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



U.S. Citizenship
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Services

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Date: **MAY 23 2012**

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FILE



IN RE:

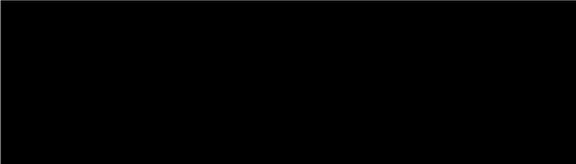
Petitioner:

Beneficiary:



PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1)

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 with the field office or service center that originally decided your case by filing a 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,

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 appeal will be dismissed.

The petitioner is a Sikh temple. It seeks to extend the beneficiary's classification as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as a religious priest. The director, based on the results of a compliance review verification visit at the petitioning organization, determined that the petitioner had not established that it has extended a qualifying job offer to the beneficiary and had not satisfactorily completed an onsite inspection. The director also determined that the petitioner had failed to provide a complete attestation as required by the regulation at 8 C.F.R. § 214.2(r)(8).

The director determined that the petitioner had not established that it had paid the beneficiary \$1,200 monthly and that the beneficiary worked on a full time basis. The director cites to the superseded immigrant religious worker regulation at 8 C.F.R. § 204.5(m)(4) which required that the petitioner submit documentation that the beneficiary "will not be solely dependent on supplemental employment or solicitation of funds for support." The AAO notes that neither the current immigrant regulations nor the nonimmigrant religious worker regulations at 8 C.F.R. § 214.2(r) contain this language. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(12) requires that any request for an extension of stay as an R-1 must include initial evidence of the previous R-1 employment (including Internal Revenue Service (IRS) documentation if available). The regulation at 8 C.F.R. § 214.1(e) states that a nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act. Under 8 C.F.R. § 214.2(r)(5), extension of status is available only to aliens who maintain R-1 status.

The issues of the beneficiary's prior employment and maintenance of R-1 status are significant only insofar as they relate to the application to extend that status. An application for extension is concurrent with, but separate from, the nonimmigrant petition. There is no appeal from the denial of an application for extension of stay filed on Form I-129, Petition for a Nonimmigrant Worker. 8 C.F.R. § 214.1(c)(5). Because the beneficiary's past employment and maintenance of status are extension issues, rather than petition issues, the AAO lacks authority to decide those questions, and will address them only so far as it relates to the validity of the job offer.

On appeal, counsel asserts that the petitioner has "amply demonstrated" that the beneficiary "was being paid \$1200 per month by the gurudwara, and that the gurudwara has been paying his room and board." Counsel submits a brief and additional documentation in support of the appeal.

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 issue presented is whether the petitioner has established that it has extended a qualifying job offer to the beneficiary.

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

(1) 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 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 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 October 27 and October 28, 2010, an immigration officer (IO) visited the petitioner's premises for the purpose of verifying the petitioner's claims in its petition. The IO stated that a review of checks received by the beneficiary indicates that the petitioner was not paying the beneficiary the proffered salary of \$1,200 per month. The IO stated that the beneficiary reported that "technically he is paid weekly for a total of \$12,000 a year but that that amount is supplemented by payments made to him directly by devotees." The IO concluded that the petitioner had failed the verification review because it could not be established that the petitioner was paying the beneficiary the \$1,200 a month proffered wage.

The petitioner did not indicate on the Form I-129, Petition for a Nonimmigrant Worker, any specific compensation that the beneficiary could expect to receive. In response to the director's April 22, 2010 request for evidence (RFE), the petitioner submitted a February 10, 2010 "Employer Verification Letter" in which it confirmed that the beneficiary "is currently drawing a salary of \$1,200 per month" and that he is provided with room and board "free of cost." The petitioner, however, submitted no documentation to establish that it pays the beneficiary the stated salary or any other documentation in accordance with the above-cited regulation to establish how it intends to compensate the beneficiary.

In a November 17, 2010 Notice of Intent to Deny (NOID) the petition, the director again cited to outdated immigrant religious worker regulations in informing the petitioner of the results of the IO's October 2010 investigation. The director stated:

The petitioner has alleged that it would pay the beneficiary \$1,200.00 on a monthly basis plus room and board including utilities and that the beneficiary is not going to be dependent on any supplement employment or solicitation of funds for support. However, further investigation revealed that such remuneration has not fully materialized and the beneficiary is forced to take funds directly from the devotees since the amount that the petitioner is paying the beneficiary is not

sufficient. Because of the circumstances surrounding the petition, it does not appear that the petitioner has a valid job offer and is not in compliance of the requirements of compensation as specified on the petition.

