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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 [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:

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,

U. Rosenberg

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 establish that the beneficiary would work in a religious occupation, or to submit sufficient verifiable evidence regarding the beneficiary's intended compensation.

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.

The director initially rejected the petitioner's appeal as untimely. In a subsequent brief, counsel correctly observed that the appeal was not untimely, and that the rejection arose from the erroneous belief that the director issued the decision on June 14 rather than June 23, 2010. The director has reopened the appeal, which the AAO will now consider on its merits.

On appeal, the petitioner submits a written statement from [REDACTED] a deacon of the petitioning church, writing on behalf of the petitioning organization. The petitioner contends, on appeal, that the director "applied the wrong set of laws" and has "initially . . . also mistaken the facts of this petition with some other applicant's information for a completely different benefit."

The AAO acknowledges that, on March 22, 2010, the director notified the petitioner of the director's intent to deny the petition unless the petitioner overcame various issues of concern. In that notice, the director cited immigrant regulations at 8 C.F.R. § 204.5(m). In responding to that notice, counsel pointed out the errors, but in most cases, parallel nonimmigrant regulations existed at 8 C.F.R. § 214.2(r). Also, the first paragraph of the March 2010 notice identified a different alien than the beneficiary. The inclusion of this name appears to have been in error. The rest of the same notice correctly identified several facts of this proceeding, including the beneficiary's name. The misuse of another alien's name was a one-time, minor error that did not alter the substance of the notice. A review of the body of the denial notice shows that the director correctly and consistently adhered to the fact pattern of the present proceeding. The decision itself does not suggest that the director inadvertently relied on facts or evidence from a different proceeding involving a different petitioner and/or beneficiary. The single misuse of another alien's name in a previous notice had no effect on the substantive content or outcome of the denial notice.

With respect to counsel's claim that the director relied on "the wrong set of laws," the petitioner, on appeal, does not elaborate or specify which "laws" were "wrong." A review of the director's denial notice reveals that the director cited two regulations that apply to immigrant petitions, rather than to nonimmigrant petitions. One of these regulations, at 8 C.F.R. § 204.5(m)(10), relates to evidence of compensation for special immigrant religious worker petitions. This regulation does not apply to nonimmigrant religious worker petitions, but a parallel regulation at 8 C.F.R. § 214.2(r)(11)(i),

pertaining to nonimmigrant petitions, contains much of the same language. The two regulations require the submission of basically the same evidence. Therefore, the director's citation of the functionally equivalent immigrant regulation amounts to harmless error. *See Gifford Pinchot Task Force v. U.S. Fish and Wildlife Serv.*, 378 F.3d 1059, 1071 (9th Cir. 2004); *Buschmann v. Schweiker*, 676 F.2d 352, 358 (9th Cir. 1982) (error is harmless if it clearly had no bearing on the procedure used or the substance of decision reached).

The other inapplicable regulation, at 8 C.F.R. § 204.5(g)(2), applies only to immigrant petitions and has no nonimmigrant counterpart. This regulation, however, is largely redundant in the face of the applicable regulation at 8 C.F.R. § 214.2(r)(11), because both regulations deal with the petitioner's ability to provide the compensation offered to the beneficiary. The director's incorrect citation of this regulation did not prejudice the outcome of the petition, and therefore once again amounts to harmless error.

In a second notice, the director acknowledged the above errors and gave the petitioner an additional opportunity to address deficiencies in the record.

Turning to the merits of the petition, the first issue concerns the nature of the beneficiary's intended work for the petitioner. The USCIS regulation at 8 C.F.R. § 214.2(r)(3) includes the following relevant definitions:

Minister means an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and
- (D) Works solely as a minister in the United States which may include administrative duties incidental to the duties of a minister.

Religious occupation means an occupation that meets all of the following requirements:

- (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination;

(B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination;

(C) The duties do not include positions which are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible; and

(D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

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 21, 2009. That form included the following information:

Job Title: Pastor

Nontechnical Job Description: Ordained Minister

Detailed description of the alien's proposed daily duties: Prepare and Give Sermons. Conduct Bible Study Classes. He will lead worship services. He will lead smaller prayer meetings and bible study classes. He will visit the homes and businesses of our members. He will lead missionary activities and coordinate missionary activities. He will perform marriage ceremonies and funeral[] services. Finally, he will head the Youth Ministry.

