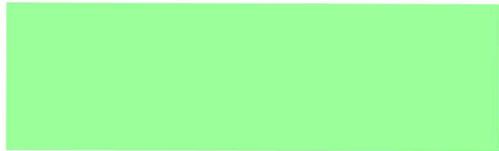
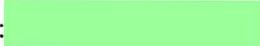


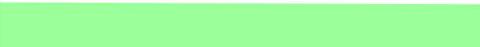


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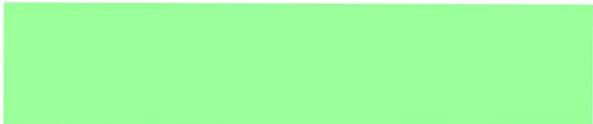


DATE: JUL 29 2014 OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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 matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner is a church. It seeks classification of 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 “Home Health Care Aide as part of religious ministry.” The director determined that the petitioner failed to establish that the beneficiary will be employed in a qualifying religious occupation and how the petitioner intends to compensate the beneficiary.

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

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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(1) states that, 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 first issue to be discussed is whether the petitioner has established that the beneficiary will be employed in a qualifying religious occupation.

The USCIS regulation at 8 C.F.R. § 214.2(r)(3) includes the following definitions:

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, a church affiliated with the [REDACTED] denomination, filed the Form I-129, Petition for a Nonimmigrant Worker, on July 8, 2013. As a description of the proposed daily duties, in Supplement R, the petitioner stated: "This home care aid will help elderly or disabled parishioners and non-parishioners alike with activities of daily living, including hygiene, meals preparation, laundry and housekeeping." The summary of responsibilities listed by the petitioner contained a similar description of duties. Accompanying the petition, the petitioner submitted evidence that the beneficiary was appointed as an [REDACTED] (the petitioner) on June 7, 2011, along with

copies of foreign certifications held by the beneficiary to show that she is certified in elder care and home care.

On July 30, 2013, the director issued a Request For Evidence (RFE) asking, in part, that the petitioner submit additional information about the proffered position and evidence that it qualifies as a religious occupation. In an October 13, 2013 letter submitted in response to the RFE, the petitioner stated:

The instant petition involves, as has been clear throughout[,] the delivery of elder care by the church as part of its ministry and Christian purposes. . . . The ministering of the sick, the infirmed, the elderly, the imprisoned, and the dying has been part of Christian teaching and practice since the time of Jesus Christ.

The petitioner submitted an employment contract, signed by the petitioner and the beneficiary, which included a description of the services to be provided by the beneficiary. The contract indicated that the beneficiary would be responsible for administering medications, monitoring the patient's condition, and providing a variety of personal care and housekeeping services. The listed duties included escorting the patient "to religious services or events."

On November 22, 2013, the director denied the petition stating that the petitioner failed to establish that the proffered position qualifies as a religious occupation.

On appeal, the petitioner submits a December 16, 2013 statement, signed by the signatory of the petition, [REDACTED] as Archbishop of the petitioning church and [REDACTED]

The statement provides information on the diocese's vision, mission, core values and support for the petitioner's elder care program which is stated to be a ministry of the petitioner's denomination. The signatory states that "[p]roviding elder care is one of our sacred duties to help the laity, both from a mission directed perspective as well as a time honored tradition from our Orthodox praxis and roots." The signatory also states that "[t]he physical and spiritual wellbeing of our elders is of critical concern and hence the [REDACTED] has now develop[ed] an elder care program, under [the] guidance of the [REDACTED], to meet that mission." The statement provides an additional list of duties under the headings, "Companion Care," "Alzheimer's and Dementia Care," "Housekeeping," "Personal Care," and "Spiritual Care." The duties under "Spiritual Care" consist of the provision of "spiritual nourishment and assist in daily spiritual needs," and "perform support to and from religious activities." In a separate statement, also dated December 16, 2013, the signatory states: "Our Eparchal direction is to develop a program that gives comfort to the elders of our Eparchy, dioceses and parishes. This program will be administered by our clergy and in particular our Archons." The signatory states that the beneficiary "will be the first care giver of this program under the title of religious worker and home health aide."

