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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

DATE: JUN 25 2014 OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

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.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) withdrew the director's decision and remanded the petition for further consideration. The director again denied the petition and, based on our instructions, certified the decision to us for review. We will withdraw the director's decision. 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 is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a senior pastor and overseer. The director determined that the petitioner failed to establish its intent and ability to compensate the beneficiary.

The petitioner submits no brief or statement on certification.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 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;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before September 30, 2012, 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) before September 30, 2012, 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; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(10) states:

Evidence relating to compensation. Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence 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. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

The Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, was filed on November 19, 2009. On the petition, the petitioner stated that the beneficiary “will be offered an initial compensation package of \$42,000.” In an accompanying letter, dated November 6, 2009, the petitioner stated that the beneficiary has been a pastor for 21 years, during which time he has led the [REDACTED]. At the time of filing, the petitioner submitted copies of its unaudited financial statements for 2008 and 2009. The 2008 statement indicated that the petitioner had a total income of \$100,680.88 and total expenses of \$94,357.11, leaving a net income of \$6,323.77. The 2009 statement indicated total income of \$104,692.07, total expenses of \$107,023.08, and a net loss of \$2,331.01. Although neither statement included any salaries or wages on the list of expenses, the 2008 statement included \$64,501.99 to [REDACTED] and the 2009 statement included \$72,560.21 to [REDACTED] as “Missions” expenses.

On March 1, 2010, the director issued a Request for Evidence (RFE), in part requesting additional evidence of the petitioner’s ability to provide the proffered compensation. In a March 27, 2010 letter responding to the RFE, the petitioner asserted that, although it had not previously employed or compensated the beneficiary, it “has made provision in its budget for the remuneration of [the beneficiary] for when this petition is approved and he is able to accept the letter [of] offer.” The petitioner submitted a 2010 budget, listing total income of \$296,000.00 and total expenses of \$282,000.00, including a “Proposed Pastor Salary” of \$42,000.00, and \$130,000.00 for “Missions & Projects.”

The director denied the petition on May 27, 2011, finding that the petitioner failed to establish that it is operating in the capacity claimed in the petition. On July 6, 2012, we withdrew the director’s finding on that issue and remanded the matter for additional consideration, finding, in part, that the petitioner had not established how it intends to compensate the beneficiary. Based on our instructions, the director issued an additional RFE on October 3, 2012, again requesting evidence regarding the petitioner’s ability to provide the proffered compensation.

In response to the RFE, the petitioner submitted copies of its previously submitted 2008 and 2009 financial statements. The petitioner also submitted unaudited financial statements for 2011 and 2012, as well as “Budget Overview” spreadsheets for 2011, 2012, and 2013. Additionally, the petitioner submitted copies of its bank account statements for the months of January, 2008, through November, 2012. The bank statements showed total deposits of \$108,697.25 in 2008, \$148,105.98 in 2009, and

\$170,282.35 in 2010. The petitioner also submitted a December 18, 2012 email from the beneficiary, providing the following explanation: “[F]or now since there [is] no senior pastor most of the funds are allocated for overseas missions, when senior [pastor] will be in place more funds will be allocated to local [sic] missions.”

On February 11, 2014, the director again denied the petition and certified it to us for review. The director stated that the petitioner’s 2008 and 2009 bank statements indicated a net income less than the intended \$42,000 yearly salary and the petitioner’s bank statements for those years “had a balance less than what would be the beneficiary’s monthly salary” (\$3,500 per month) during most months. Regarding the submitted documentation for 2010 through 2013, the director found that this evidence was not relevant to the petitioner’s ability to pay the proffered wage at the time of filing. A petitioner must establish eligibility at the time of filing; a petition cannot 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 Katigbak*, 14 I&N Dec. 45, 49 (Comm’r 1971).

Although the petitioner’s financial statements do not show sufficient net income to cover the beneficiary’s salary, the statements indicate that the funds allocated to overseas missions each year were greater than the amount needed to provide the proffered salary. The 2008 and 2009 financial statements are supported by the submitted bank statements, which show total deposits above the claimed income for those years and include substantial withdrawals made in [REDACTED]. According to the submitted explanation, cited above, the missions funds will be reduced to pay the beneficiary’s salary, as needed. The petitioner has established by a preponderance of the evidence that it had the ability to pay the proffered salary at the time of filing. We will withdraw the director’s finding on this issue.

The above discussion indicates that the petitioner has overcome the only stated basis for denial of the petition. However, review of the record shows an additional ground of eligibility that has not been established. 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)(16) reads:

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.

The record indicates that the petitioner failed a previous compliance review with regard to the instant petition. On remand, the director shall determine whether the petitioner has satisfied the regulation at 8 C.F.R. § 214.2(r)(16) or whether another compliance review, onsite inspection or other verification of the petitioner's claims is appropriate.

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 director's decision 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.