Description of the alien's qualifications for the position offered: Beneficiary is an Ordained Minister with the [REDACTED] Masters Degree in Theology from the [REDACTED] and Bachelor[] of Arts in Theology from [REDACTED]

The Beneficiary has been employed by the [REDACTED] as an Assistant Pastor for the [REDACTED] in [REDACTED]

South Korea and as an Ordained Minister for the [REDACTED] in [REDACTED]

The petitioner's response to the March 2010 notice included further documentation of the beneficiary's ordination as a minister.

On May 7, 2010, the director issued a second notice of intent to deny the petition, requesting "a **detailed description** of the work to be done" by the beneficiary. In that notice, the director stated that a USCIS officer interviewed the beneficiary and [REDACTED] pastor of the petitioning church, on July 16, 2007. The interview report contained the following information:

Pastor [REDACTED] . . . said that [the beneficiary] was not employed by the church but was an 'aide' who was considered to be a volunteer. Both [REDACTED] and [the beneficiary] said that [the beneficiary] was currently under a probation status. . . . [REDACTED] said that while he was inclined to turn church duties over to [the beneficiary], that had not been done yet as he still considered him to be under probationary status. . . .

[T]he beneficiary's current duties, as a volunteer, were given as taking care of children during Sunday School and also doing some ministering.

Citing the above information, the director concluded that the information provided during the interview "is totally different from the duties listed on the petition."

An unsigned statement included in the petitioner's response read:

[The beneficiary] will Pastor the congregation. He will perform marriage ceremonies and funeral[] services. He will prepare and conduct worship services. He will lead smaller prayer meetings and bible study classes. He will visit the homes and business[es] of our members. He will lead . . . and coordinate missionary activities. This position entails a high degree of responsibility. He will not be supervised. The beneficiary must have a degree in theology. The beneficiary must be ordained. The above duties as described are considered a religious position.

Counsel asserted that the petitioner "assisted [REDACTED] during that transition phase," but that [REDACTED] intended to retire as soon as possible and stop devoting his full time attention to the Church." This assertion, however, is not entirely consistent with information provided during the 2007 interview. At that time, [REDACTED] indicated that, even then, he was not "devoting his full time attention to the Church." Rather, as the director noted: [REDACTED] said that he has a business called 'Today's Fashions' that he runs out of his home and that his duties with the church do not require full-time devotion of his efforts."

The director denied the petition on June 23, 2010, based in part on the finding that "[t]he beneficiary's duties do not relate to a traditional religious function. A review of the petition reveals that the beneficiary will be primarily involved in secular and not religious activities. The petitioner

has not shown that the beneficiary's essential job functions are inherently or predominantly religious."

The petitioner's appeal statement addresses the above finding only tangentially, asserting: "The beneficiary has all the qualifications necessary for this position." Nevertheless, in reviewing the record, the AAO finds that the record does not support this particular finding of the director. The petitioner has consistently described the beneficiary's intended position as that of a minister, which is statutorily distinct from a worker in a religious occupation. The director, therefore, erred by holding the beneficiary exclusively to the standards relating to religious occupations rather than to ministers. The AAO acknowledges the director's concerns regarding credibility issues, and the AAO will address those concerns in this decision, but those concerns are separate and distinct from the question of the position the petitioner has stated the beneficiary will fill.

The description of duties in the petition prospectively described the beneficiary's intended future duties, which may or may not match duties that the beneficiary was already performing at the time of filing. During the interview that the director cited as a basis for denial, the petitioner's pastor stated that he would "turn church duties over to" the beneficiary. That interview took place more than two years before the present petition's filing date; the prevailing conditions at the church in July 2007 may not have been identical to those in December 2009. Furthermore, the director has not questioned any of the documentation of the beneficiary's ordination as a minister.

The AAO will therefore withdraw the director's finding that the beneficiary's position does not qualify as a religious occupation.

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. That 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 [Internal Revenue Service] 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. Elsewhere on that form, the petitioner stated that the beneficiary would earn \$3,000 per month, an amount consistent with the \$36,000 annual figure. The petitioner's initial submission did not include any financial documentation.