In defining "religious occupation," the regulation at 8 C.F.R. § 214.2(r)(3) states that the duties of the occupation must primarily relate to a traditional religious function of the church and be recognized as a religious occupation within the denomination. Additionally, the duties of the position must clearly involve inculcating or carrying out the religious creed and beliefs of the denomination. The petitioner

contends that providing elder care relates to the traditional religious function of ministering to the sick and the elderly. However, the regulatory definition of religious occupation focuses on the nature of the specific duties to be performed, requiring that duties be “primarily” religious rather than secular. In this instance, the primary duties of the position are related to medical and personal care and do not appear to have a religious component to them. Further, the record does not establish that the position of a home health care aid is recognized as a religious occupation within the petitioner’s denomination. The petitioner states on appeal that the proffered position is a new position within the petitioner’s diocese, and the petitioner submits no evidence to establish that this position exists in any other diocese of the petitioner’s denomination. As such, the petitioner has failed to establish that the proffered position qualifies as a religious occupation.

The next issue to be discussed is whether the petitioner has established its intent and ability to provide the proffered compensation.

The 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 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.

* * * *

The petitioner stated on the Form I-129 that the beneficiary would receive monetary compensation of \$1,095 per week plus nonmonetary compensation of free room and board and a plenary health benefits package. Accompanying the petition, the petitioner submitted a May 29, 2013 affidavit, signed by the petitioner’s Archbishop and the beneficiary, stating that the beneficiary will receive free room and board from the petitioner, that the beneficiary will not become a public charge, and that the beneficiary will accept no other employment while employed by the petitioner.

In the director’s July 30, 2013 RFE, she requested, in part, that the petitioner submit verifiable evidence of how the petitioner intends to compensate the beneficiary. In its October 13, 2013 letter responding to the director’s RFE, the petitioner stated that the funds to compensate the beneficiary would be “a

combination of funds at the disposal of the petitioner and the use of government resources which are available to many of the elderly who are served by your petitioner.” The petitioner indicated that the beneficiary would be paid \$219.00 per day for client care, the rate paid to Medicaid beneficiaries. The petitioner stated: “hence the petitioner will be working in unison and in a public, private, and charitable partnership with the government, both state and federal and with private organizations to meet the needs of the elderly whom the petitioner serves.”

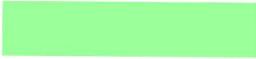
In denying the petition, the director found that the petitioner failed to submit verifiable evidence of how it intends to compensate the beneficiary. The director stated that the petitioner failed to provide bank statements, audited financial statements, and/or IRS tax returns for 2011 and 2012, or an explanation of why IRS documentation was not available.

In a brief submitted on appeal, the petitioner states that it does have the financial resources to meet its needs and payroll obligations. As “proof of ongoing payments” made in connection with the employment of home health providers for the church’s elder care patients, the petitioner submits sample invoices from [REDACTED] to one of that provider’s clients, along with a copy of the private duty service agreement under which the invoices were billed. The petitioner states:

It is noted that in meeting the financial obligations associated with this model, the church uses a combination of church resources, government entitlement and benefit programs, insurance proceeds and benefits, and some contribution from the elder patient receiving the benefits. As indicated, the church’s role is largely that of an umbrella organization connecting multiple resources to meet the needs of its ministry and hence its parishioners.

The USCIS regulation at 8 C.F.R. § 214.2(r)(11) and the employer attestation require 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 by arranging for third parties to compensate the alien.

Even if third party compensation were allowed in this instance, the regulation at 8 C.F.R. § 214.2(r)(11) also indicates that, if the petitioner intends to provide salaried or non-salaried compensation, IRS documentation “such as IRS Form W-2 or certified tax returns,” or an explanation for its absence along with comparable, verifiable documentation, is required. The petitioner indicated that the beneficiary will receive salaried and non-salaried compensation, with funds for the salaried compensation to come from the petitioner and other sources. However, the petitioner has not indicated the amount it will contribute, or submitted IRS documentation of its ongoing ability to provide such funds. Nor has the petitioner provided an explanation for the absence of IRS documentation along with comparable, verifiable documentation. Accordingly, the petitioner has not met the requirements of the USCIS regulation at 8 C.F.R. § 214.2(r)(11), and the petition may not be approved.



The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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). Here, that burden has not been met.

ORDER: The appeal is dismissed.