**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

Date: MAY 0 1 2013 Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

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 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 in accordance with the instructions on 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based nonimmigrant visa petition. On a subsequent appeal, the Administrative Appeals Office (AAO) remanded the petition for additional consideration. The matter is again before the AAO on appeal. The appeal will be dismissed.

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

On appeal, the petitioner asserts that its child care center is not a separate entity and that the petitioner has demonstrated its ability to compensate the beneficiary. The petitioner submits 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 how it intends to compensate the beneficiary.

The U.S. Citizenship and Immigration Services (USCIS) 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 [Internal Revenue Service] documentation, such as IRS 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 stated on the Form I-129, Petition for a Nonimmigrant Worker, filed on February 8, 2011, that the beneficiary would receive compensation of $290 per week for a 40-hour workweek (approximately $15,080 annually) at the which the petitioner describes on page 5 of the Form I-129 as a "religious school and day care." In Section 1, question 3 of the Form I-129 Supplement R, the petitioner described the duties as "providing Christian education at the from ages 2-12."

The petitioner provided a copy of its 2010 Annual Report that included a copy of the "Profit & Loss Budget vs. Actual" report for the for the year 2010. The profit and loss statement reflects a net income of $18,833.70. Additional information on the statement indicates that bank balances as of December 31, 2010 were $16,025.91 in checking and $10,685.85 in savings; the petitioner did not provide a copy of the bank statements. The petitioner's general fund reflected a balance of $33.26. None of the financial reports included in the annual report have been audited.

In a May 21, 2012 request for evidence (RFE), the director instructed the petitioner to submit documentation in accordance with the above-cited regulation to establish how the petitioner intended to compensate the beneficiary. The director also instructed the petitioner to submit its quarterly wage reports for the previous four quarters. In response, the petitioner submitted a copy of its 2011 annual report. The report shows a net loss of $17,310.22 for the with a checking account balance of $24,583.27, payroll savings of $42,698.72, and a fundraiser account of $8,706.59. The report also reflects a balance of $94.22 in the general fund. Again, none of the financial documents have been audited, and the petitioner did not submit any documentation to verify the funds in the bank accounts. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The petitioner submitted uncertified copies of its IRS Form 941, Employer's Quarterly Federal Tax Return, for the quarters ending September 2011, December 2011, March 2012, and June 2012. The petitioner also submitted a list of 13 employees. The petitioner submitted similar documentation for the including uncertified copies of IRS Form 941 for the same period and a list of 36 employees. The validity of the IRS documents for the are questionable, however, as the September and December 2011 returns are on IRS forms that were revised in January 2012. None of the forms are signed or dated. Additionally, the returns show different employer identification numbers (EIN) for the petitioner and the

In denying the petition, the director compared the 2011 budget for the against the actual income reported in the 2011 annual report and determined that the petitioner had income of $6,343.78, which would have been insufficient to pay the beneficiary. The director also stated:

> The petitioner submitted copies of the organization's employee list with accompanying Form 941s indicate [sic] the petitioner has 13 employees, and their [EIN] is This documentation is for the petitioner . . .
>
> The second set of submitted documentation is not for the petitioner; rather, it is for the , EIN . Since the second set of documentation is not for the petitioner, it can not be considered as evidence. It should be noted, corporation[s] are distinct legal entities from one another. Therefore, any assets of their shareholders or of other corporations or enterprises, cannot be considered when determining how the petitioner intends to compensate the beneficiary.

The petitioner asserts on appeal that the director made "an incorrect assumption . . . regarding the relationship between the [petitioner] and the organization known as the " The petitioner states:

> The Church is the sole controlling body of the licensed child day care center operated as the . The is not a separate corporate entity, but rather is part of the Church. The is physically located and operated in church facilities located at [the petitioner's address of record]. The enclosed Bylaws of the detail the organizational structure and relationship of the Church and its child care center. Because the is not an entity unto its own, the Church is and must be the only petitioner for this request.
>
> The second set of submitted documentation, as referenced in your determination letter, must be allowed for consideration as the is NOT a separate corporation but rather falls under the umbrella of the Church. Enclosed you will find the Ohio Secretary of State registration documents for both the Church and the In those documents, you will see that the Church is a registered non-profit corporation in the State of Ohio and that the [ name is only a registered "fictitious name" – used by the [petitioner]. The definition of "fictitious name" according to the State of Ohio is - ". . . a name used in business or trade

> that the user has not registered as a trade name or is not entitled to register as a trade name. Registration of a fictitious name does not give the user any exclusive right to the name." In other words, this is a name the Church uses publically for its child care operation. . . .
>
> With that being said, the financial documentation provided for both the Church and must be considered together when making a determination about the petitioner's ability to compensate the beneficiary. The evidence will show there is more than sufficient financial support to provide the salary as described in the petition.

