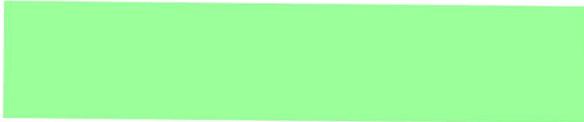


(b)(6)

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



DATE: JUN 18 2013 OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)

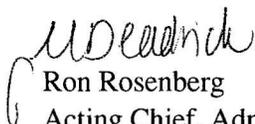
ON BEHALF OF PETITIONER:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a Presbyterian church. It seeks to classify the beneficiary as a nonimmigrant religious worker under section 101(a)(15)(R) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R), to perform services as a pastor. The director determined that the petitioner failed to submit the required employer attestation and adequate evidence regarding the beneficiary's compensation and past employment. The director also found that the petitioner failed a compliance review.

On appeal, the petitioner submits a statement from [REDACTED] a deacon of the petitioning church, writing on behalf of the petitioning organization.

Section 101(a)(15)(R) of the Act pertains to an alien who:

- (i) for the 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; and
- (ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii).

Section 101(a)(27)(C)(ii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii), pertains to a nonimmigrant who seeks to enter the United States:

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
- (II) . . . 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) . . . 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.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(1) states that, to be approved for temporary admission to the United States, or extension and maintenance of status, for the purpose of conducting the activities of a religious worker for a period not to exceed five years, an alien must:

- (i) Be a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least two years immediately preceding the time of application for admission;
- (ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);
- (iii) Be coming solely as a minister or to perform a religious vocation or occupation as defined in paragraph (r)(3) of this section (in either a professional or nonprofessional capacity);
- (iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and
- (v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

COMPLIANCE REVIEW

The first issue concerns the compliance review process. The USCIS regulation at 8 C.F.R. § 214.2(r)(16) reads:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The petitioner filed the Form I-129 petition on December 18, 2006. At that time, the petitioner listed its address as [REDACTED]. That same address appeared on Form G-28, Notice of Entry of Appearance as Attorney or Representative, submitted with the petition. The date on that form is December 5, 2006. The petitioner indicated that the beneficiary was already an R-1 nonimmigrant religious worker with a different employer, and the petitioner sought to amend the beneficiary's stay to reflect new employment with the petitioner.

The petitioner submitted a copy of a November 17, 2006 letter from the Internal Revenue Service (IRS), acknowledging the petitioner's tax-exempt status since 1998. The IRS addressed the letter to the petitioner at [REDACTED]. The petitioner also submitted a copy of an undated IRS Form 8822, Change of Address notice, indicating that the petitioner had moved from [REDACTED]. The form identified no intermediate address.

A copy of a rental agreement indicated that the petitioner rented the [REDACTED] address from [REDACTED] for \$1,500 per month, for the year beginning July 1, 2006. The form shows the typed date "June 21, 2006," and both signatures show the handwritten date "6/23/06."

The petitioner submitted what are purported to be photocopies of Korean-language programs for weekly worship services in late 2006. The programs dated October 22, November 5, and November 12 show the petitioner's [REDACTED] address as [REDACTED]. The programs dated November 19 and 26 show the address as [REDACTED].

On July 8, 2007, a USCIS officer traveled to the [REDACTED] location in order to perform a compliance review. The officer found a different church operating from the [REDACTED] location. The pastor of that church stated that his church moved into the space in June 2007. On July 9, 2007, a USCIS officer visited [REDACTED] lessor of the [REDACTED] property. (The petitioner's purported rental agreement identified the lessor as [REDACTED].) A property manager at [REDACTED] stated that [REDACTED] leased the [REDACTED] property from January 1, 2007 until its eviction on April 30, 2007. The property then remained vacant until June 2007, when the new church moved into the space.

Counsel then advised USCIS that the petitioner had moved to its present location on [REDACTED]. On July 16, 2007, the USCIS officer interviewed the beneficiary, who "claimed that the church had used [REDACTED] as its address for the first six months of 2007. He said that the church had moved its location when the rent went from \$1,500 per month to \$2,500 per month." The officer requested a copy of the lease agreement for the [REDACTED] property. The petitioner agreed to provide that document, but the officer never received it. The officer did, however, receive a copy of what purported to be the petitioner's "Operating Budget for 2006 & 2007," which allocated \$6,000 per year for "Rent."

In a letter dated September 8, 2008, counsel inquired about the status of the petition. Counsel questioned whether delays may have ensued "because a site visit by USCIS showed that the petitioner was no longer at the [REDACTED] location as originally listed in the I-129 petition."

