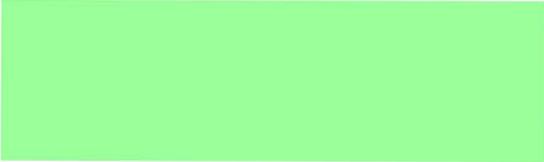
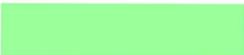


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

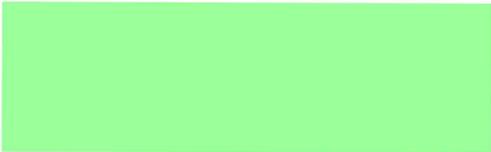


Date: **MAY 17 2013** Office: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

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,

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

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, initially approved the employment-based nonimmigrant visa petition. On further review, the director determined that the beneficiary was not eligible for the visa classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) approval of the petition and her reasons for doing so. The director subsequently exercised her discretion to revoke approval of the petition on January 24, 2013. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification of the beneficiary as a nonimmigrant religious worker under section 101(a)(15)(R) of the Act, 8 U.S.C. § 1101(a)(15)(R), to perform services as a priest. The director determined that the petitioner had not established that it is a bona fide nonprofit religious organization, that the petitioner had failed to provide an accurate and valid employer attestation, that the petitioner had failed to establish how it intends to compensate the beneficiary, and that the petitioner failed to establish that the beneficiary is qualified for the proffered position.

Counsel asserts on appeal that the director's decision "contains erroneous conclusions of law and fact that should be reversed." Counsel submits a brief in support of the appeal.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(18) provides that the director may revoke a petition at any time, even after the expiration of the petition, for the following reasons:

1. The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;
2. The statement of facts contained in the petition was not true and correct;
3. The petitioner violated terms and conditions of the approved petition;
4. The petitioner violated requirements of section 101(a)(15)(R) of the Act or paragraph (r) of this section; or
5. The approval of the petition violated paragraph (r) of this section or involved gross error.

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).

The first issue presented is whether the petitioner has established that it is a bona fide nonprofit tax-exempt religious organization.

The regulation at 8 C.F.R. § 214.2(r)(3) defines a tax-exempt organization as "an organization that has received a determination letter from the IRS [Internal Revenue Service] establishing that

it, or a group it belongs to, is exempt from taxation in accordance with section[] 501(c)(3) of the Internal Revenue Code [IRC].” The regulation at 8 C.F.R. § 214.2(r)(9) provides:

*Evidence relating to the petitioning organization.* A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the IRS showing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or
- (iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3), or subsequent amendment or equivalent sections of prior enactments, of the [IRC], as something other than a religious organization:
  - (A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;
  - (B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;
  - (C) Organizational literature, such as books, articles, brochures, calendars, flyers, and other literature describing the religious purpose and nature of the activities of the organization; and
  - (D) A religious denomination certification. The religious organization must complete, sign and date a statement certifying that the petitioning organization is affiliated with the religious denomination. The statement must be submitted by the petitioner along with the petition.

With the Form I-129, Petition for a Nonimmigrant Worker, filed on April 17, 2012, the petitioner submitted a copy of a February 23, 2000 letter from the IRS recognizing the organization as tax exempt under sections 501(c)(3) and 170(b)(1)(A)(i) of the IRC. The letter was addressed to the petitioner in care of [REDACTED] identified in the record as the petitioner’s prior attorney, at

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The director approved the petition on July 25, 2012 without further questioning the petitioner's bona fides as a nonprofit religious organization.

Subsequent to the approval, however, the director questioned the sufficiency of the documentation submitted by the petitioner to support its claim as a bona fide nonprofit religious organization. In her November 19, 2012 NOIR, the director stated that while the 2000 IRS letter reflected an address in New York, NY, the petitioner's address of record is Hicksville, NY. The director instructed the petitioner to submit a currently valid determination from the IRS, as required by the regulation.

