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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



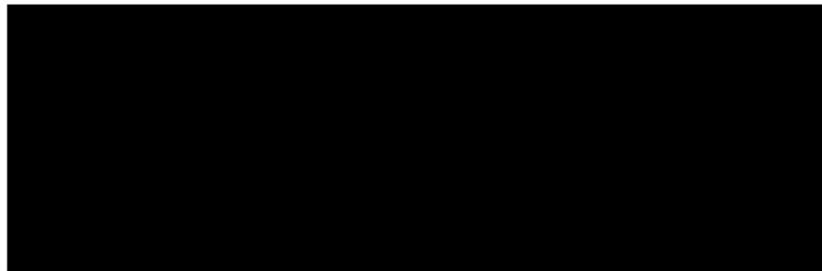
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DATE: OCT 07 2011 OFFICE: CALIFORNIA SERVICE CENTER FILE # [REDACTED]

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

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

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 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, with a fee of \$630. 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 an evangelical Protestant 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 an auxiliary pastor. The director determined that the petitioner failed to submit sufficient evidence regarding the beneficiary's intended compensation.

On appeal, the petitioner submits additional financial documents and arguments from counsel.

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 USCIS regulation at 8 C.F.R. § 214.2(r)(11) requires the petitioner's initial evidence to state how the petitioner intends to compensate the alien, including specific monetary or in-kind compensation. The regulation at 8 C.F.R. § 214.2(r)(11)(i) 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.

The petitioner filed the Form I-129 petition on June 7, 2010. On that form, the petitioner indicated that the beneficiary would receive a salary of \$24,969 per year, plus "[r]ental expenses and reimbursement for medical expenses." The petitioner claimed gross annual income of \$108,725 and net annual income of \$11,025. In an accompanying employer attestation, the petitioner stated that the beneficiary "will be paid an annual salary of \$24,960 per year." The attestation included no mention of additional non-salaried compensation.

The petitioner indicated that it had one employee at the time of filing, specifically Rubens Andrade, the petitioner's senior pastor. The petitioner did not yet employ the beneficiary, or any other auxiliary pastor, at the time it filed the petition. Even without paying a salary for that position, the petitioner's claimed net annual income was less than half the proposed salary.

The petitioner submitted an uncertified copy of its IRS Form 990 return for 2008, including information for 2007 under the heading "Prior Year." The information on the form included the following figures:

Year	2007	2008
Total Revenue	\$117,538	\$108,725
Salaries	58,300	63,600
Total Expenses	94,464	97,700
Revenue Less Expenses	23,074	11,025
End Of Year Assets	66,808	77,833

On August 9, 2010, the director requested additional evidence, including evidence of compensation. The director quoted the regulation at 8 C.F.R. § 214.2(r)(11)(i) in full. The petitioner's response included new affidavits from [REDACTED] and the beneficiary. [REDACTED] stated that the auxiliary pastor position "is a new position" that "no one has ever occupied . . . before." The beneficiary claimed that he "began helping the Church sometime in May 2010" as an unpaid volunteer. [REDACTED] first secretary of the petitioning church, affirmed that [REDACTED] "is currently the only paid employee of the Church."

The petitioner submitted copies of bank statements containing the following information:

Period ending	5/25/2010	6/23/2010	7/26/2010	9/24/2010
Starting Balance	\$58,022.47	\$58,966.50	\$57,240.71	\$55,863.67
Credits	14,809.78	9,880.51	10,775.96	11,333.94
Debits	13,868.75	11,606.30	10,310.74	16,491.56
Ending Balance	58,966.50	57,240.71	57,705.93	50,706.05

The petitioner submitted an uncertified copy of its IRS Form 990 return for 2009, containing the following information:

Total Revenue	\$151,689
Salaries	62,400
Total Expenses	138,034
Revenue Less Expenses	13,655
End Of Year Assets	[blank]

Even after the claimed significant increase in revenue for 2009, the petitioner's net annual income is well under the beneficiary's proposed annual compensation.

Uncertified copies of IRS Form 941 quarterly federal tax returns indicated that the petitioner paid one employee \$18,600 in the last quarter of 2009, and \$15,600 in each of the first two quarters of 2010. These figures are consistent with the range of salary figures on the IRS Forms 990.

The director denied the petition on March 8, 2011, stating:

The Service requested IRS Form W-2 or certified tax returns, verifiable evidence of all financial support, including stipends, room and board, or other support for the

beneficiary, a lease to establish where the beneficiary lived, or other evidence acceptable to USCIS.

The petitioner failed to submit the requested evidence asked [for] by USCIS. Without this information USCIS is unable to determine if the petitioner can pay the proffered wage of the beneficiary.

On appeal, counsel stated that the bank statements submitted previously show "more than enough funds available to compensate the beneficiary." The bank statements indicate that the petitioner's income is not keeping pace with its expenses, even with only one paid employee. At this rate, the beneficiary's base salary, even with no added amount for housing or medical expenses, would exhaust the petitioner's reserves in about two years.

The petitioner submits its 2011 budget, with projected income of \$178,506.89, and anticipated payments to the beneficiary in the amounts of \$24,969 (salary) and \$12,000 (rent allowance), for total compensation of \$36,969 for the year. The petitioner's earlier documents all showed a decline in net income. The petitioner cannot overcome this trend simply by declaring that its annual income will be greater in 2011 than in previous years. The same budget document shows that the petitioner's 2010 budget anticipated a surplus of \$11,356.33, whereas the petitioner actually ended 2010 with a \$19,382.08 loss. The petitioner attributed the discrepancy to one-time expenses, such as its late-2010 relocation, but it remains that the petitioner's documentation does not trend toward sufficient growth to cover the petitioner's compensation – especially if, as claimed on appeal, the annual total is \$36,969 rather than \$24,969.

Furthermore, for the petition to be properly approvable, the petitioner must establish eligibility as of the petition's filing date. *See* 8 C.F.R. § 103.2(b)(1). Therefore, subsequent events cannot cause a previously ineligible alien to become eligible after the filing date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

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.