



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **JAN 15 2013**

Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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.

Thank you,

Ron Rosenberg
Acting 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 withdraw the director's decision and will remand the petition for further action and consideration.

The petitioner is a church. It seeks to classify the beneficiary as a nonimmigrant religious worker under section 101(a)(15)(R)(1) of the Act, 8 U.S.C. § 1101(a)(15)(R)(1), to perform services as a religious family counselor. The director determined that the petitioner had not established how it intends to compensate the beneficiary.

On appeal, counsel states that the financial statements submitted by the petitioner "are supported by the bank statements" The petitioner submits copies of previously submitted 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 how it intends to compensate the beneficiary.

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 [Internal Revenue Service] Form W-2 [Wage and Tax Statement] 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 indicated on the Form I-129, Petition for Nonimmigrant Worker, filed on February 13, 2012, that it had a gross annual income of \$400,000 and a net annual income of \$210,000. The petitioner also stated that it would pay the beneficiary a salary of \$24,000. With the petition, the petitioner submitted copies of its monthly bank statement for August 2009, which shows a beginning balance of \$102,724.04, an average balance of \$114,315.49, and an ending balance of \$145,752.68; for June 2010, which shows an ending "qualifying balance" of \$113,775.82 in two accounts, and daily ledger balances in excess of \$97,000; and for August 2011, which shows a beginning balance of \$540,596.23, an average ledger balance of \$569,099.14, and an ending balance of \$660,855.14.

In a February 17, 2012 Notice of Intent to Deny (NOID) the petition, the director advised the petitioner that it had not submitted documentation in accordance with the above-cited regulation to establish how it intends to compensate the beneficiary. In response, the petitioner submitted information from the IRS website indicating that a church is not required to file informational tax returns and stated that it therefore does not have any tax returns. The petitioner also submitted copies of its unaudited financial statements apparently prepared by [REDACTED]. The "Financial Statement As of December 31st, 2011" appears to be a statement of assets and indicates the petitioner had total assets of \$735,470.60 including cash on hand of \$638,771.11. The Profit and Loss Statement for the period January 1, 2011 through December 31, 2011 reflects net operating income of \$223,338.79. A handwritten annotation on the document, referring to the \$54,100 for payroll, states [REDACTED] apparently in reference to the beneficiary. The petitioner submitted similar documentation for 2009 and 2010, reflecting cash on hand of \$177,619.34 and \$408,686.30, respectively.

The director determined the petitioner had submitted insufficient documentation to establish how it would compensate the beneficiary, stating:

Although the petitioner may be exempt from filing an annual information return, the record indicates the petitioner has one employee. Therefore, it appears the petitioner would be required to file documentation with the IRS pertaining to that employee. The unavailable documentation has not been explained.

The submitted financial statements are unexplained and can not [sic] be verified. The petitioner states on the "Profit and Loss Statement" for 2011 that they have allocated \$54,100.00 to the beneficiary under the expenditure of "Payroll." However, the beneficiary is not employed by the petitioner and the beneficiary's proffered compensation is stated as \$24,000.000 [sic]. In addition, it appears this figure is for the current one-employee, that being the Pastor. Further, a review of 2010 and 2009 figures also show comparable payroll expenditures.

On appeal, counsel states:

I ask that you disregard that notation since in fact that sum is not allocated to [REDACTED]. At this time [REDACTED] is not employed by the petitioner, and cannot be until USCIS approval. The notation was placed in error by the individual delivering the materials to my office on behalf of the petitioner.

Since the petitioner has only the previously submitted financial statements and bank statements we respectfully request that the application be granted based on such documentation. The financial statements are supported by the bank statements which clearly reflect a balance of over \$500,000.00. The [REDACTED] statement from August 2011, clearly reflects the "average Ledger Balance" to be "569,099.14." That should be sufficient to support and corroborate the income provided in the financial statement for 2011, which reflects a profit for 2011 of "\$223,388.79." Based on the income statement and the supporting bank statements there is more than sufficient funds to pay the \$24,000 annual salary of the beneficiary.

While the petitioner did not provide IRS documentation of the compensation it paid to the pastor, the submission of this documentation alone would not establish how it would compensate the beneficiary. As the director noted, the amount for payroll indicated on the profit and loss statements clearly referred to the pastor as the only current employee. The petitioner's statement that as a church it is not required to file a tax return sufficiently explains the lack of IRS documentation that would be relevant in establishing how it will compensate the beneficiary.

The beginning and ending balances shown on the petitioner's bank statements reflect that it maintains a monthly balance of over \$100,000. The cash on hand reported by the petitioner on its unaudited financial statements appear consistent with maintaining a healthy bank account. The AAO finds that the financial statements together with the monthly bank statements provide

verifiable evidence of how the petitioner will compensate the beneficiary the proffered salary of \$24,000. The AAO therefore withdraws the director's decision.

Nonetheless, the petition cannot be approved as the record now stands. The petitioner has not established that the proffered position qualifies as that of a religious occupation.

The regulation at 8 C.F.R. § 214.2(r)(3) provides:

Religious occupation means an occupation that meets all of the following requirements:

- (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination;
- (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination;
- (C) The duties do not include positions which are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible; and
- (D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

The petitioner's documentation fails to establish that the duties of religious family counselor primarily relate to a traditional religious function, are primarily related to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination, and that the position is recognized as a religious occupation within the denomination.

The matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. 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 AAO for review.