As noted previously, during the July 2007 interview, [REDACTED] told the interviewing officer "that his duties with the church do not require full-time devotion of his efforts." [REDACTED] and the beneficiary acknowledged that the beneficiary was not yet working full-time, but the beneficiary

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“intended to evangelize the community in order to grow the church to the point where the Pastor’s position was full-time.” The inspecting officer visited the church on Sunday, July 22, 2007, and reported that “no more than 15 persons, including pastor and persons playing musical instruments were observed in services.” On Form I-129, the petitioner had indicated that the congregation had 70 members.

In the March 2010 notice, the director instructed the petitioner to submit IRS documentation and other materials to establish the petitioner’s financial status. The director noted the apparent small size of the petitioner’s congregation, which would affect the petitioner’s need and ability to employ a full-time pastor as claimed on Form I-129. In response to that notice, the petitioner stated:

The church is more than capable of paying [the beneficiary’s] salary. [The petitioner] owns and operates the [redacted] in the state of [redacted] as well. USCIS claims that the number of congregants at the Church is small. However this is not the case. [The petitioner] has over 100 members.

The petitioner submitted documentation showing that the petitioner had registered [redacted] as a trade name on January 25, 2010, approximately five weeks after the petition’s filing date. 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 petition must be approvable based on circumstances at the time of filing. *See* 8 C.F.R. § 103.2(b)(1); *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg’l Comm’r 1978);. Regardless, the petitioner submitted no documentation to show that [redacted] is a significant source of revenue for the petitioning entity. 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 petitioner submitted 62 affidavits, all in an identical “fill in the blanks” format, with each witness’s name and address handwritten into blank spaces. Every affidavit includes the sentence fragment “I have attended since.” The petitioner apparently intended to include a blank space after “since,” but did not, and therefore almost none of the witnesses stated when they began attending the petitioning church. The only witness to specify a date, [redacted] stated “2010 February,” a date two months after the filing of the petition. The affidavits offer no details except to assert that the beneficiary is a minister at the petitioning church and therefore do not establish the petitioner’s intent or ability to employ the beneficiary under the terms specified on Form I-129.

The petitioner states: “we have informed USCIS how [the beneficiary] will be compensated. [The beneficiary] will be paid \$24,000 per year by the Church plus other fringe benefits. The evidence shows the Church is capable and will pay [the beneficiary] that amount.” The \$24,000 figure is a major reduction from the \$36,000 figure that appears twice on Form I-129.

The petitioner submitted copies of IRS Form W-2 Wage and Tax Statements, purporting to show the petitioner’s compensation of the beneficiary from 2007 through 2009. The petitioner also submitted

uncertified copies of the beneficiary's income tax returns for the same three years. The materials indicate that the petitioner paid the beneficiary \$24,000 per year in 2008 and 2009. The 2008 return shows a preparation date of December 4, 2009, well after its April 15 filing deadline; the 2009 return shows no date.

The 2007 documentation indicated that [REDACTED] paid the beneficiary \$9,000, and the petitioner paid the beneficiary \$4,800, for a total of \$13,800. (The handwritten Form W-2 attributed to [REDACTED] shows the wrong street address, with the number [REDACTED]) The beneficiary's 2007 income tax return shows a preparation date of October 15, 2008, six months after its filing deadline. That return shows earnings of \$13,800, matching the two IRS Forms W-2. An accompanying amended tax return indicated that the beneficiary had originally reported only \$9,000 in income, and sought to add \$4,800 to that amount. Under "Explanation of Changes," the preparer of the amended return stated: "Gross income increased by \$4800 due to payroll income from another church which was omitted in the 2007 original tax return." Recently submitted IRS documentation appears to indicate that the IRS processed the amended return in November 2008, but then the IRS issued a refund on June 21, 2010, after the director issued the notice of intent to deny the petition in March 2010.

The petitioner submitted copies of purported IRS Form W-3 Transmittal of Wage and Tax Statements, showing the same annual salary amounts claimed above. The 2007 form shows a preparation date of April 21, 2010. The 2007 form is actually a 2009 form, with an August 18, 2009 revision date. The form's date was changed to "2007" by adding a handwritten numeral "7." The 2008 form shows a preparation date of December 2, 2009. The only form with what appears to be a timely preparation date was the 2009 form, with a preparation date of January 10, 2010. The petitioner also submitted purported quarterly wage reports from the second quarter of 2009 through the first quarter of 2010, showing \$6,000 paid to the beneficiary every quarter.

