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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: NOV 09 2010

IN RE: Petitioner: [redacted]
Beneficiary:

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

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently $585, but will increase to $630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the $630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
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 Foursquare church. It seeks to classify the beneficiary as a nonimmigrant religious worker under section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1), to perform services as a minister and worship leader. The director determined that the petitioner had not shown that the beneficiary will work at least 20 hours per week.

On appeal, the petitioner submits arguments from counsel and letters from church members.

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 sole stated basis for denial of the petition concerns the beneficiary's claimed work schedule. The USCIS regulation at 8 C.F.R. § 214.2(r)(1)(ii) requires that the beneficiary must be coming to the United States to work at least in a part time position (average of at least 20 hours per week); the regulation at 8 C.F.R. § 214.2(r)(8)(ix) requires the petitioner to sign an attestation to that effect.

The regulation at 8 C.F.R. § 214.2(r)(8)(viii) requires the petitioner to attest to the details of the beneficiary's proposed compensation. The 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, which 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. Internal Revenue Service (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.

The petitioner filed the Form I-129 petition on March 16, 2009, seeking to extend R-1 nonimmigrant status previously granted to the beneficiary. [redacted], senior pastor of the petitioning church, signed Form I-129, thereby certifying under penalty of perjury that the petition and the evidence submitted with it were "all true and correct." On Part 5 of that form, the petitioner described the beneficiary's compensation as follows:

Wages per week or per year: $12.50 PER HOUR
Other Compensation: $200.00 ADDITIONAL COMPENSATION PER MONTH

In section 2 of the accompanying attestation, which [redacted] also signed under penalty of perjury, the petitioner stated: "This position shall continue to be salaried at the rate of $12.50 per hour for a work-week of 20 hours. He receives additional compensation of $200 per month during the period of September-January of each year in compensation for his duties as a Praise Music instructor during this period."

In a letter accompanying the petition, [redacted] repeated, word-for-word, the compensation terms stated in the attestation. This wording indicates that the above terms of compensation are already in effect, rather than new terms contingent on the approval of the petition. At no point did [redacted] indicate that the beneficiary would receive, or had already received, any form of non-salaried compensation.

The beneficiary's compensation, as the petitioner repeatedly and consistently described in the initial submission, adds up to $14,000 per year ($12.50/hour × 20 hours/week × 52 weeks/year = $13,000/year; $200/month × 5 months = $1,000). The beneficiary has held R-1 status since March 2006, and therefore should have worked two full calendar years (2007 and 2008) under the terms described.

On November 10, 2009, the director instructed the petitioner to submit IRS documentation of the beneficiary's compensation "for the year 2007 and 2008." The director also requested payroll documentation for 2009.

In response, the petitioner submitted an IRS transcript of the beneficiary's 2008 income tax return, indicating that the beneficiary reported gross business income of $8,400. An IRS Form 1099-MISC Miscellaneous Income statement identifies the petitioner as the source of that income. The petitioner did not submit IRS documentation of the beneficiary's 2007 income, even though the director had specifically requested it. 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 non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

The petitioner also submitted copies of the beneficiary's 2009 pay receipts, showing that the petitioner paid the beneficiary $300 twice a month for "music" and $250 once a month for "sound room," for total compensation of $850 per month, equal to $10,200 per year. A separate pay receipt shows a payment of $251.32 from the "Bldg. fund" for "remodeling." These notations suggest that the payment was a reimbursement for expenses, rather than compensation for services rendered. We note that the pay receipts do not reflect additional $200 monthly payments from September through January as the petitioner previously claimed.

The petitioner's response to the request for evidence, like its initial submission, contained no indication at all that the beneficiary received any compensation other than a salary.

The director denied the petition on January 20, 2010. In the denial notice, the director noted that the beneficiary's compensation in 2008 and 2009 fell well below the $14,000 annual pay claimed on Form I-129. The director found that these low numbers also contradicted the petitioner's claim that the beneficiary was already receiving that level of pay. The director concluded that the beneficiary's low pay "does not indicate the beneficiary has been working at least 20 hours per week."