In response, the petitioner resubmitted the February 2000 letter from the IRS. In his December 13, 2012 letter accompanying the petitioner's response, prior counsel stated that was his prior place of business, and that the petitioner did not purchase the property at which it is currently located until 2005. The petitioner submitted a copy of the purchase contract dated February 1, 2005 for the address. The petitioner submitted other documentation, including assumed name certificates from the State of New York, reflecting that its principal location is

The director denied the petition, stating that the petitioner had failed to provide a currently valid letter from the IRS. On appeal, counsel states that the petitioner had submitted a determination letter from the IRS, and that "the petitioner's tax exempt status had not changed since the IRS determination letter on February 23, 2000. As such, the petitioner's IRS determination letter should be considered currently valid."

Nonetheless, a review of the IRS online "Exempt Organizations Select Check," accessed on April 9, 2013 and again on April 30, 2013, reveals that the petitioning organization is not currently recognized as a tax-exempt organization by the IRS. Thus, as the petitioner has not provided a copy of a currently valid determination letter from the IRS and does not appear on the list of exempt organizations maintained by the IRS, the petitioner has failed to establish that it is a bona fide nonprofit religious organization as defined by the regulation at 8 C.F.R. § 214.2(r)(9).

The second issue presented is whether the petitioner has provided an accurate and valid employer attestation.

The regulation at 8 C.F.R. § 214.2(r)(8) requires the petitioner to submit a detailed attestation with details regarding the petitioner, the beneficiary, the job offer, and other aspects of the petition. Specifically, the regulation provides:

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<sup>1</sup> Different counsel represents the petitioner on appeal. The petitioner's previous counsel will be referred to as "prior counsel" in this decision.

An authorized official of the prospective employer of an R-1 alien must complete, sign and date an attestation prescribed by USCIS and submit it along with the petition. The prospective employer must specifically attest to all of the following:

- (i) That the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation;
- (ii) That the alien has been a member of the denomination for at least two years and that the alien is otherwise qualified for the position offered;
- (iii) The number of members of the prospective employer's organization;
- (iv) The number of employees who work at the same location where the beneficiary will be employed and a summary of the type of responsibilities of those employees. USCIS may request a list of all employees, their titles, and a brief description of their duties at its discretion;
- (v) The number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past five years by the prospective employer's organization;
- (vi) The number of special immigrant religious worker and nonimmigrant religious worker petitions and applications filed by or on behalf of any aliens for employment by the prospective employer in the past five years;
- (vii) The title of the position offered to the alien and a detailed description of the alien's proposed daily duties;
- (viii) Whether the alien will receive salaried or non-salaried compensation and the details of such compensation;
- (ix) That the alien will be employed at least 20 hours per week;
- (x) The specific location(s) of the proposed employment; and
- (xi) That the alien will not be engaged in secular employment.

At Part 5, question 13 of the Form I-129, the petitioner stated that it currently employed one person in the United States. In the employer attestation, contained in Section 1 of the Form 129

Supplement R, however, the petitioner stated that it had three employees working at the location at which the beneficiary would be employed, and named its address of record in Hicksville as the beneficiary's place of employment, stating that the beneficiary "will be working only" at that address during "the entire duration of stay in R status." In its April 9, 2012 letter submitted in support of the petition, the petitioner stated that it operated two temples in New York, one in Hicksville and the other in Flushing, and that the petitioner "will be using the beneficiary's services in both, but he will spend the bulk of his time in Flushing." The petitioner also attested that it had 3,000 members, and that it had previously filed two petitions and employed two people as immigrant and nonimmigrant religious workers during the past five years.

In her May 1, 2012 RFE, the director requested the petitioner to provide the size of its congregation and further instructing the petitioner to "[s]ubmit a current membership directory verifying the total number of actual congregants" and to "[p]rovide a list of the current number of paid individuals within the petitioner's denomination or religious organization."