On June 23, 2010, the director advised the petitioner of the director's intent to deny the petition, based in part on the unsatisfactory outcome of the 2007 compliance review. The director advised the

¹ In subsequent filings, the petitioner has resubmitted copies of the same IRS Form 8822, identical except for the clearly legible date "12.05.06." The petitioner either added this date to some copies of the form, or removed it from some copies. The date is five months after the effective date of the rental agreement for this address.

petitioner that, based on the 2007 site inspections, “it appears that the lease agreement that was submitted with the petition is not a valid lease.” The director noted that the lease agreement stated the rental rate as \$1,500 per month, meaning that the petitioner had budgeted only four months’ rent per year for 2006 and 2007.

In response, counsel claimed:

The building located at [REDACTED] has multiple owners. [The petitioner] executed this lease with [REDACTED] who does in fact represent one of the owners. . . . After one of the owners executed this lease with [the petitioner], the other owners[] feuded among themselves and decided not to honor what the other owner agreed to. . . . Thus [the petitioner] was under the impression they had a lease at [REDACTED]

. . . Because the lease agreement did not work out with [REDACTED] [the petitioner] held services at [REDACTED] until a physical location was found [on] [REDACTED]. . . [The petitioner] indicated rent of \$500 per month during this period because it cost them \$500 per month to have chairs delivered for their worship services.

The petitioner did not submit any evidence (such as documentation of chair delivery expenses, evidence of multi-party ownership of [REDACTED] or anything from [REDACTED] to support counsel’s above claims. 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). Furthermore, counsel’s explanation contradicts the beneficiary’s earlier claim that the petitioner rented the [REDACTED] space for the full term of the lease, and moved at the end of June 2007 when faced with a rent increase. Also, counsel’s statement does not address why the petitioner only budgeted \$500 per month for “rent” in 2006 and 2007, even at a time when it supposedly intended to rent a space for \$1,500 per month.

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.

The director denied the petition on August 10, 2010, in part because the petitioner had not overcome the USCIS officer’s findings from the July 2007 compliance review. On appeal, the petitioner claims: “The Petitioner has shown with overwhelming evidence that the Petition is valid, real, and [the beneficiary] qualifies for the benefits sought.” The petitioner refers to USCIS’s adjudication of

a separate petition,² and asserts that the director “left this case in limbo for over 3 years.” The petitioner does not address the credibility issues arising from the 2007 compliance review. The findings from that compliance review cast doubt on the authenticity of the 2006 lease agreement, and therefore on the petitioner’s credibility and ultimate eligibility.

On September 12, 2012, concerned that the beneficiary may have willfully misrepresented a material fact in the course of this proceeding, the AAO notified the petitioner of the AAO’s intent to dismiss the appeal. In the notice, the AAO stated:

As the director has already advised your organization, USCIS inquiries revealed that [REDACTED] controls the site at [REDACTED]. A property manager for [REDACTED] stated that [REDACTED] leased the site from January 2007 to April 2007, which was then briefly vacant until a different church arrived in June 2007. From this evidence, it appears that your church was never at the [REDACTED] site at any point in 2007.

The only evidence that your church was at the [REDACTED] site in 2006 is the rental agreement, dated June 23, 2006. That rental agreement, however, identifies the landlord as [REDACTED] rather than [REDACTED]. Also, that agreement is on a pre-printed form from the [REDACTED] with the legend “Revised 6/06 For Release 11/06,” which means that the form was not available for use in June 2006. These very serious discrepancies lead USCIS to conclude that the lease is not authentic. When the director first raised concerns about this issue, your only response was an explanation from counsel, with no supporting evidence, that contradicted previous information in the record.

Based on the above information, there is no credible evidence that your church was ever at [REDACTED]. When the beneficiary repeated the claim that your organization used the [REDACTED] address in early 2007, he directly participated in efforts to secure immigration benefits using that address.

The AAO also raised concerns about the beneficiary’s 2007 income tax return. In response to the notice, counsel requested additional time to gather further evidence. Additional time to respond to a request for evidence or notice of intent to deny may not be granted. 8 C.F.R. § 103.2(b)(8)(iv). The petitioner’s response did, however, include sufficient evidence to address the AAO’s concerns regarding the beneficiary’s 2007 income tax return.

