

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

[Redacted]

Date: **MAY 28 2013**

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) 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
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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 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 an associate and administrative pastor. The director determined that the petitioner had not established how it intends to compensate the beneficiary.

The petitioner submits additional documentation in support of the petition.

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 in Part 5 of the Form I-129, Petition for a Nonimmigrant Worker, and in Section 1 of the Form I-129 Supplement R, filed on June 29, 2012, that the beneficiary would be compensated at the rate of \$320 per week plus housing and transportation. The petitioner also indicated in Section 1 of the Form I-129 Supplement R that it had one member and entered "0" for the number of employees that would be working at the same location as the beneficiary. The petitioner stated that it had no current employees and had a gross annual and net income of \$20,000. With the petition, the petitioner submitted a copy of its monthly bank statements for February 2012 and March 2012, reflecting ending balances of \$11,028.52 and \$6,823.36, respectively. The petitioner submitted no other documentation to establish how it intends to compensate the beneficiary.

In a September 7, 2012 request for evidence (RFE), the director advised the petitioner that a budget and other financial evidence about the organization was not provided and instructed the petitioner to submit verifiable evidence, such as that indicated in the above-cited regulation, of how it intends to compensate the beneficiary. In response, the petitioner stated:

Non-salaried compensation: when the beneficiary served as Optional Practical Trainee at [the petitioning organization]. The ministry has taken care of his housing, food, and transportation. It is still being continuing [sic] by the ministry at good level. The bank statement is attached for the expenses of beneficiary.

The petitioner resubmitted the copy of its February 2012 monthly bank statement.

The director denied the petition, finding that the petitioner had failed to establish how it would compensate the beneficiary. On appeal, the petitioner submits two letters from its bank, both dated February 21, 2013. One attests that the petitioner opened an account on March 30, 2010 and that the account currently had a balance of \$10,800. The other letter attests that the petitioner opened an account on February 20, 2013, and that the account currently had a balance of

\$22,200. A 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). The letters, reporting the petitioner's ending balances in 2013, as well as the opening of a bank account in 2013, do not establish the petitioner's intent and ability to compensate the beneficiary in June 2012, when the petition was filed. The petitioner also submits copies of check stubs, some of which indicate that the petitioner paid the beneficiary periodic "gifts" and support of \$400 to \$600 over a period of six months, from December 2011 to May 2012. The stubs also indicate that the petitioner paid for housing for the beneficiary in the amount of \$250 on June 5, 2011 and \$200 on July 15, 2011. The submitted documentation indicates that the petitioner paid the beneficiary a total of \$4,800 and does not establish that it had the ability to pay the proffered salary of \$320 per week.

The petitioner stated on the Form I-129 that it had gross and annual income of \$20,000, thus implying that it had no expenses against its income. The evidence in the record refutes that the petitioner has no expenses. As discussed above, the check stubs submitted by the petitioner reflect expense items such as rent, repairs, and monetary gifts. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Although the petitioner has submitted bank statements, these statements are insufficient to provide an accurate picture of the petitioner's financial status. The petitioner submits no verifiable documentation such as a budget, income statement or balance sheet that would reflect not only its income but the expenses offsetting that income.

The petitioner also submits a copy of a declarations page from its February 2013 "Commercial Auto insurance Coverage Summary" identifying the beneficiary as the second rated driver on the policy. Although the petitioner states in its February 20, 2013 letter that the policy is a renewal, the document contains no evidence of this and to establish when the beneficiary was added to the policy. There is no evidence that the beneficiary was provided with transportation prior to the date of this policy. 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 also submits a copy of a lease agreement dated June 10, 2011 between the beneficiary and [REDACTED]. The lease provided for no rent payment and no other rental expenses by the beneficiary. In a handwritten note, [REDACTED] states that he met the beneficiary through his son "and as a co-worker in the ministry," and that he gives the beneficiary "permission to say with me as a missionary help through the [petitioner] to help in [their] need of ministry."

The petitioner stated on the Form I-129 that the beneficiary's compensation would include housing. According to [REDACTED] the beneficiary is permitted to stay at his home rent-free. Thus, the beneficiary will receive lodging, not from the petitioner as alleged, but by an apparent member of the petitioner's congregation. The regulation at 8 C.F.R. § 214.2(r)(11) requires the petitioner to "state how the petitioner intends to compensate the alien" and to "submit verifiable evidence explaining how the petitioner will compensate the alien." The cited regulation twice specifies the petitioner, i.e., the employer, as the entity that will "compensate the alien." The regulation does not state that the petitioner can discharge this responsibility through an arrangement between the beneficiary and an independent third-party. The provision of housing by another individual or entity is not evidence of the petitioner's ability to provide the proffered compensation. Although the petitioner's check stubs indicate that it paid "housing" on behalf of the beneficiary, the payments were only for June and July of 2011. The petitioner submits no other documentary evidence to demonstrate an ongoing responsibility for the beneficiary's housing.

The petitioner has failed to provide verifiable documentation to establish how it intends to compensate the beneficiary as required by the regulation at 8 C.F.R. § 214.2(r)(11).

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.