In response, prior counsel stated in a July 18, 2012 letter that: "Although [the petitioner does] not have membership to our religious institution, we have more than 20,000 devotees spread over the continent and majority of them are from the tri-state of New York, New Jersey and Connecticut in particular." Nothing in the record supports this claim by prior counsel. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In her November 19, 2012 NOIR, the director noted the inconsistencies between the petitioner's claimed membership of 3,000 in its petition and the 20,000 "devotees" but no members indicated in prior counsel's letter. The director advised the petitioner that the NOIR was "an opportunity to explain this inconsistency." In response, the petitioner submitted a list of 456 names that it identified as its membership list. Prior counsel stated in his December 13, 2012 letter:

Members are registered as families. As such on average, each registration reflects on average 4 members. . . . In addition to our members, there are about 20,000 Indian Hindus who live in Nassau and Suffolk county [sic] who have the services of the temple and priests available to them and a substantial number of them frequent the temple.

Again no documentation in the record supports prior counsel's statement. The petitioner submitted no documentation to reflect that the 456 membership list it provided reflects more than the individuals listed and that it services any additional clientele. Furthermore, prior counsel asserted in response to the NOIR, that the petitioner serviced 20,000 individuals in Nassau and Suffolk counties; however, in response to the RFE, prior counsel stated that the petitioner serviced individuals throughout North America, particularly in the tri-state area of New York, New Jersey, and Connecticut. The director determined that the petitioner's evidence did not overcome the concerns regarding the alleged size of the petitioner's congregation, noting that

assuming prior counsel's statement is accurate, quadrupling the petitioner's list of 456 names would produce a membership of 1,824 members rather than the 3,000 members alleged by the petitioner in its attestation.

On appeal, counsel states:

The petitioner provided USCIS with a list of 456 members. According to the petitioner, there are approximately four members for each name on the list, for a total of approximately 1,824 members. The petitioner also has about 20,000 devotees in the New York area. Based on these estimates, the petitioner concluded that its congregation consists of approximately 3,000 active participants. Under these circumstances, the petitioner provided an accurate reflection of what is admittedly a fluid membership base.

The petitioner submitted no documentation to support any of the statements made by counsel. The record contains no evidence to establish that the petitioner has a congregation of more than 456 individuals or that it services any individuals other than those it identifies on its membership list. The petitioner has submitted no documentation to establish that it has a membership of at least 3,000 as claimed in the petition, and that it has 20,000 "devotees" in total.

The director also found that the petitioner had provided inconsistent information regarding the number of employees that would work at the same location as the beneficiary. Additionally, the director questioned the petitioner's statements regarding the location at which the beneficiary would work. The petitioner stated on the Form I-129 that the beneficiary would work only at its address of record; however, in its April 9, 2012 letter accompanying the petition, the petitioner stated that the beneficiary would work at both of its locations, Hicksville and Flushing, with "the bulk of his time in Flushing."

In question 12, Part 5 of the Form I-129, the petitioner stated that it currently had one employee in the United States; however, in the employee attestation the petitioner stated that there would be three employees working at the same location as the beneficiary. In response to the director's RFE, the petitioner submitted uncertified copies of its unsigned IRS Form 941, Employer's Quarterly Federal Tax Return, and State of New York form NYS-45, Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return, for the first quarter of 2012, each reflecting that the petitioner had four employees. A copy of the petitioner's form MTA-305, Employer's Quarterly Metropolitan Commuter Transportation Mobility Tax Return, reflects that the petitioner also reported four employees to the New York State Department of Taxation and Finance.

The director pointed out these inconsistencies in the NOIR, and requested that the petitioner "provide a list of all employees, their position titles, a brief description of their duties, number of hours worked per week, date(s) of hire, annual salary, and immigration status." The director also requested evidence to clarify the petitioner's inconsistent statements regarding where the beneficiary would work.

In response to the NOIR, prior counsel stated that the number of employees at the petitioner's locations varied, and that the petitioner's documentation differed based on the different times it was submitted. Prior counsel also stated that the petitioner was "in dire need of a permanent priest" at its Flushing location where it "intend[s] to assign the beneficiary on a full time basis. Beneficiary, however, will be expected to occasionally perform services or prayers at the Hicksville location if the regular priests are not available for services there."