Like a delayed birth certificate, the amended tax returns and the late preparation of the IRS Forms W-3 raise serious questions regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991) (discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings).

In the May 2010 notice, the director noted that [REDACTED] did not work for the petitioning church full-time, and ran [REDACTED] on the side. The director stated that the apparent lack of any full-time clergy, along with the congregation's small size, did not suggest that the petitioner needed or could afford to employ the beneficiary full-time as claimed. The director repeated the assertion that the petitioner had not shown its ability or intention to pay the salary claimed on the petition form. The director instructed the petitioner to submit "official IRS printouts" of the beneficiary's Forms W-2 and income tax returns.

In response, counsel asserted that, at the time of the July 2007 interview, [REDACTED] was nearing retirement and not up to the demands of full-time religious work. (The petitioner claims that [REDACTED] retired in August 2007.) Counsel also claimed: "The July 22, 2007 USCIS site visit was conducted after the main service was over. The vast majority of Church members [had] already left

and only a few remained for fellowship and additional services.” 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).

The petitioner submitted a profit and loss statement for April 2010, claiming \$14,266.68 in income and \$9,672.47 in expenses (including \$2,000 for the beneficiary’s salary), leaving net income of \$4,594.21 for the month, in addition to \$36,486.12 “Cash in Bank.” Like the other documents, this statement indicates that the petitioner underpays the beneficiary by \$1,000 per month, compared to the amount initially claimed on Form I-129.

Sealed IRS tax return transcripts show that the beneficiary reported \$9,000 in income on his 2007 tax return, filed October 15, 2008, and \$24,000 in income on his 2008 tax return, filed December 22, 2009. Both transcripts showed Forms 1099, reflecting income from interest and tax refunds, but not Forms W-2.

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.

In the denial notice, the director stated that the petitioner failed to submit persuasive evidence that the petitioner has employed the beneficiary full-time at \$36,000 per year, or intended to do so in the future. On appeal, the petitioner claims to have “submitted substantial evidence of . . . their ability to pay.” The petitioner does not explain why it reduced the beneficiary’s offered salary by a third, nor does the petitioner account for the irregularities in its (usually untimely filed) IRS documents. The petitioner having offered no substantive rebuttal to the director’s finding regarding the petitioner’s finances, the AAO will affirm that finding and dismiss the appeal on this basis.

Review of the record reveals another matter of concern. 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).

USCIS conducted its July 2007 compliance review in relation to an earlier petition that the petitioner had filed for the beneficiary in December 2006. In that earlier petition, the petitioner listed its address as [REDACTED]. In that petition, and again in the present petition, 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 on [REDACTED]. The petitioner also submitted copies of two IRS Form 8822 Change of Address notices. The first notice, dated December 5, 2006,

indicated that the petitioner had moved from [REDACTED] to the [REDACTED] address shown on the earlier petition.¹ The second notice, dated August 21, 2007, reported the change from [REDACTED] address that the petitioner still uses today.

As part of the compliance review process, on July 9, 2007, a USCIS officer visited [REDACTED] in [REDACTED] lessor of the [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.

During the July 16, 2007 interview, the beneficiary “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.” This information contradicts the information provided by [REDACTED].

In the March 2010 notice of intent to deny the petition, the director stated that the July 2007 compliance review revealed that “the church is misrepresenting its previous address, claiming to have used a particular address without providing any evidence of such use.” The director did not elaborate.

The petitioner’s response to the notice included additional copies of the IRS change of address notices, thereby repeating the claim that the petitioner was previously at [REDACTED]. The petitioner also submitted a copy of a copy of a rental agreement that 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” (five months before the date on the first IRS Form 8822 Change of Address notice), and both signatures show the handwritten date “6/23/06.” The landlord’s signature is illegible, and nothing printed in the document identified the landlord.

