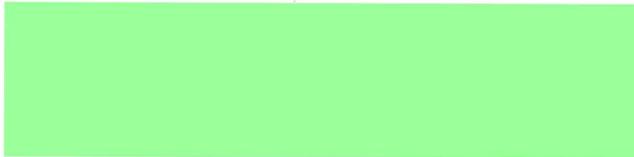
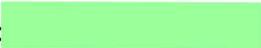


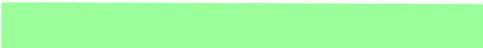


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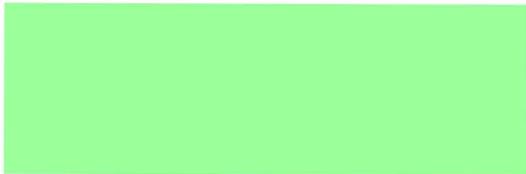


DATE: **AUG 26 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:

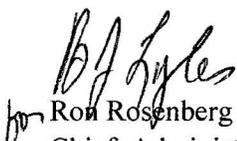


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before us on a motion to reopen and a motion to reconsider. The motion to reopen will be granted and the denial of the petition will be withdrawn. Because the record, as it now stands, does not support approval of the petition, we will remand the petition for further action and consideration.

The petitioner identifies itself as a “religious organization of Sikh religion.” It seeks to classify the beneficiary as a nonimmigrant religious worker pursuant to 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 granthi-priest. The director determined that the petitioner failed to establish how it intends to compensate the beneficiary. In our March 6, 2014 decision, we agreed with the director’s determination and additionally found that the petitioner failed to submit required evidence to establish that it qualifies as a bona fide non-profit religious organization or a bona fide organization that is affiliated with the religious denomination.

On motion, the petitioner submits a brief and additional evidence.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). In support of the motion to reopen, the petitioner asserts, in part, that it relied on improper and insufficient advice from an “immigration consultant” whom the petitioner believed to be an attorney. The petitioner contends that this individual “failed to specify all of the exact information or documents” needed in response to the director’s Notice of Intent to Deny (NOID) and on appeal. The petitioner therefore requests that we consider the evidence submitted on motion. While we will consider complaints based upon ineffective assistance against accredited representatives, (*Cf. Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff’d*, 857 F.2d 10 (1st Cir. 1988)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel)), we note that there is no remedy available for an applicant who authorizes an unlicensed attorney or unaccredited representative to undertake representations on its behalf. *See* 8 C.F.R. § 292.1. Nevertheless, as the petitioner submits new evidence in support of the motion to reopen, the motion is granted and the newly submitted evidence will be considered.

Regarding the issue of compensation, the petitioner asserted at the time of filing the Form I-129, Petition for a Nonimmigrant Worker, that it would provide \$800 per month plus lodging, food, and other amenities. The petitioner submitted unaudited financial statements as well as its uncertified tax returns for 2010 and 2011. The director issued a NOID, discussing the negative findings of a past site visit and instructing the petitioner to submit additional evidence pertaining to compensation, including IRS documentation or an explanation for its absence along with comparable, verifiable documentation. In response, the petitioner submitted copies of two bank statements and photocopies of monthly checks for \$1,200 each from the petitioner to the beneficiary for the period from November 10, 2011 and March 28, 2013, only some of which included evidence that they had been cashed or deposited.

In denying the petition, the director found that the submitted evidence was insufficient to establish the petitioner’s ability to provide the proffered wage. The director found that the petitioner “failed to account for the absence of IRS documentation,” and had not submitted sufficient evidence to rebut

the site visit finding, described in the NOID, that the petitioner relied on checks paid directly from temple members to compensate its employees. On appeal, the petitioner provided copies of utilities bills as ability of its past provision of room and board. The petitioner also provided additional bank statements, copies of two processed checks to the beneficiary for \$1,200 each, dated May 27, 2013, and July 28, 2013, and copies of documents previously submitted. In our decision, we stated that the submitted utility bills were for commercial, rather than residential service, and therefore did not demonstrate the petitioner's ability to provide room and board. We also found that the petitioner failed to submit sufficient IRS documentation, including IRS documentation of the beneficiary's purported past compensation as evidence of the petitioner's ability to pay the proffered wage. We also stated that the submitted bank statements were not sufficient to support the figures asserted in the petitioner's unaudited financial statements, and that most of the submitted paychecks were not verifiable as they did not include evidence that they had in fact been processed.