In revoking approval of the petition, the director found the petitioner's documentation and explanation insufficient to explain the inconsistent statements, and that the petitioner failed to provide a list of its employees with pertinent information about their employment as instructed in the NOIR. On appeal, counsel asserts that the petitioner provided accurate information regarding the number of its employees by explaining that the employees varied depending on the time of the evidence submitted.

The AAO concurs with the director that the petitioner's documentation is internally inconsistent and a simple statement that the number of employees varied with the timing of the documentation submitted is insufficient to overcome the inconsistency. The petitioner stated in one place on the Form I-129, which it signed on April 12, 2012 and filed on April 17, 2012, that it had one employee and in the attestation that it had three employees. On the Form I-129 the petitioner alleged that the beneficiary would be working only at its Hicksville, NY location, yet in the letter accompanying the petition, the petitioner stated that the beneficiary would "spend the bulk of his time in Flushing." These inconsistent statements about the number of employees and the location at which the beneficiary will work raises questions as to whether the petitioner intends to employ, and has the financial ability to employ, the beneficiary in the capacity claimed. If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The director determined that the petitioner had provided inconsistent statements regarding the number of its employees holding special immigrant or nonimmigrant visas and the number of such petitions the petitioner has filed during the past five years.

In the employee attestation, Section 1 of the Form I-129 Supplement R, the petitioner stated that it had employed two individuals in an immigrant or nonimmigrant status in the past five years and that it had also petitioned for two alien workers during the same time frame. In her NOIR, the director instructed the petitioner to submit the names, employment dates, job details, and other pertinent information regarding the two individuals. In response, prior counsel submitted information on three different individuals.

The director found the petitioner's response inconsistent with its claims on the Form I-129. The director also found that the petitioner's response was inaccurate and thus not credible in that: "Service Records show that petitioner submitted seven (7) I-360 [Petition for Amerasian, Widow(er), or Special Immigrant] and I-129, not including the [instant] petition."

On appeal, counsel states:

On Form I-129, the petitioner stated that it employed two alien religious workers in the past five years, but in an ITR response letter, the petitioner stated that it employed three alien religious workers in the past five years. At the time the petitioner prepared its Form I-129 it had employed two alien religious workers in the past five years. However, when the petitioner responded to the ITR it had employed a total of three alien religious workers. Under these circumstances, the petitioner's statements should not be deemed contradictory.

Counsel also asserts:

On Form I-129, the petitioner reported the number of employees that were granted Form I-360 petitions in the past five years. . . . The USCIS report includes every petition filed by the petitioner within the past five years. As such, the information provided by the petitioner may be considered incomplete, but it should not be deemed inaccurate. Under these circumstances, the petitioner's statement regarding the number of special immigrant petitions and nonimmigrant religious work petitions that it filed within the past five years should be considered credible.

Counsel's assertions are not persuasive. A review of the information provided by the petitioner in response to the NOIR reveals no employee whose employment began after the filing date of the petition. Additionally, the Form I-129 specifically asks the petitioner for the "Number of special immigrant religious worker petition(s) (I-360) and nonimmigrant religious worker petition(s) (I-129) filed by the petitioner within the past 5 years." Counsel states that the petitioner's report of only approved Form I-360 petitions should be "considered incomplete, but should not be deemed inaccurate." The question is not bifurcated on the Form I-129 and counsel offers no explanation as to why the petitioner would think the question refers only to approved Forms I-360.

The many unexplained inconsistencies in the petitioner's attestation in the Form I-129 raise the issue of the credibility of the petitioner's claims in 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). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* On appeal, counsel merely asserts that the petitioner's evidence is accurate; the petitioner provides no documentation to resolve the inconsistencies. The AAO concurs with the director that the petitioner has failed to provide an accurate and valid attestation.

The third issue in this proceeding is whether the petitioner has established how it intends to compensate the beneficiary.

