issued a Request for Evidence (RFE) asking, in part, that the petitioner submit evidence of how it intends to compensate the beneficiary. The director noted that evidence could include, but was not limited to: "proof of past compensation for similar positions," "budgets showing monies set aside for salaries, leases, etc., (ex. Audited financial statements, bank statements/cancelled checks, paystubs)," and "IRS documentation, such as IRS Forms W-2 or certified tax returns." The director further stated: "If IRS documentation is unavailable, please submit an explanation for the absence of IRS documentation, along with comparable, verifiable documentation."

In response to the RFE, the petitioner submitted a letter dated October 8, 2013, signed by the petitioner's president, which stated that the petitioner had gross receipts in excess of \$22,000,000 during 2012 and assets exceeding \$60,000,000, and that "[m]eeting [the beneficiary's] compensation would present absolutely no problem for us." The petitioner submitted the beneficiary's IRS tax return transcripts for 2011 and 2012, which indicated total income of \$23,052 and \$30,001 in those years respectively, but did not identify the beneficiary's employer or the source of the income.

The director denied the petition on October 28, 2013, stating that the petitioner failed to present sufficient evidence to establish the petitioner's ability to provide the proffered compensation. The director noted that the submitted IRS transcripts did not identify the petitioner as the beneficiary's

employer, and that petitioner's unsupported statements as to its ability to compensate the beneficiary did not represent verifiable evidence.

On appeal, the petitioner submits an audited statement of its financial position for 2009 and 2010. The petitioner states in a November 26, 2013 letter that this is its "latest audited financial statement." The petitioner also submits copies of the front sides of seven pay checks totaling \$19,587.75, payable to the beneficiary from the petitioner, and dated between January 31, 2013 and November 7, 2013. In addition, the petitioner submits copies of the beneficiary's IRS Forms W-2, Wage and Tax Statements, from 2010, 2011 and 2012, showing income from the New Jersey [REDACTED] and the [REDACTED].

### ANALYSIS

The regulation at 8 C.F.R. § 204.5(m)(10) requires IRS documentation or an explanation for its absence along with comparable, verifiable documentation. As the submitted Forms W-2 are from the beneficiary's previous employers, they do not relate to the instant petitioner's ability to provide the proffered wage. The petitioner indicated on the petition that it employed 262 employees at the time of filing, but the petitioner has not provided any IRS documentation of wages paid, either to the beneficiary or for similar positions. The petitioner has not provided an explanation for this absence or provided comparable, verifiable documentation. The submitted copies of the beneficiary's 2013 paychecks show only the front side of the checks only and do not show that the checks have actually been paid during the normal banking process. Accordingly, they do not constitute verifiable evidence. Without IRS documentation or supporting verifiable evidence, the petitioner's audited financial statement from several years prior to filing the petition is insufficient to establish how the petitioner intends to compensate the beneficiary.

The next issue to be considered is whether the beneficiary has the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition.

The 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. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work in lawful immigration status throughout the two-year period immediately preceding April 23, 2013.

### RELEVANT LAW AND REGULATIONS

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 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.

If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

#### PERTINENT FACTS AND PROCEDURAL HISTORY

The petitioner indicated on the Form I-360 petition that the beneficiary arrived in the United States on April 20, 2012 in R-1 nonimmigrant status. The petitioner stated in section 5(c) of the Form I-360 employer attestation that the beneficiary has served as a literature evangelist “for several years in many countries such as [the] Philippines and the United States.”

In the director’s August 20, 2013 RFE, she requested evidence that the beneficiary had been continuously employed as a religious worker for the two-year period immediately preceding the filing of the petition. In response to the RFE, the petitioner again stated that the beneficiary “has been serving as [a] Literature Evangelist for several years in many countries such as [the] Philippines and the United States.” The petitioner submitted a letter dated January 8, 2008 from the [REDACTED] stating that the beneficiary “is a regular employee of [REDACTED].” The petitioner also submitted the beneficiary’s IRS tax transcripts for 2011 and 2012, and a copy of a Certificate of Recognition from the [REDACTED] [REDACTED] which states that the beneficiary was being recognized for his service and dedication “as a Literature Evangelist for several years.” In addition, the petitioner submitted evidence that the beneficiary held an R-1 nonimmigrant visa from April 17, 2008, to April 14, 2013, for employment with the [REDACTED] in New Jersey.

The director denied the petition stating, in part, that the submitted tax transcripts do not indicate the beneficiary's employer and the employment letter submitted in response to the RFE did not provide dates of employment.

On appeal, the petitioner submits evidence that the beneficiary was granted R-1 nonimmigrant status authorizing his employment with the petitioner from May 12, 2013 to August 1, 2013. In a letter dated November 26, 2013, the petitioner states that the beneficiary "began working in the United States in 2008 and has been serving the [redacted] continuously." In a "Certification" dated November 18, 2013, the President of the New Jersey [redacted] states that the beneficiary "served in New Jersey [redacted] under the supervision of [redacted] from September 4, 2010 and ended his tenure on the last day of December 31, 2012. In a letter dated November 26, 2013, the Associate Director of the [redacted] in [redacted] Maryland, states that the beneficiary "served as a Missionary Evangelist Bible Instructor from May 17, 2008 through December 31, 2012, with [redacted], a subsidiary of [redacted] and the [redacted] of the [redacted]." The letter also states that it authorizes a change of sponsorship to the petitioning organization and that "[a]ll entities concerned belong to the worldwide [redacted] and subscribe to the same organization, doctrines, beliefs and practices.

The petitioner also submits copies of the beneficiary's W-2 Forms, Wage and Tax Statement, for 2010, 2011 and 2012. The W-2 Forms show 2010 earnings of \$6,885.35 from the N.J. [redacted] (EIN [redacted]), 2011 earnings of \$23,052.48 from the New Jersey [redacted] (EIN [redacted]) and \$3,736 from the NJ [redacted] (EIN [redacted]) and 2012 earnings of \$26,265 from the [redacted] (EIN [redacted]). The petitioner further submitted copies of the beneficiary's pay checks from the [redacted] dated January 31, 2013 (\$3,010.25), March 5, 2013 (\$3,161.00), April 2, 2013 (\$2,405.00), July 1, 2013 (\$2,525.00), September 3, 2013 (\$2,837.75), October 3, 2013 (\$2,861.75) and November 7, 2013 (\$2,787.00).

#### ANALYSIS

The petitioner provides no explanation for the inconsistencies between the statements of the New Jersey [redacted] and the [redacted], as well as the submitted Forms W-2, regarding the beneficiary's dates of employment and his actual employer during the two years preceding the filing of the petition. It is incumbent upon the petitioner to 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).

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Therefore, the petitioner has not established the beneficiary's continuous, qualifying work experience during the two years preceding the filing of the petition.<sup>1</sup>

#### CONCLUSION

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, the burden has not been met.

**ORDER:** The appeal is dismissed.

<sup>1</sup> 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 any subsequent proceeding, this issue may require further discussion as the petitioner provides no evidence that the beneficiary was authorized to work for any employer other than the [REDACTED] of New Jersey during the qualifying period.