On motion, as evidence regarding salaried compensation, the petitioner submits copies of processed paychecks indicating payments from the petitioner to the beneficiary of \$1,200 each, approximately every month from November 10, 2011 to February 28, 2014. The petitioner also submits copies of IRS Form 1099-MISC, Miscellaneous Income, for 2011, 2012, and 2013, indicating that the beneficiary received nonemployee compensation of \$13,200, \$16,720, and \$14,980 in those years, respectively. As evidence of its ability to provide the proffered non-salaried compensation, the petitioner submits an August 1, 2013 lease agreement between the petitioning organization and [REDACTED] for the lease of two rooms at [REDACTED] "as a private residence to accommodate priest, religious workers or visitors," for \$450 per month. The petitioner also submits processed checks from the petitioner to [REDACTED] with notations indicating "rent" payments, for \$500 each for the months of December 2012 to May 2013, and \$450 each for August 2013 to December 2013. The submitted 2012 and 2013 Forms 1099-MISC list [REDACTED] as the beneficiary's address.

The regulation at 8 C.F.R. § 214.2(r)(11) states that evidence of compensation may include past evidence of compensation for similar positions, and that the petitioner must submit IRS documentation if available. The evidence submitted on motion, including evidence of past compensation of the beneficiary in the form of processed checks and Forms 1099-MISC, is therefore sufficient to establish the petitioner's ability to provide the proffered compensation. Our previous finding on this issue is withdrawn.

We will next discuss whether the petitioner has submitted the required documentation to establish its status as a bona fide nonprofit religious organization or a bona fide organization that is affiliated with the denomination. As initial evidence on this issue, the petitioner submitted a letter from the Internal Revenue Service indicating that it was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code as something other than a religious organization. In our March 6, 2014 decision, we noted that the petitioner must therefore establish that it qualifies as a bona fide organization which is affiliated with the denomination by submitting the additional evidence required under 8 C.F.R. § 214.2(r)(9)(iii). We analyzed the submitted evidence as follows:

The petitioner's submission of the IRS determination letter is sufficient to satisfy the regulation at 8 C.F.R. § 214.2(r)(9)(iii)(A). However, the petitioner did not submit its organizing instrument or similar documentation to establish its religious purpose as required under 8 C.F.R. § 214.2(r)(9)(iii)(B), and the submitted brochure did not sufficiently describe the petitioner's activities to establish their religious purpose and nature as required under 8 C.F.R. § 214.2(r)(9)(iii)(C). Further, the petitioner submitted a Religious Denomination Certification signed by its own president. The regulation at 8 C.F.R. § 214.2(r)(9)(iii)(D) states that "[t]he **religious organization** must complete, sign and date a religious denomination certification certifying that the **petitioning organization** is affiliated with the religious denomination[.]" (Emphasis added). The regulation clearly differentiates between the religious organization and the petitioning organization. The form instructions contain identical language. As the regulation applies to a petitioner that is "something other than a religious organization," the "religious organization" which must sign the certification is an organization other than the petitioner. Accordingly, the petitioner has failed to establish its qualifying religious nature.

On motion, the petitioner submits a copy of its constitution, including the organization's purpose "[t]o promote, teach and practice the principles of the Sikh religion and its religious tenets and beliefs through establishment of a Sikh Temple [REDACTED]" The petitioner also submits evidence regarding its religious activities, including a printout from its website regarding its mission, a November 11, 2010 article from the [REDACTED] regarding a special program of religious services being held by the petitioner, and communications between the petitioner and the [REDACTED] City Fire Department regarding plans for a Diwali festival at the temple. In addition, the petitioner submits a Religious Denomination Certification signed by the general secretary of Sikh [REDACTED] – [REDACTED] attesting to the petitioning organization's affiliation with the Sikh religion, as well as a "Membership Form" indicating the petitioner's membership in Sikh [REDACTED] [REDACTED] identified as an umbrella organization of Sikh [REDACTED] The evidence submitted on motion meets the evidentiary requirements under 8 C.F.R. § 214.2(r)(9). Accordingly, our previous finding on this issue is withdrawn.

The above discussion indicates that the petitioner has overcome all stated grounds relevant to denial of the petition. However, review of the record shows an additional ground of eligibility that has not been established. We conduct appellate review on a de novo basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The USCIS 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 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.

On remand, the director shall determine whether the petitioner has satisfied the regulation at 8 C.F.R. § 214.2(r)(16) and whether a new compliance review, onsite inspection or other verification of the petitioner's claims is appropriate in the instant petition.

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. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The motion is granted and the denial of the petition 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.