The regulation at 8 C.F.R. § 214.2(r)(11) provides:

*Evidence relating to compensation.* Initial evidence must state how the petitioner intends to compensate the alien, including specific monetary or in-kind compensation, or whether the alien intends to be self-supporting. In either case, the petitioner must submit verifiable evidence explaining how the petitioner will compensate the alien or how the alien will be self-supporting. Compensation may include:

- (i) *Salaried or non-salaried compensation.* 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 [Wage and Tax Statement] 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.

The petitioner indicated on the Form I-129 that it would compensate the beneficiary at the rate of \$20,000 per year plus: "Health Insurance; Lodging Apartment; Utilities; Food, Cleaning And Laundry Allowance." The petitioner stated that it had an annual gross income of \$420,000 and an annual net income of \$60,000. With the petition, the petitioner submitted a copy of a monthly bank statement from two different banks for the month of March 2012. The statement from [REDACTED] shows an ending balance of \$97,851 and the statement from [REDACTED] shows the petitioner with an ending balance of \$5,148.07 in its business checking account.

In response to the RFE, the petitioner submitted a copy of its April 2012 monthly statement from the [REDACTED] which reflects an ending balance of \$65,501. The April 2012 statement from [REDACTED] reflects an ending balance of \$6,037.16. The petitioner's IRS Form 941 for the first quarter of 2012 indicates that it paid wages and other compensation in the amount of \$12,524.31; however, as the petitioner does not allege that the beneficiary is replacing one of the four employees, the IRS Form 941 is not evidence of how it will also compensate the beneficiary.

In her November 19, 2012 NOIR, the director instructed the petitioner to provide additional documentation, to include a certified copy of its tax return, financial statements, and documentation of the non-salaried compensation that the petitioner stated it would provide to the beneficiary. In response, the petitioner provided a partial copy of its monthly bank statements for the month of November 2012 from three different banks. An account with [REDACTED] reflects an ending balance of \$3,171.99, the account with [REDACTED] reflects an ending

balance of \$29,298.05, and the account with [REDACTED] shows an ending balance of \$30,290.38 in the petitioner's business checking account.

The director found that the petitioner had provided no documentation to establish the non-salaried compensation of room and board that the petitioner stated would be part of the beneficiary's compensation, and that the petitioner had failed to provide evidence in accordance with the regulation at 8 C.F.R. § 214.2(r)(11). On appeal, counsel states that the petitioner "provided bank statements from three different accounts to show that it has the means to compensate the beneficiary. Under these circumstances, the petitioner respectfully contends that it has satisfied its burden of proof as to how it will compensate the beneficiary."

Counsel's argument is not persuasive. First, the bank statements submitted in response to the NOIR are after the filing date of the petition. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978). Accordingly, the status of the petitioner's bank accounts in November 2012 is not evidence of its ability to pay the beneficiary the proffered salary in April 2012 when the petition was filed.

Additionally, the petitioner submitted no budget or other documentation of its income and expenses. While the bank statements in March and April 2012 reflect adequate balances to compensate the beneficiary at the proposed rate, the statements also reflect that the balance in the [REDACTED] dropped from over \$97,000 in March 2012 to \$65,501 in April 2012, with no explanation of the \$31,500 decrease. The regulation requires the petitioner to submit verifiable documentation of how it intends to compensate the beneficiary. The petitioner has provided insufficient documentation to meet the requirements of the regulation.

Lastly, the director determined that the petitioner had failed to establish that the beneficiary is qualified for the proffered position.

The regulation at 8 C.F.R. § 214.2(r)(3) defines religious worker as "an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister." The regulation at 8 C.F.R. § 214.2(r)(10) requires that, if the alien is a minister, the petitioner must submit:

- (i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and
- (ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that

establishes that the theological education is accredited by the denomination, or

- (iii) For denominations that do not require s prescribed theological education, evidence of
  - (A) The denomination's requirements for ordination to minister;
  - (B) The duties allowed to be performed by virtue of ordination;
  - (C) The denomination's levels of ordination, if any, and
  - (D) The alien's completion of the denomination's requirements for ordination.

