

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: **MAR 06 2014** OFFICE: CALIFORNIA SERVICE CENTER

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:

SELF-REPRESENTED

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. The AAO will dismiss the appeal.

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.

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 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 filed the Form I-129, Petition for a Nonimmigrant Worker, on April 12, 2013. On the petition, the petitioner stated that it has gross annual income of \$145,099.61, and indicated that the beneficiary would receive compensation of \$200 per week in addition to “free lodging, free food & other amenities.” In Supplement R to the petition, the petitioner stated “the alien would be paid a monthly salary of \$800 and besides this he would be provided free lodging, food and other amenities.” In a letter accompanying the petition, the petitioner stated the following regarding the proffered compensation:

For his services, the Temple will be providing the Beneficiary with the following salary and benefits:

1. COMPENSATION AND FRINGE BENEFITS

- A) The yearly salary for the resident priest shall be \$800.00 per month.
- B) Other reasonable salary increments may be made in the future depending on the financial position of the Temple and the satisfactory performance of his duties by the resident priest as reviewed by the Board of Directors.

2. ACCOMODATIONS [sic]

- A) The resident priest shall be provided with living accommodations.
- B) He will be served with free food and other necessities.
- C) The Temple will also pay all utilities & phone costs required for the resident priest's apartment.

The petitioner submitted financial statements titled "Profit & Loss October 2011 through September 2012," and "Balance Sheet as of September 30, 2012." The petitioner also submitted an uncertified 2011 Internal Revenue Service (IRS) Form 990, Return of Organization Exempt From Income Tax, indicating net assets or fund balances of \$508,152. The return was dated February 19, 2013 and was unsigned. The petitioner also submitted a photocopy of a 2010 Form 990 return with a stamp indicating receipt by the IRS on January 30, 2012. The 2010 return indicated net assets or fund balances of \$495,091.

On May 7, 2013, USCIS issued a Notice of Intent to Deny the petition (NOID), based in part on the findings of a site visit to the petitioner's premises, during which it was found that a previous beneficiary was paid inconsistent amounts by the petitioner and received personal checks directly from "temple devotees." The NOID instructed the petitioner to submit additional evidence pertaining to compensation, including IRS documentation or an explanation for its absence along with comparable, verifiable documentation.

In a letter responding to the NOID, the petitioner stated:

As per Sikh religious every Sikh has to contribute some amount of his income for the welfare of society and community and the amount which is fixed by sikh religion is 10% of your total earning. All the community family usually provide \$ 10 to Gurudwara as daswant of their earning and Gurudwara have more than \$ 3500 per week from the community collection and Petitioner general use that money for regular and daily work and for the salaries of the employees.

We have plenty of money with us for the salary of the employees, for the development of Gurudwara and for the religious ceremonies of Sikh Religion.

The petitioner submitted copies of its [REDACTED] checking and savings bank statements for the periods of January 2, 2013 to February 1, 2013, and February 2, 2013 to March 1, 2013, listing

ending balances of \$12,231.05 and \$11,702.89 respectively. The petitioner also submitted 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. The petitioner submitted records showing that the checks dated February 24, 2013, March 28, 2013, December 1, 2011, January 6, 2012, and March 25, 2012, had been processed or deposited. Copies of checks for the remaining months showed only the fronts of the checks, with no evidence that they had been processed.

On July 29, 2013, the director denied the petition, finding that the petitioner had not submitted sufficient evidence to establish how it intends to compensate the beneficiary. The director found that, although the petitioner submitted some evidence of past compensation of the beneficiary, the petitioner "failed to account for the absence of IRS documentation," and had not submitted sufficient evidence to rebut the findings of the site visit, as stated in the NOID, that the petitioner relied on checks paid directly from temple members to compensate its employees.