On appeal, counsel states: "the petitioning church has received a 'site visit,' during which the employment of the beneficiary was properly confirmed." The director did not question "the employment of the beneficiary," but rather the extent of that employment. The report from the August 23, 2009 site inspection does not discuss the beneficiary's work schedule at all. While the regulation at 8 C.F.R. § 214.2(r)(16) states that a petition cannot be approved if the petitioner fails the site inspection, the regulation does not require approval of a petition if the petitioner passes the site inspection. The compliance review and site inspection process does not examine every facet of a petition, and a petition can pass a site inspection and still be denied for other reasons. We note that the site inspection report confirmed that the beneficiary was not receiving the stated salary. The site inspection report indicated that the beneficiary received money from the petitioning church, but the report contained no information about any form of non-monetary compensation.

[redacted], in a sworn declaration, contends that the beneficiary has consistently worked "at least 20 hours each week." [redacted] claims that the beneficiary "has continuously received a food basket each week, as described above for all of 2008, 2009, and until the present time. Based on prevailing prices . . . we believe the value of weekly food baskets is approximately $500 per month." Pastor Edwards asserts that the value of the food baskets, added to the beneficiary's salary payments, exceeds the previously stated compensation amount.

The petitioner had numerous opportunities, prior to the appeal, to claim that a substantial fraction of the beneficiary's compensation took the form of weekly food baskets. The petitioner never before made that claim, even when specifically asked about "non-salaried compensation." Rather, the petitioner repeatedly and consistently claimed that the beneficiary received an hourly wage, plus an additional monthly sum five months of the year. The petitioner changed its claim only after the director observed that the petitioner's documentary evidence does not match its original claim.

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 petitioner submits a Monthly Statistical Report for January 2010, indicating that the petitioner distributed "Food Paks" to 22 families and "Bulk Food" to 159 families. The report specified how many families received one donation during the month; how many received two; and so on. This indicates that the petitioner kept records of donations made to specific families, but the petitioner submitted no documentary evidence to show that the beneficiary had consistently received such donations. This lack of evidence is particular significant when we consider that the petitioner never before claimed that the beneficiary was paid, in part, with food baskets.

The petitioner submits letters from four members of the congregation. These witnesses praise the beneficiary's dedication to the church and assert that the beneficiary is actively involved with many

church functions, but they do not address the discrepancies at the core of the denial notice. The director did not dispute that the beneficiary is, and has been, a church employee. At issue are the accuracy, and therefore the reliability, of the petitioner's claims regarding details of that employment.

The petitioner – more specifically, [redacted] – initially attested to the accuracy of its original claims under penalty of perjury, but now, on appeal, claims that those claims did not accurately reflect the true nature of the petitioner's compensation. The petitioner does not explain why it (supposedly) knowingly misrepresented the nature of the beneficiary's compensation.

We find that the petitioner's claims on appeal lack credibility, and that the petitioner has failed to overcome the director's findings regarding the beneficiary's apparent work schedule. We agree with the director's finding in this regard. The petitioner has presented evidence that conflicts with its original claims. In an attempt to explain that conflict, the petitioner has made new claims that contradict its earlier claims. The petitioner has not credibly shown that the petitioner has worked and will work at least 20 hours per week.

We further note that, because of the contradictions in the record, the petitioner has also failed to satisfy the requirements of the regulation at 8 C.F.R. § 214.2(r)(11), quoted earlier, which requires the petitioner to show how it intends to compensate the beneficiary. The AAO may deny an application or petition that fails to comply with the technical requirements of the law even if the Service Center does not identify all of the grounds for denial 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 will dismiss the appeal for the above stated reasons, with each considered as an independent and alternative basis for dismissal. 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, the petitioner has not met that burden.

ORDER: The appeal is dismissed.