The petitioner submits a copy of the September 2005 bylaws for the which state, "The Session of the [petitioner] shall be the controlling body of the " and that the "session" would appoint a Christian Education Committee that would be responsible for, among other things, "[c]oordinating the program and reporting to the Session" and "[r]ecommending the selection of the Administrator to the Session." The petitioner also submits a copy of its June 1, 1994 certificate of incorporation in the State of Ohio and a copy of a March 26, 1997 certificate from the Secretary of State for the State of Ohio registering the as an "NFO." The document indicates the petitioner filed for the status for the and that the certificate would expire on March 26, 2002. The petitioner's "Report of Use of Fictitious Name" for the name of was approved by the Ohio Secretary of State on March 26, 1997 and was renewed on December 15, 2011.

While the petitioner has submitted documentation to establish that it is the parent organization of the it has submitted insufficient evidence to establish that the and the petitioner are one entity. The use of a fictitious name does not, without more, establish the petitioner and are a single organization; it merely shows that the petitioner operates a day care, nursery and pre-school under the fictitious name of The fact that the petitioner provides financial support to the also does not establish that they are a single unit. The has a separate set of bylaws and a separate EIN from the petitioning organization. It maintains a separate budget and a separate profit and loss statement. The maintains a separate employee list and files separate IRS Forms 941 reporting the wages it pays to its employees. While the petitioner may exercise some administrative control of the there is no indication in the record that it exercises day-to-day operational control of the organization, to include the hiring of any employee other than the administrator. The AAO does not discount the petitioner's inclusion of the in its annual report as the petitioner does with its other organizations such as the However, this inclusion is not inconsistent with any corporate organization reporting the activities of its subordinate units and does not represent that the organizations are indistinguishable or constitute a single entity.

While the director appears to have accepted the petitioner as the potential employer, given the AAO's findings that the petitioner has failed to adequately establish that it and the are a single entity, the evidence of record is not clear that the beneficiary seeks to enter the United States for the purpose of working for the petitioning organization. Rather, the evidence is clear

that the beneficiary will work for the The regulation at 8 C.F.R. § 214.2(r)(1)(iv) provides that to be eligible for classification as a nonimmigrant religious worker, the alien must "[b]e coming to or remaining in the United States at the request of the petitioner to work for the petitioner."

Even assuming that the petitioner had adequately established that it and the are a single organization, it has failed to provide sufficient documentation in accordance with the regulation at 8 C.F.R. § 214.2(r)(11) to establish how it will compensate the beneficiary. The petitioner submitted a copy of its 2010 and 2011 Annual Reports which included copies of unaudited financial reports. The petitioner reported a balance of $33.26 in its general fund in 2010 and $94.22 in 2011. The Profit and Loss Statements for the show a net income of $18,833.70 in 2010 and a net loss of $17,310.22 in 2011. As none of the financial documentation has been audited, they are based only on the petitioner's representations, and there is no independent review to establish that they fairly represent the financial position of the petitioning organization. In light of this, limited reliance can be placed on the validity of the facts presented in the financial statements that have been submitted. No further supporting documentation is included in the record to reflect the assertions made by the petitioner in the financial documentation or contained within the unaudited financial statements.

On appeal, the petitioner submits a copy of the quarterly bank statement for the payroll reserve account for April to June 2012 and monthly bank statement for the for the period July 11, 2012 to August 10, 2012. However, these documents are dated after the dates of the annual reports and after the filing date of the petition. Therefore, they do not serve to establish the facts contained with the financial documentation or that the petitioner was capable of compensating the beneficiary as of February 8, 2011, when the petition was filed. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978).

As discussed above, in response to the director's RFE, the petitioner submitted uncertified copies of its IRS Forms 941 for September 2011, December 2011, March 2012, and June 2012. The petitioner submitted similar documentation for the However, the petitioner did not state that the beneficiary was replacing any of the employees that it currently had in its employ and for which it reported the wages. Therefore, the uncertified tax returns do not provide evidence of the petitioner's ability to pay an additional salary to the beneficiary.

The petitioner has failed to establish how it will compensate the beneficiary.

Furthermore, the petitioner has submitted insufficient documentation to establish 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.

In a May 6, 2012 position description, the petitioner provided a list of general responsibilities associated with the proffered position. However, the petitioner provided no specifics of the beneficiary's proposed duties and submitted no documentation to establish that the position is recognized as a religious occupation within its denomination, and that the duties of the position primarily relate to a traditional religious function, and primarily relate to and clearly involve inculcating or carrying out the religious creed and beliefs of the denomination.

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).

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.