Regarding the petitioner’s claimed addresses, counsel stated that the petitioner took out the lease on [REDACTED] in June 2006, intending and expecting to move to that location in early 2007 after the completion of requested renovations. Counsel asserts that, after funding for the renovations became unavailable and the owners of the property refused to make the requested improvements, the

² The AAO addresses this assertion in a separate decision relating to that petition (receipt number [REDACTED]).

petitioner was “forced to cancel the lease agreement and looked for an alternative location.” Counsel states that the petitioner “was not located [at ██████████ nor had they ever been physically in possession of that unit.” Counsel does not explain why the petitioner listed its address as ██████████ on numerous forms and documents in the record.

To support these claims, the petitioner submits a translated letter attributed to ██████████ of ██████████ (said to be the renamed ██████████). The letter reads, in part:

[A]t around the time of entering agreement with [the petitioner], I was almost at the closing step for purchasing the building at ██████████ which was in Escrow. ██████████ was the seller side’s representing agent. I, the realtor of ██████████ asked ██████████ to keep doing the building management if I purchased the building. . . . Please find the attached statement from the proper person who handled the matter in ██████████ at that time.

The record contains no “attached statement” matching the above description. Instead, counsel states that the petitioner requested a statement from ██████████ but “[t]here was not enough time for a letter to be drafted” (hence the request for an extension). Thus, although ██████████ referred to an “attached statement,” the petitioner did not obtain this statement. Furthermore, if ██████████ had not yet bought the ██████████ property as indicated by ██████████ it is not evident how the company was in a position to execute a lease and collect a security deposit for ██████████ ██████████ makes no claim that ██████████ was one of “multiple owners” of the property, or that those multiple owners disagreed over the terms of the lease as counsel had previously stated.

The 2006 lease identified ██████████ as both the “Owner” and the “Property Manager/Brokerage Firm,” but ██████████ states: “I . . . asked ██████████ to keep doing the building management.” This statement indicates that ██████████ was already the property manager before the date of the lease, because a new property manager would not “keep doing the building management.” Thus, the new letter introduces further contradictions into the record.

Furthermore, the 2006 ██████████ lease indicated that the petitioner had committed to monthly payments of \$1,500, which would add up to \$18,000 over the one-year term of the lease. As previously indicated, however, the petitioner’s 2006-2007 budget (which would cover the entire term of the lease) allocated only a third of that amount (\$6,000 per year) for “rent.” This document casts further doubt on the claim that the petitioner leased the ██████████ property or intended to pay the rental rate specified in the lease. Counsel’s earlier contention that the petitioner paid \$6,000 a year to have chairs delivered to a park, and referred to this delivery charge as “rent,” lacks evidentiary support.

Counsel prepared the Form I-129 petition in 2006, and signed Part 7 of that form under the declaration: “I declare that I prepared this petition at the request of the [petitioner] and it is based on all information of which I have any knowledge.” ██████████ signed Part 6 of the petition form, thereby certifying “under penalty of perjury . . . that this petition and the evidence submitted with it

is all true and correct.” Part 1 of the petition form indicated that the petitioner’s mailing address was

If the petitioner never moved to [REDACTED] then there is no explanation for the petitioner’s submission of two IRS Form 8822 Change of Address notices (one undated, one dated December 5, 2006). Another IRS Form 8822, dated August 1, 2007, reported another change of address, this time identifying [REDACTED] as the “Old mailing address.”

Furthermore, the lease agreement in the record did not indicate that the petitioner would take possession of the site in early 2007. Rather, it indicated that the “Rental Agreement will begin on July 1, 2006,” with the first rental payment due on September 1, 2006. The tenant’s signature on the lease indicates agreement with its terms. The record contains no evidence that the petitioner paid rent on the property in the last months of 2006 (a time when, supposedly, the petitioner still expected to move into the property and would, therefore, have had an incentive not to default on the lease by not paying rent).

The petitioner’s initial filing included numerous documents (such as the aforementioned worship service programs) from late 2006 indicating not that the petitioner intended to relocate to [REDACTED] in the near future, but rather that the petitioner was already at that address, holding worship services and receiving mail there before the end of 2006.

Counsel’s September 2008 correspondence indicated that “the petitioner was no longer at the [REDACTED] location.” This wording implies that the petitioner used to be at that location; it is not until July 2010 that counsel claimed that the lease agreement fell through without the petitioner ever moving to the site.