On appeal, the petitioner asserts that it has employed the beneficiary since July 16, 2009, and states the following:

- Petitioner would like to high light that beneficiary is provided with Boarding and room facility for this petitioner is providing Electricity and Gas Bills from which it is clear that Petitioner is provided with Food and room facilities. Copy of Electricity and Gas Bills from Jan-2013 to July-2013 is enclosed here with.
- Petitioner is providing bank statement from January 2013 to August 2013 which shows ample funds to compensate beneficiary salary.
- Petitioner is providing salary checks of beneficiary from November 2011 to till date.
- Petitioner is providing balance sheet of Gurudwara for Year 2010, 2011 and 2012.
- Petitioner is providing P & L statements of Gurudwara for 2011 and 2012.
- Petitioner is providing copy income tax return of year 2011.

Petitioner would like to highlight that total income of Gurudwara in P & L statement was \$ 225,473.53 for year 2011 and \$ 190,104.35 for year 2010 with the deduction of all expense including salaries. Gurudwara had \$ 62,343.77 net income for year 2011 and \$ 19,745.87 in year 2010. Is it clear from the statements that Gurudwara have enough funds and income to provide salary to beneficiary.

Another issue you mentioned in I-129 for the salary compensation mentioned was \$ 800 with necessary living expenses but check from November 2011 to March 2013 show compensation amount \$ 1200.

Petitioner would like to inform you that the monthly compensation of beneficiary is \$ 800 but he is performing on Akhand Path and Sehaj Path on Special Occasion organized on every weekend by members of Gurudwara on weddings, Last Rites, Birth of child, Birthdays Kirtan and special achievements and other special days of

Sikh religion and days associated with Guru and Sikh History that are celebrated in Gurudwara. During Special Ceremonies cash offering are made by devotees. All the cash offering are submitted to Gurudwara and management provides beneficiary extra \$ 400 every month for performing on special occasions. You can find out in P&L statements that Gurudwara gets lots of funds from Program income.

The petitioner submits a document entitled "Contract of employment," signed by the Secretary of the petitioning organization, stating that the beneficiary "is currently drawing a salary of \$1,200 per month," and receives boarding and lodging, including utilities. The petitioner submits copies of electric, gas, and phone bills for various months of 2013. Although the petitioner contends that the utility bills are evidence of the room and board and other non-salaried compensation received by the beneficiary, the bills do not indicate that they relate to residential service. Instead, the gas bills specify "Gas Service to Small Commercial Customers" and state that the petitioner is billed at a "nonresidential (commercial or industrial) rate. The telephone bills indicate that the petitioner has a "Bus Local Calling Unlimited A" monthly service plan. 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). The petitioner also submits copies of processed checks to the beneficiary for \$1,200 each, dated May 27, 2013, and July 28, 2013, as well as duplicates of the previously submitted check copies. The petitioner does not submit evidence of payment for June 2013, nor does the petitioner submit evidence to demonstrate the processing or deposit of the previously submitted checks, discussed above.

If the petitioner intends to provide salaried or non-salaried compensation, the regulation at 8 C.F.R. § 214.2(r)(11) requires IRS documentation or an explanation for its absence along with comparable, verifiable documentation. The only IRS documentation submitted by the petitioner consisted of a Form 990 tax return from 2010 (not filed with the IRS until 2012), and an unsigned, uncertified Form 990 tax return from 2011. Like a delayed birth certificate, the late filing of the Form 990 raise questions regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991)(discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings). Although the petitioner asserts that it has employed the beneficiary since 2009 and provides him with both salaried and non-salaried compensation, the petitioner has provided no explanation for the absence of IRS documentation of that compensation as required by the regulation. 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)). Further, the petitioner has not submitted comparable, verifiable evidence of its ability to compensate the beneficiary. The petitioner has not submitted evidence to indicate that the submitted balance sheets and profit and loss statements have been audited, nor are the submitted bank statements sufficient to verify the figures asserted in the statements. Additionally, as discussed previously, the petitioner only submitted evidence that some of the beneficiary's purported paychecks were in fact processed or deposited.

For the reasons discussed above, the petitioner failed to establish how it intends to compensate the beneficiary.