The proffered position is that of priest. In its April 9, 2012 letter submitted in support of the petition, the petitioner outlined the requirements for the position:

The minimum requirements for this position require a theoretical and practical application of highly specialized knowledge and understanding of the Hindu Religion, Rites and activities of a Hindu. An individual having a minimum of 5 years progressive work experience[] as a Priest in a temple such as ours or a similar one in India or anywhere else could satisfactorily discharge duties of this position. We also require at a minimum a masters degree in Acharya, or religious studies from any recognized institution of religious learning.

The petitioner stated that the beneficiary "has over twelve years of experience working as a priest in a similar position. He has been a religious priest of bona fide Hindu religious organization in United [States] and India and has carried on religious vocation in a professional capacity in India."

With the petition, the petitioner submitted a copy of a March 5, 2002 letter from [REDACTED] in Delhi, India, who certified:

[The beneficiary] completed rigorous training and discipline in preparation for his vows of monk hood at this ashram from 1985 to 1991. He took the vows of celibacy and austerity and was initiated into Sanyas (monk hood) by [REDACTED] [the beneficiary's] spiritual guru on 2-15-91 at [REDACTED]. Since then he has been preaching the Hindu scriptures and performing various religious services in India and other parts of the world.

No formal certification is issued for such initiation in Hindu Religious orders.

The petitioner also submitted a February 1, 2002 statement from [REDACTED] also of the [REDACTED] who stated that the beneficiary “was studying in Hindu Religious Ceremonies, Cultural, Religious, . . . and singing education in our [REDACTED] from the childhood and continue working as a Priest in our Ashram.”

Additionally, the petitioner submitted a copy of a December 1, 2011 education equivalency statement from [REDACTED] indicating that the beneficiary possessed education equivalent to a combined bachelor’s and master’s degree in liberal arts in the United States. A review of the supporting documentation for this evaluation reveals no religious studies. The petitioner provided copies of the beneficiary’s training certificates as a home health aide, personal care aide, hospice care, and in fire safety and infection control.

In her May 1, 2012 RFE, the director instructed the petitioner to submit evidence in accordance with the above-cited regulation of the beneficiary’s qualifications for the position. The director instructed the petitioner to “provide a detailed description of the religious denomination’s or organization’s requirements for ordination” and to “[s]ubmit a copy of the organization’s constitution, by-laws, manuals . . . to demonstrate the petitioner’s ordination requirements.”

In his July 18, 2012 letter accompanying the petitioner’s response, prior counsel stated:

Unlike in the other religions, the Hindu priest is not ordained. On completion of the training in the study of Hindu religious codes and vedas under a senior priest, the religious priest starts functioning as a priest under the guidance of a senior priest. By virtue of experience, he will be authorized to perform all religious services including weddings, final rites and religious Prayers for the departed souls. Generally an individual with 3 to 5 years of experience performing various Hindu religious rites can perform the above enumerated duties.

The petitioner resubmitted letters, discussed further below, detailing the beneficiary’s experience; however, nothing in the record supports counsel’s statements regarding the training and subsequent qualifications of an individual for the Hindu priesthood. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In the November 19, 2012 NOIR, the director advised the petitioner that not only had it failed to submit documentation of the beneficiary’s qualifications as required by the regulation, the petitioner had also failed to establish that the beneficiary met the petitioner’s minimum qualifications for the position as there is no evidence that the beneficiary has a master’s degree in Acharya or religious studies from a recognized institution of religious learning.

In a December 13, 2012 letter provided in response, the petitioner’s president “acknowledge[d]” the organization’s initial education requirements and stated:

However, subsequent to interacting with [the beneficiary], witnessing the extent of his knowledge of our Holy Scriptures and his immense positive impact on the community, as an organization, we have determined that the requirement of a Master's Degree in Acharya is an irrelevant factor in the decision making process for extending a permanent/full-time job offer to [him].