With respect to beneficiary’s statements during the USCIS site inspection, counsel states: “the individuals interviewed at the time were very nervous and did not have a command of the English language. Thus, a miscommunication may have resulted in the Site inspector believing that [the] Church was located at [REDACTED] temporarily.” The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena* at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

Counsel states: “Petitioner wishes that USCIS was aware of the actual location of [the petitioning] Church from the beginning so that none of these issues would have surfaced.” As noted, counsel prepared and the petitioner signed, Form I-129 listing the [REDACTED] address, and that same address appeared on several other documents submitted to USCIS. The petitioner’s initial submission did not indicate a planned future location. Change of address notices dated many months apart purport to show the petitioner’s arrival and departure from the [REDACTED] address. In 2008, counsel stated that the petitioner “was no longer at the [REDACTED] location,” a statement that can be interpreted as a claim that the petitioner used to be at that location. Counsel’s more recent acknowledgement that [REDACTED] was never the petitioner’s “actual location” supports the finding that the petitioner misrepresented its “actual location” as [REDACTED]

The AAO will affirm the director's finding that the petitioner failed its compliance review with regard to the [REDACTED] property.

The second stated ground for denial concerns the beneficiary's intended compensation. The USCIS regulation at 8 C.F.R. § 214.2(r)(11)(i) requires the petitioner to submit verifiable evidence explaining how the petitioner will compensate the alien. The regulation states:

Evidence of compensation 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. IRS documentation, such as IRS Form W-2 or certified tax returns, must be submitted, if available. If IRS documentation is unavailable, the petitioner must submit an explanation for the absence of IRS documentation, along with comparable, verifiable documentation.

On the Form I-129 petition, the petitioner indicated that the beneficiary would work full-time for \$36,000 per year plus medical insurance. The sole financial evidence that the petitioner submitted with the initial filing was a letter from [REDACTED] indicating that the petitioner had a checking account with a \$30,484 balance. The letter did not contain further details about the petitioner's financial transactions, and therefore it did not show how quickly the petitioner spent or took in money.

As noted above, the petitioner provided a copy of its "Operating Budget for 2006 & 2007" to the USCIS officer who conducted the compliance review. That document showed the petitioner's total expenses to be \$48,600 for 2006, and \$51,800 for 2007. The individual figures in the 2006 column, however, add up to only \$24,600. The budget showed \$24,000 for "Pastor's Salary" in 2007, with no amount shown for that expense in 2006. Thus, the arithmetical error matches the missing \$24,000 salary figure, and this issue, by itself, is of minimal concern.

The \$24,000 shown in the budget, however, is only two-thirds of the \$36,000 claimed on Form I-129. The petitioner did not claim to have budgeted any funds for the beneficiary's medical insurance, which the petitioner had specified would be a benefit over and above the beneficiary's salary.

In the June 23, 2010 notice of intent to deny the petition, the director advised the petitioner that the claimed operating budget "is insufficient for USCIS to verify the organization's historical and future financial stability and does not appear to be an accurate account of their financial position." The director noted that the beneficiary's claimed \$36,000 salary, plus the claimed \$18,000 per year rent on the [REDACTED] property, add up to more than the entire amount budgeted for either 2006 or 2007.

In response, counsel stated: "The petitioner has submitted an operating budget and has indicated how much the Beneficiary will be compensated in 2 other Response[s] to Notice[s] of Intent to Deny for

this petitioner.” The director had issued no previous notice of intent to deny the present petition. Counsel, here, apparently referred to two notices relating to a second Form I-129 petition that the petitioner had filed in 2009 that are not part of this record of proceeding. In that petition, the petitioner had likewise claimed to offer the beneficiary \$3,000 per month, plus health insurance.

The AAO takes notice that the record of proceeding for the 2009 petition contains notices of intent to deny dated March 22, 2010 and May 7, 2010. The responses to those notices showed the same reduction in salary from \$36,000 to \$24,000 per year.

The director, in denying the petition, noted that the petitioner submitted no new evidence in response to the June 2010 notice. On appeal, although the petitioner claims to have “submitted substantial evidence of . . . their ability to pay,” it does not explain how the evidence satisfies the regulatory requirements. The petitioner also fails to explain why the evidence submitted shows a \$1,000 per month cut in the beneficiary’s salary from the amount originally offered. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1), (12). Therefore, subsequent events cannot cause a previously ineligible alien to become eligible after the filing date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971). A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm’r 1998). The AAO will affirm the director’s finding.

The third issue under consideration relates to the employer attestation. While the petition was pending, USCIS published new regulations concerning religious worker petitions. Supplementary information published with the new rule specified: “All cases pending on the rule’s effective date . . . will be adjudicated under the standards of this rule. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information.” 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

The new regulation at 8 C.F.R. § 214.2(r)(8) requires the petitioner to submit a detailed employer attestation, containing specific details about the intending employer, the beneficiary, and the job offer. In the June 2010 notice mentioned above, the director quoted the relevant regulation in full and observed that the petitioner had not yet complied “by submitting a completed, signed and dated attestation.”