As an additional matter, the petitioner failed to establish that it qualifies as a bona fide non-profit religious organization or a bona fide organization that is affiliated with the denomination. The AAO conducts 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)(3) provides the following definitions:

Bona fide non-profit religious organization in the United States means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the Internal Revenue Service (IRS) confirming such exemption.

Bona fide organization which is affiliated with the religious denomination means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the IRS confirming such exemption.

Tax-exempt organization means an organization that has received a determination letter from the IRS establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the Internal Revenue Code . . .

Regarding evidence of the petitioner's tax-exempt status, the regulation at 8 C.F.R. § 214.2(r)(9) requires the following:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or

(iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, as something other than a religious organization:

(A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

The instructions on the Form I-129 petition also list these identical evidentiary requirements. The Religious Denomination Certification, included in the Employer Attestation portion of the petition, was signed by the president of the petitioning organization and identified the petitioner as affiliated with the "Sikh Religion" denomination.

Accompanying the petition, the petitioner submitted an October 8, 2009 letter from the IRS, confirming the petitioner's exemption from taxation under section 501(c)(3) of the Internal Revenue Code (the Code). The letter further stated that the petitioner was determined to be "an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi)." While section 170(b)(1)(A)(i) of the Code refers specifically to churches and related organizations, section 170(b)(1)(A)(vi) of the Code has no such limitations. The petitioner also submitted copies of Form 990 tax returns from 2010 and 2011, each of which described the organization's mission as "Religious and Sikh Community Services."

In the May 7, 2013 NOID, the director noted that the submitted determination letter indicated that the petitioning organization was granted tax exempt status as something other than a religious organization. The director therefore instructed the petitioner to submit additional evidence to establish that it qualifies as a bona fide organization that is affiliated with the religious denomination, as described in 8 C.F.R. § 214.2(r)(9)(iii)(B), (C), and (D). The director stated:

Since said designation is a clear indication that the petitioning organization is not a church, the petitioner may qualify to be a bona fide religious organization only by

establishing with evidence its affiliation with a religious denomination; by documentation that establishes the religious nature and purpose of the organization such as a copy of the organizing instrument of the organization that specifies the purposes of the organization; and by organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

As stated in subparagraph (D) the religious denomination certificate must be completed, signed, and dated by a religious organization with which the petitioning organization is affiliated. Moreover, the Form I-129 instructions state: Religious Denomination Certificate, which is part of the R-1 Classification Supplement to Form I-129, [“completed, signed, and dated by the religious organization certifying that the petitioning organization is affiliated with the religious denomination.”] Pursuant to the regulations and the I-129 Form Instructions, the religious organization is a distinct entity than the petitioning organization that is claiming to be a bona fide organization affiliated with a religious denomination.

(Emphasis in original). In response to the NOID, the petitioner submitted a copy of a May 28, 2013 letter from the IRS confirming the petitioner’s tax-exempt status under section 501(c)(3) of the Code as an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi). The petitioner also submitted a brochure from the petitioning organization and a brochure about Sikhism from a separate organization, [REDACTED]. The brochure about the petitioning organization identified the petitioner as “a non profit registered organization dedicated to serving the Sikh Community in efforts to build a Gurdwara,” and described fundraising efforts to build a full kitchen inside “[REDACTED].”

On appeal, the petitioner submits an additional letter from the IRS, dated January 7, 1998, again confirming the petitioner’s tax-exempt status under section 501(c)(3) of the Code as an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi). The petitioner asserts that it is “a nonprofit, tax exempted religion organization.”

Although the petitioner asserts that it is recognized as a tax-exempt religious organization under section 501(c)(3), the submitted determination letters indicate that the petitioner was granted 501(c)(3) status as something other than a religious organization. Therefore, the IRS determination letters are evidence of the petitioner’s tax-exempt status but are not evidence of the petitioner’s religious nature or purpose. The director correctly stated in the NOID 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). 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.

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.