In revoking approval of the petition, the director noted that the petitioner indicated that the exception for the education requirements was for the offer of a permanent position rather than the temporary position that is the subject of the instant visa petition. The AAO does not find the distinction relevant as the petitioner, as also discussed by the director, attempted to change the minimum qualifications for the instant position to fit the beneficiary's qualifications. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). The petitioner was aware of the beneficiary's qualifications when it prepared and submitted its petition, yet it made no changes in the minimum qualifications prior to filing the petition. Additionally, the petitioner has submitted no documentation such as its bylaws or constitution that sets forth the requirements for the position or permitting an exception to the minimum qualifications. The petitioner also failed to provide documentation of the denomination's requirements for the position.

While the petitioner submitted a document stating that there is no "formal certification" for initiation in Hindu religious orders, the petitioner submitted no documentation to establish the denomination's requirements for becoming a priest or monk, whether the denomination recognizes specific levels of priests and distinguishes between their duties, and how the beneficiary met the denomination's requirements for the priesthood.

On appeal, counsel states that "the petitioner submitted 18 letters demonstrating the beneficiary's qualifications and experience as a Hindu priest" and that the beneficiary has a master's degree in liberal arts. Counsel asserts: "The petitioner respectfully contends that the beneficiary's Master's degree in liberal arts should be considered the equivalent of a Master's degree in Acharya." The petitioner submits no reasoning or documentation to support this request. Furthermore, the petitioner's president acknowledged in response to the NOIR that the beneficiary did not meet the organization's minimum educational requirements.

The director also determined that the petitioner has not established that the beneficiary meets the "5 years of progressive work experience" set forth by the petitioner.

The director summarized the 18 letters detailing the beneficiary's experience. Significant among those are:

1. An August 17, 2000 letter from [REDACTED] Manchester, England, [REDACTED] listed on the letterhead as a trustee, which stated that the beneficiary had taken on the duties of a priest at the temple since August 1998 on a two-year permit from the Home Office.
2. A March 16, 2004 letter from [REDACTED] stated that the beneficiary “is a Hindu missionary who has worked in the [REDACTED] located at Vrindaban, India” and compensated for his services from August 2001 to March 2004, after which he “was sent on religious missionary to various countries.”
3. A December 18, 2004 letter from [REDACTED] who described the beneficiary as a “senior monk of the Ashram” and stated that he “has been part of this Ashram since childhood.” [REDACTED] also stated that the beneficiary “gives religious discourses and conducts lectures in religion and philosophy, and due to his high standard of education and eloquency [sic], he has attracted many people back to religion.”
4. A January 23, 2006 letter from [REDACTED] a priest at the [REDACTED] in Central Islip, New York, who stated that the beneficiary was a priest at the mandir and that prior to joining the organization, he had “traveled around the United States to meet and perform pujas (prayer services) for his devotees in their homes.”
5. An August 18, 2010 letter from [REDACTED] who stated that the beneficiary had lived in the mandir from July 2004 to May 2008 and that while there, had “been instrumental in setting up various programs, such as members learning how to prepare specialty foods for religious leaders; providing prayers lessons to children and teaching Hindi – the language to both adults and children.”

The director seems to be concerned that the beneficiary was referred to alternately as a monk and a priest. However, the record does not support the director’s concerns about the distinction in the titles held by the beneficiary. The director also questions the beneficiary’s continuous work history as a priest and states that the record reflects that the beneficiary “ceased being employed as a religious worker altogether after December 2005.”

The AAO notes that “progressive” work experience is not synonymous with “continuous” work experience. Additionally, the record does not support the director’s conclusion that the beneficiary stopped working as a religious worker after December 2005. While the record does not establish that the beneficiary qualifies as a priest, the letters submitted by the petitioner indicate that he has significant experience in religious work.

Nonetheless, the petitioner has failed to submit documentation in accordance with the regulation to establish that the beneficiary is qualified as a priest within its denomination and failed to establish that the beneficiary meets the minimum requirements set by the petitioning organization.

The petition will be denied 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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.