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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
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Services

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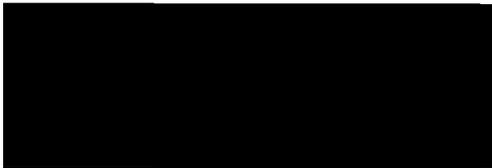
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DATE: **JAN 12 2012** OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
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:



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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO), and the AAO withdrew the director's decision and remanded the matter for a new decision. The director again denied the petition and certified the decision to the AAO for review. The AAO will again withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further action and consideration.

The petitioner is a [REDACTED]. It seeks to classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act, to perform services as an assistant imam. The director determined that the petitioner had not submitted sufficient credible documentation concerning the beneficiary's compensation.

On appeal, the petitioner submits a legal brief with supporting exhibits.

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.

U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. § 214.2(r)(1) state 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 December 15, 2008. The director initially denied the petition on July 13, 2009. On August 20, 2010, the AAO withdrew the director's decision and remanded the petition for a new decision. That remand order addressed the initial denial of the petition, and we need not repeat that aspect of the discussion here.

The present decision relates to the beneficiary's intended compensation. The USCIS regulation at 8 C.F.R. § 214.2(r)(11) states:

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 [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 receive \$3,500 per month, and that the beneficiary was one of two employees. [REDACTED] president of the petitioning entity, stated that the beneficiary "will be paid a salary [of] \$3,500.00 per month plus a rent

free lodging.” In the first denial decision, the director questioned the petitioner’s ability to pay the beneficiary’s salary.

In the remand order, the AAO noted the petitioner’s submission of IRS and payroll documents showing that the beneficiary’s salary totaled \$43,000 in 2008 and had increased to \$4,000 per month by mid-2009. The AAO stated:

The petitioner has submitted the required IRS documentation of its salary paid to the beneficiary. Because the petitioner has, in fact, paid the beneficiary more than the stated salary, we must conclude that the petitioner has been able and willing to do so.

A related issue that the director has not directly addressed concerns another aspect of the beneficiary’s compensation. [REDACTED] had stated that the petitioner would provide “\$3,500.00 per month plus a rent free lodging.” With respect to this type of non-salaried compensation, the regulation at 8 C.F.R. § 214.2(r)(11)(i) calls for “verifiable documentation that room and board will be provided.” The record, as it now stands, contains no documentation to show the circumstances under which the petitioner will provide such lodging. For example, the petitioner has not specified whether it owns the premises; holds the lease on a particular property; or reimburses the beneficiary for rent paid. We note that, on Form I-129, the petitioner provides an address for the beneficiary that is different from the petitioner’s address, which indicates that the beneficiary does not reside at the petitioning mosque itself. Therefore, documentation that the petitioner owns the mosque itself is not evidence that the petitioner owns the beneficiary’s residence.

The director’s findings regarding the beneficiary’s compensation cannot stand, for reasons we have explained. At the same time, we cannot definitively find that the petitioner has met its burden of proof relating to that compensation, because the record does not contain sufficient information and documentation regarding the beneficiary’s housing as non-salaried compensation. The director must afford the petitioner a meaningful opportunity to provide this required evidence.

We note that, according to Form I-129, the beneficiary [REDACTED]

On October 5, 2010, the director instructed the petitioner to submit “verifiable documentation that room and board will be provided for the beneficiary,” as well as evidence of the petitioner’s ownership or control of the [REDACTED] property where the beneficiary resides. In response, counsel stated:

The beneficiary is not living in a dwelling leased or owned by the petitioner. He is living with his other family members in a house located . . . [on] [REDACTED] . . . and owned by the beneficiary. He is paid \$500.00 per month in addition to his \$3500.00 monthly salary. . . . This additional amount is to pay for the beneficiary’s

lodging expenses, which is [the] approximate expense to rent a room in the Ypsilanti Area.

The petitioner submitted a copy of the beneficiary's October 2010 pay receipt, showing a \$4,000 payment, consistent with counsel's assertion that the beneficiary receives \$3,500 in salary plus \$500 for housing. The petitioner also submitted a letter from certified public accountant [REDACTED] who calculated the average monthly expenses per person in the beneficiary's household at \$493. Supporting this figure are copies of utility bills and other materials, including a mortgage statement showing that the beneficiary owes \$1,736.05 per month on the [REDACTED] property. Real estate agent [REDACTED] stated that, for rental properties in Washtenaw County, Michigan, \$500 per month is a reasonable rental rate "for a single room, unfurnished," not including utilities.

The director denied the petition on December 13, 2010, stating that the extra \$500 in the beneficiary's monthly paycheck does not amount to "rent free lodging" on a house with a monthly mortgage of \$1,736.05. The director noted that, if the beneficiary owns the house on [REDACTED], then the beneficiary "is solely responsible for all expenses associated with home ownership." The director dismissed the suggestion that, for \$500 per month, "the beneficiary would be renting a room in a home that he owns." The director concluded: "The petitioner has not provided verifiable documentation to establish the petitioner is supplying the beneficiary with 'a rent free lodging' as indicated by [REDACTED]."

In response to the certified denial, counsel explains that the petitioner had not intended to claim that \$500 per month paid for the house where the beneficiary's family lives, or for the beneficiary's personal share of that house. The petitioner submits a new affidavit from [REDACTED] (here spelled [REDACTED] although his signature matches the signatures on earlier materials in the record), who explained that the beneficiary previously resided in an apartment provided by the petitioner. After the beneficiary purchased his current house, the petitioner consulted with a local realtor and determined that the value of the beneficiary's former apartment was \$500 per month. Therefore, rather than pay directly for the beneficiary's housing, the petitioner added \$500 to the beneficiary's monthly pay, so that the beneficiary would continue to receive the same total value of compensation.

This explanation is plausible and reasonable, and the record supports it. If a job offer includes housing at a specific location, and the employee later moves to more expensive housing, the employer would be under no obligation to effectively increase the employee's salary to pay for that more expensive housing. To pay the cash value of the beneficiary's former housing, in lieu of providing that housing directly, effectively maintains the beneficiary's compensation at the same overall level.

For the above reasons, the AAO will withdraw the director's decision. The AAO will not approve the petition at this time, however, because another issue remains unresolved. In its remand order, the AAO stated:

The AAO can find no evidence of a compliance review of the petitioning organization on [REDACTED]. There is evidence of a review of other

area addresses in 2005, several years before the petitioner filed this petition, but it is unclear to what extent this information relates to the present petition. Further investigation and compliance review may be necessary in this instance. If any such inspection should produce evidence that the petition should not be approved, then the director may use that information as a factor in a future decision.

The USCIS regulation at 8 C.F.R. § 204.5(m)(12) 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, 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.

USCIS records reflect additional compliance review activities in 2008, pertaining to other sites, but the record still contains no evidence that the director has undertaken compliance review with respect to the petitioning entity on [REDACTED]. Some of the earlier compliance review efforts raised questions about the petitioner's ability to employ a full time religious worker, but the record contains persuasive documentary evidence from the IRS and other sources that show the petitioner has compensated the beneficiary. Any concerns about whether the beneficiary is actually working for the petitioner, rather than simply collecting a salary to create the appearance of employment for immigration purposes, must be addressed through the compliance review process, including site inspection if the director deems necessary.

The AAO will therefore remand the petition to the director for further action as the director deems appropriate. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.