In response, the petitioner resubmitted the "Employer Verification Letter" and a December 12, 2010 statement in which the petitioner's president, [REDACTED] certified that the beneficiary's monthly salary is \$1,200. The petitioner submitted copies of two checks dated in November and December 2010 in the amount of \$1,200. However, neither of the checks indicates that it has been processed by the bank. The petitioner submitted no other documentation to establish how it intends to compensate the beneficiary. The director denied the petition, finding that the petitioner had not provided sufficient documentation to establish that it had extended a qualifying job offer to the beneficiary.

On appeal, the petitioner's president states that the beneficiary "has never been forced to take money from the congregation to supplement his income." [REDACTED] states:

[] Because the gurudwara has no source of income other than the congregation, whether the money is given directly from the congregation to the gurudwara and then to [the beneficiary], or given to [him] director from the congregation, the total is about \$1,200.

[] Because the gurudwara is new and was trying to minimize expenses, we did not have a good accounting system of how [the beneficiary] was getting paid, but now we are directly writing a check for \$1200 to him every month. It was not that we did not have enough resources to pay him directly, but rather it was a matter of poor accounting. . . .

The beneficiary provides a November 6, 2011 statement in which he confirms [REDACTED] statements.

The petitioner submits on appeal an uncertified copy of its unsigned IRS Form 990, Return of Organization Exempt from Income Tax, for the year 2008. The return is dated January 12, 2011. The petitioner also submits an uncertified copy of its 2009 unsigned 2009 IRS Form 990. The latter document indicates that it was signed by the preparer on January 29, 2011. There is nothing in the record to establish that either tax return was filed with the IRS. The petitioner also submits a copy of its unaudited profit and loss statement for the period October 2009 through September 2010 and its unaudited balance sheet for September 2010. The petitioner provides copies of checks made payable to the beneficiary in the amount of \$1,200 and dated in each month from November 2010 to October 2011; none indicate that they have been processed by the bank. In an affidavit dated November 6, 2011, Avtar Singh states that the petitioner rents a room in his home for \$500 on behalf of the beneficiary. The petitioner provides copies of pay stubs made payable to [REDACTED] in the amount of \$500 for January through September 2011 and a copy of an unprocessed check dated October 30, 2011.

With the exception of the rent paid on behalf of the beneficiary, the petitioner has submitted no verifiable documentation of how it intends to compensate the beneficiary. The petitioner's IRS Forms 990 are not only dated well after their due dates, the record does not indicate that the tax returns were ever filed with the IRS. Additionally, none of the checks written to the beneficiary indicate that they have been processed by the bank; thus, there is no evidence that the beneficiary received these payments. As the petitioner's financial documents are unaudited, they are simply the representations of the petitioner. No other documentation appears in the record to support these assertions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The petitioner has failed to submit sufficient documentation to establish how it intends to compensate the beneficiary. Accordingly, it has failed to establish that it has extended a qualifying job offer to the beneficiary.

The director also determined that the petitioner had not successfully completed a compliance review.

The regulation at 8 C.F.R. § 214.2(r)(16) provides:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS [U.S. Citizenship and Immigration Services] 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, or 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.

The record reflects that the IO determined that the petitioner did not pay the beneficiary the salary specified in the petition. As discussed above, the AAO concurs with this finding and thus with the director's decision that the failure to successfully complete a compliance review is a ground for denying the petition.

The director found that the petitioner had failed to complete the attestation required by the regulation at 8 C.F.R. § 214.2(r)(8), which requires the petitioner to submit a detailed attestation with details regarding the petitioner, the beneficiary, the job offer, and other aspects of the petition.

In her RFE, the director informed the petitioner that the attestation on the Form I-129 was incomplete and instructed the petitioner to submit a completed attestation. The petitioner failed to do so. The director again informed the petitioner in the November 2010 NOID that it had failed to submit the required attestation. The petitioner again failed to submit a completed attestation in response to the NOID. On appeal, the petitioner submits the attestation required by the regulation.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

The record before the director indicates the petitioner had failed to provide an attestation as required by the regulation.

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.