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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

D13

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 07 2010

IN RE: Petitioner:
Beneficiary: [redacted]

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:

SELF-REPRESENTED

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 nondenominational Christian 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 campus pastor. The director determined that the petitioner had not shown how it would compensate the beneficiary.

On appeal, the petitioner submits letters from church staff and new financial documents.

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 petitioner filed the Form I-129 petition on September 23, 2009. On that form, the petitioner stated that it pays the beneficiary "every two weeks $1000 before taxes." The petitioner claimed three employees and gross annual income of $100,000, but did not state its net annual income. 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's initial submission included no evidence except for copies of earlier visa documents. The petitioner had indicated that the beneficiary receives biweekly payments of "$1,000 before taxes," but the petitioner submitted no evidence of payment or withholding of those taxes.

On October 19, 2009, the director issued a request for evidence, instructing the petitioner to submit, among other things, the financial evidence (including IRS documentation) required by the regulation at 8 C.F.R. § 214.2(r)(11). In response, the petitioner indicated that it had increased its number of employees to four (plus one volunteer), who earn a total of $84,000 per year.

The petitioner's response included a photocopy of a pay receipt dated May 28, 2009, indicating a payment of $1,000 for the biweekly pay period, and a year-to-date total of $9,800. The petitioner did not explain why this total was $200 less than it should have been after ten pay periods.

The petitioner also submitted a copy of an IRS Form W-2 Wage and Tax Statement, indicating that the petitioner paid the beneficiary $24,560 in 2008. Line 14 of the Form W-2 indicates that the beneficiary received $400 for "misc." Even if we assume that this amount is over and above the reported salary amount, the total ($24,960) is still more than a thousand dollars short of the salary the petitioner has described. The petitioner did not explain the shortfall.

On December 16, 2009, the director notified the petitioner that a USCIS officer had conducted a site inspection of the petitioning church on July 22, 2009, in accordance with the regulation at 8 C.F.R. § 214.2(r)(16). During that site inspection, the officer learned that "due to financial problems, the church had to lay off the bookkeeper," which called into question the petitioner's financial status. The director advised the petitioner that "the petition may be denied based on the preceding information."

In response to the notice, the petitioner submitted a letter from [redacted] director and senior founding pastor of the petitioning church. [redacted] observed that the 2009 site inspection focused on other church workers, not on the beneficiary of the present petition. She stated:

> As [with] most non-profit organizations, 2009 was a difficult financial year. However, during 2009, [the beneficiary] was paid on schedule with no delays. While several areas of programming received cutbacks, salaries were maintained. . . . While it is true donations were lower than expected, the church continues to meet its salary obligations to its main staff members and will continue to do so in 2010.

[redacted] added that the beneficiary "will receive a pay increase, tentatively scheduled for May 2010." She did not specify the amount of the pay increase, or submit documentary evidence to show that additional funds are available to meet it.

The director denied the petition on January 28, 2010, stating: "The petitioner has not submitted evidence to establish that the organization has the ability to pay the beneficiary the proffered wages." On appeal, four officials of the petitioning church, in a jointly signed statement, assert:

> We, as the board members, state that [the beneficiary] has been paid according to the salary agreement consistently and without fail. While the income of [the petitioning] Church, like most non-profits, did drop in the beginning of the year, we were able to finish strong and even took on another part time staff member in November.

A separate, unsigned letter attributed to [redacted] indicates that "the bookkeeper was released [in early 2009] because their level of work was less than 6 hours per week and could be completed by another staff member." The letter indicates that, at the conclusion of the July 2009 site inspection, "we were told that [the officer] would be back for another interview specific to [the beneficiary]. We never heard from that office again."

It is certainly possible that the petitioner's financial picture improved late in 2009, after the site inspection took place. The burden is on the petitioner, however, to submit consistent and credible documentary evidence to show that this is the case. When the director issued the request for evidence in October 2009, the petitioner submitted fragmentary evidence and did not explain why more complete documentation was not available.

The petitioner submits income and expense data for 2009, indicating that the petitioner's income exceeded its expenses by nearly $39,000. These self-generated tables and charts lack verifiable detail and supporting evidence.

A new breakdown of the beneficiary's past and future compensation shows the following figures:

2009	2010
$24,800 per annum	$1000 bi weekly - $26,000 per annum
$1200 per annum for health insurance	$1200 per annum for health insurance
Total Package: $26,000	$12,800 per annum for housing allowance
	Total Package: $40,000

The petitioner adds that the housing allowance would commence "after six months of running a campus, which will commence in March 2010," the beneficiary having begun to serve as a campus minister in September 2009. Previously, the petitioner had made no indication that the beneficiary's compensation would include a $12,800 housing allowance.

On Form I-129, asked whether the beneficiary would receive "other compensation" beyond a salary, the petitioner wrote "N/A" (not applicable). On appeal, however, the petitioner claims that the beneficiary received health insurance in lieu of some of his salary. The petitioner does not submit any documentation of this claimed health insurance.

A November 2009 pay stub submitted on appeal, like the May 2009 pay stub submitted previously, indicates that the petitioner deducts $16.65 from each paycheck to cover "Group Insurance." Over the course of a year, those payments add up to less than $400. Thus, the petitioner's descriptions of the beneficiary's intended compensation have been inconsistent.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO 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).

While discussing inconsistencies in the petitioner's claims, we note that the regulations at 8 C.F.R. § 214.2(r)(8)(x) and (iv) respectively require the petitioner to specify the specific location(s) of the proposed employment and the number of employees who work at the same location where the beneficiary will be employed. On the attestation accompanying Form I-129, the petitioner listed only one address, specifically the petitioner's own street address in [redacted] and indicated that three employees work "at the same location where the beneficiary will be employed."

During the July 2009 site inspection, the beneficiary told the USCIS officer that he "is working on expanding the church to the [redacted]" In a letter submitted on appeal, the beneficiary repeated that he seeks to be "Campus Pastor of our [redacted] Campus,"

which is roughly 20 miles from the [redacted] address that the petitioner had identified as the only location where the beneficiary would work.

The petitioner failed to mention the [redacted] campus when specifically instructed to list the locations where the beneficiary would work. Even now, the petitioner has never specified the precise location of that campus. This continues the pattern of the petitioner's failure to provide sufficient information to permit verification of its claims. Compliance review and site inspection are important aspects of that verification (spelled out in the regulation at 8 C.F.R. § 214.2(r)(16)). USCIS cannot and should not approve a petition based on changing and unverifiable claims. 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).

If the petitioner has not specified the address of the [redacted] campus because that campus does not yet exist, then a different problem arises. The regulation at 8 C.F.R. § 103.2(b)(1) requires the petitioner to establish eligibility at the time of filing. If there was no [redacted] campus at the time of filing, then it was premature, to say the least, to file a petition for an alien to work at that campus. The expectation that the beneficiary's intended work site will eventually exist is not a sufficient basis for a petition.

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.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will dismiss the appeal.

ORDER: The appeal is dismissed.