The petitioner’s response included an unsigned statement that “The Petitioner has moved it’s [sic] location twice just as any other entity may move from time to time.” The same statement mentioned the two change of address forms, the clear indication being that the petitioner “moved its location” first from [REDACTED] and then from [REDACTED].

In the second notice of intent to deny the petition, issued in May 2010, the director stated “the church’s use of [REDACTED] is in question.” The beneficiary had stated, during the July 2007 interview, that the church was at the [REDACTED] address for the first six months of 2007, but the petitioner’s claimed 2007 budget (submitted in support of the earlier petition) allocated only \$6,000 for “rent” for the entire year. At \$1,500 per month, the budgeted amount would have covered only four months’ rent at [REDACTED] and left nothing for any subsequent location. The director instructed the petitioner to submit copies of “lease agreements, rental agreements, and/or

¹ The petitioner’s earlier 2006 petition included a copy of this same IRS Form 8822, but the date section was blank. The petitioner has either added a date to a copy of the form, or removed the date from an earlier copy.

mortgage payments.” In response, the petitioner submitted materials related to its current site on

The denial notice for the present petition did not mention the above discrepancies. On the same day that the director denied the present petition, June 23, 2010, the director also issued a notice of intent to deny the petitioner’s other, earlier petition, based in part on the information from the July 2007 compliance review. Therefore, the petitioner (represented by the same attorney for both petitions) is aware of the director’s concern that “it appears that the lease agreement that was submitted with the petition is not a valid lease.”

In response to that notice, counsel claimed:

The building located at has multiple owners. [The petitioner] executed this lease with 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

. . . Because the lease agreement did not work out with [the petitioner] held services at until a physical location was found [on] . . . [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 or anything at all from to support any of counsel’s above claims. Furthermore, counsel’s explanation contradicts the beneficiary’s earlier claim that the petitioner rented the space for the full term of the lease, and moved when faced with a rent increase. It also contradicts the petitioner’s submission of two change of address forms, both showing the address, with the explanation that the petitioner had “moved . . . twice.” Also, counsel’s statement fails to explain why the petitioner only budgeted \$500 per month for “rent” in 2006, at a time when it supposedly intended to rent a space for \$1,500 per month.

On September 12, 2012, 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 controls the site at . A property manager for stated that 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 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 requests 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.

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

In support of the above claims, the petitioner submits a translated letter attributed to [REDACTED] of [REDACTED]. 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 [REDACTED] which was in Escrow. [REDACTED] was the seller side's representing agent. I, the realtor of [REDACTED] asked [REDACTED] 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 [REDACTED] at that time.

Counsel states that the petitioner has requested a statement from [REDACTED] but "[t]here was not enough time for a letter to be drafted" (hence the request for an extension). Accordingly, there is no "attached statement" as referred to in [REDACTED] letter. Furthermore, if [REDACTED] had not bought the [REDACTED] property as indicated by [REDACTED], it is not evident how the

(b)(6)

company was in a position to execute a lease and collect a security deposit for [REDACTED]. [REDACTED] makes no claim that [REDACTED] 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 [REDACTED] as both the "Owner" and the "Property Manager/Brokerage Firm," but [REDACTED] states: "I . . . asked [REDACTED] to keep doing the building management." This statement indicates that [REDACTED] 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 [REDACTED] 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. The petitioner's 2006-2007 budget, however, (which would cover the entire term of the lease) allocated only a third of that amount (\$6,000 per year) for "rent." This document contradicts the claim that the petitioner actually leased the [REDACTED] property and 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 his reference to this delivery charge as "rent," lacks evidentiary support.

Counsel prepared both the petitioner's 2006 and 2009 Form I-129 petitions, and signed Part 7 of both forms 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." Officials of the petitioning entity signed Part 6 of each 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 2006 petition form indicated that the petitioner's mailing address was [REDACTED].

If that was not the petitioner's address at the time of the form's preparation, then the Form I-129 necessarily contained information that was neither true nor correct. The second Form I-129 petition, now under consideration, did not list the [REDACTED]. If the petitioner never moved to [REDACTED] then there is no explanation for the petitioner's submission of two IRS Forms 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 the petitioner previously claimed it expected to move into the property.

The petitioner's initial 2006 filing included numerous documents (such as 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. In correspondence dated September 8, 2008, counsel stated that “the petitioner was no longer at the [REDACTED] location.” This wording implies that the petitioner used to be at that location.