The petitioner, through counsel, responded to the notice, but did not submit the attestation. Instead, counsel stated that “part six of the petition . . . was signed and attested by [redacted] who is a Deacon of the Petitioner. . . . Please find attached an additional copy of the Petition that clearly shows that on part 6 that the attestation was made.” Counsel, here, appears to have mistaken the petitioner’s signature on Form I-129 for the employer attestation, which the director had described in detail in the June 2010 notice.

In the denial notice, the director observed that the signature on Form I-129 is not the required employer attestation. The petitioner's statement on appeal does not address this issue. The AAO agrees with the director that the petitioner failed to submit an employer attestation after the director specifically requested that required document. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. 8 C.F.R. § 103.2(b)(14).

The fourth and final issue that the director raised concerns the beneficiary's prior employment in R-1 nonimmigrant status. The USCIS regulation at 8 C.F.R. § 214.2(r)(12) states that any request for an extension of stay as an R-1 must include initial evidence of the previous R-1 employment. If the beneficiary:

- (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 filed income tax returns, reflecting such work and compensation for the preceding two years.
- (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available. If IRS documentation is unavailable, an explanation for the absence of IRS documentation must be provided, and the petitioner must provide verifiable evidence of all financial support, including stipends, room and board, or other support for the beneficiary by submitting a description of the location where the beneficiary lived, a lease to establish where the beneficiary lived, or other evidence acceptable to USCIS.
- (iii) Received no salary but provided for his or her own support, and that of any dependents, the petitioner must show how support was maintained by submitting with the petition verifiable documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other evidence acceptable to USCIS.

Insofar as this issue relates to extension of stay, this issue lies outside the AAO's appellate jurisdiction. There is no appeal from the denial of an application for extension of stay filed on Form I-129. 8 C.F.R. § 214.1(c)(5). The AAO will, nevertheless, consider the matter as it relates to the issue of the petitioner's credibility and the lack of supporting evidence.

In a letter accompanying the initial filing, counsel stated that the beneficiary "is currently employed by the Presbyterian Church as a Pastor since September 2005." The record shows that the beneficiary first obtained R-1 nonimmigrant religious worker status through [REDACTED] valid from September 1, 2005 to August 31, 2008. (The attorney of record in the present proceeding also handled the petition in that matter.)

The Form I-129 petition filed by the previous church indicated that the beneficiary was to receive a salary of \$36,000 per year. Therefore, documentation that the beneficiary actually received that salary would indicate past employment as an R-1 nonimmigrant religious worker. The petitioner's initial submission included documentation of the beneficiary's entry into the United States as an R-1 nonimmigrant religious worker, but no evidence of subsequent employment at [REDACTED]

The director, in the June 2010 notice, stated "the petitioner has not submitted any evidence of previous R-1 employment." In response, the petitioner submitted another copy of the previously submitted documentation of the beneficiary's R-1 nonimmigrant status. This documentation shows that USCIS approved the Form I-129 petition filed by [REDACTED] but it does not show that the beneficiary ever actually reported for work at that church. It only shows that the beneficiary was allowed to do so.

Review of the record reveals other credibility issues that the director did not directly address in the denial notice. The AAO may identify additional grounds for denial beyond what the Service Center identified in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The AAO notes that the beneficiary has provided contradictory information regarding his residential address in [REDACTED]. On Form I-129, asked to list the beneficiary's current address in the United States, the petitioner left the line blank. On April 27, 2010, the beneficiary executed Form G-325A, Biographic Information, in conjunction with his Form I-485 adjustment application. On that form, the beneficiary stated that he resided at [REDACTED] from March 2005 to August 2008, and at [REDACTED] from September 2008 onward.

To prove that the inspecting officer spoke to the beneficiary during the July 2007 site inspection, the inspection report includes a photocopy of the beneficiary's driver's license. That license shows the beneficiary's address as [REDACTED]. The license's issue date is August 11, 2006, more than two years before the moving date he claimed on Form G-325A. Because the beneficiary executed the Form G-325A in the course of a different proceeding, the contradiction is not a material misrepresentation by the beneficiary in furtherance of the present petition. Nevertheless, the contradiction adds still more credibility concerns to the matter at hand.

The AAO will dismiss the appeal for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.