Likewise, when the petitioner responded to the March 2010 notice, the petitioner stated that it “moved . . . twice,” and pointed to the two IRS change of address notices that both mentioned [REDACTED]. The implication is that the petitioner “moved its location” first from [REDACTED] and then from [REDACTED]. It was not until July 2010 that counsel indicated that the lease agreement fell through without the petitioner ever moving to the site.

With respect to the beneficiary’s comments 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*, 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).

Counsel also 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, the first Form I-129 listing the [REDACTED] and that same address appeared on several other documents submitted to USCIS under penalty of perjury. The petitioner’s initial submission did not indicate a planned future location. Change of address notices dated months apart 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 only be interpreted as a claim that the petitioner used to be at that location. As late as mid-2010, the petitioner submitted copies of the IRS change of address forms without any indication that the petitioner did not actually occupy the [REDACTED] address. 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].

Beyond the issue of the [REDACTED] property, the instant Form I-129 petition appears to contain a false statement. On Part 3 of the form, the petitioner listed the beneficiary’s “Current Nonimmigrant Status” as “R-1,” and the “Date Status Expires” as “12/31/2009.” Later, in response to the director’s March 2010 notice of intent to deny the petition, counsel again stated that “the beneficiary is already in an approved R-1 status from a prior petition.”

USCIS records show that [REDACTED] filed a Form I-129 petition on July 28, 2005, which USCIS approved on August 4, 2005. (The attorney of record in the present proceeding also handled the petition in that matter.) That approved petition granted the beneficiary R-1 nonimmigrant status, valid from September 1, 2005 to August 31, 2008.

The petitioner has consistently claimed that the beneficiary’s employment at [REDACTED] ended in mid-2007, when he began working at the petitioning church. As noted

above, the petitioner has submitted an IRS Form W-2 indicating that [REDACTED] paid the beneficiary \$9,000 in 2007. The beneficiary's claimed annual salary at that church was \$36,000. Therefore, \$9,000 appears to amount to only three months' pay, indicating that the beneficiary left that church sometime around the end of March 2007. Because that employment was the sole basis for the beneficiary's R-1 nonimmigrant status, the petitioner has not explained how the beneficiary maintained his R-1 nonimmigrant status after March 2007.

The regulation at 8 C.F.R. § 274a.12(b)(16) allows an R-1 nonimmigrant to work only for the religious organization that obtained R-1 status for the alien. More generally, under 8 C.F.R. § 214.1(e) a nonimmigrant may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status. The petitioner claims to have been paying the beneficiary since the latter half of 2007, which would constitute a violation of the beneficiary's status.

The petitioner's most recent submission includes a letter from [REDACTED] a certified public accountant with [REDACTED] and [REDACTED] who states that the firm "processed [the petitioner's] 2007 and 2008 payroll in 2010," and claims: "The [petitioner's] attorney . . . instructed the church not to process [the beneficiary's] payroll until he obtained approval of his employment petition from USCIS." It is not clear whether the accountant means that the petitioner delayed paying the beneficiary, or paid the beneficiary but delayed reporting that information to the IRS and other agencies that track payroll data (*e.g.*, the Social Security Administration). It is also not clear whether the unnamed attorney is the same one now representing the petitioner on appeal. Nevertheless, this letter indicates that the beneficiary was employed without authorization.

Notwithstanding the beneficiary's violation of his original R-1 nonimmigrant status, that status expired on August 31, 2008, more than a year before the petitioner filed the present petition in December 2009. The petitioner has not explained how the beneficiary could remain in status after August 31, 2008. Counsel has correctly observed that the petitioner filed an earlier petition on the beneficiary's behalf on December 18, 2006, through which the petitioner had sought to extend the beneficiary's status through December 31, 2009. USCIS, however, never approved that petition. The 2006 petition was pending when the petitioner filed the present petition, and the director later denied the 2006 petition. The beneficiary, therefore, never derived any valid nonimmigrant status from the 2006 petition. Therefore, the statement on the petitioner's 2009 Form I-129 claiming that the beneficiary was currently in R-1 nonimmigrant status, valid through December 31, 2009, was not true.

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.