



U.S. Citizenship
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Services

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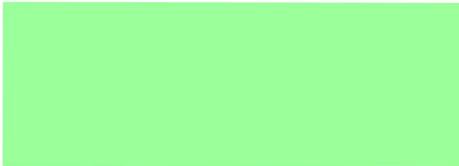


DATE: **MAR 12 2015** OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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,

Aaron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. 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 an Episcopal diocese. 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 "Missioner, [REDACTED] located at [REDACTED] Maryland. The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition.

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

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, 2015, 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, 2015, 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).

I. QUALIFYING EXPERIENCE

The issue to be discussed is whether the petitioner established that the beneficiary has the requisite two years of qualifying experience.

A. The Law

The regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working as a minister or in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, was filed on March 26, 2014. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work throughout the two-year period immediately preceding that date.

The regulation at 8 C.F.R. § 204.5(m)(11) provides:

Evidence relating to the alien's prior employment. Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14, and if acquired in the United States, must have been authorized under United States immigration law. If the alien was employed in the United States during the two years immediately preceding the filing of the application and:

- (i) Received salaried compensation, the petitioner must submit IRS [Internal Revenue Service] documentation that the alien received a salary, such as an IRS Form W-2 [Wage and Tax Statement] or certified copies of income tax returns.
- (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.
- (iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS [U.S. Citizenship and Immigration Services].

If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

B. Facts and Analysis

According to the Form I-360 petition and accompanying evidence, the beneficiary arrived in the United States on October 31, 2011, in R-1 nonimmigrant status authorizing his employment with the petitioner until October 30, 2014. In a March 19, 2014 letter, the petitioner stated that it hired the beneficiary "to launch a Korean ministry in our Diocese," located at [REDACTED] in [REDACTED] Maryland, and that it continuously employed the beneficiary as missionary of that

congregation throughout the qualifying period. The petitioner submitted printouts from its website and from [REDACTED] website providing information about the “[REDACTED]” [REDACTED]. The petitioner also submitted copies of letters and emails, dated February 28, 2012, August 26, 2012, January 29, 2013, and February 4, 2014, from the beneficiary reporting on the progress of his mission.

As evidence regarding the beneficiary’s compensation during the qualifying period, the petitioner provided a copy of the beneficiary’s 2012 IRS Form 1099-MISC, Miscellaneous Income, indicating \$4,833 in non-employee compensation from [REDACTED] as well as a copy of the beneficiary’s 2013 IRS Form 1040, U.S. Individual Income Tax Return, reporting business income of \$3,000 from his work as “Minister of the Gospel” in [REDACTED] Maryland. In addition, the petitioner submitted a copy of a contract between [REDACTED], the petitioner, and the beneficiary, regarding the provision of housing to the beneficiary as a “parsonage” beginning February 1, 2014, and ending January 31, 2015.

On April 21, 2014, the director issued a Request for Evidence (RFE), in part requesting additional documentation regarding the beneficiary’s past compensation. In response, the petitioner submitted a letter from the Chair of its Finance Committee, [REDACTED] who also serves as volunteer treasurer of [REDACTED]. Mr. [REDACTED] stated, in part:

Beginning in November 2011, [the beneficiary] has had an office at [REDACTED] and he regularly conducts bible studies and weekly and special services for his congregation in the sanctuary and meeting space of [REDACTED]. Offerings are received from congregants by [REDACTED] at those services for the support of the mission and are kept in segregated accounts by [REDACTED]. In addition, monetary support is received via donations from other congregations in the Diocese of Washington, directly from the Diocese of Washington, [REDACTED] and the AsiaAmerica Episcopal Association. These funds are received by [REDACTED] as agent of the Diocese of Washington and deposited in the Korean mission account. Throughout his presence in the U.S., [the beneficiary] has been and continues to be an ordained clergy employed by the Diocese of Washington and under the discipline of the Bishop of Washington. He was never an employee of [REDACTED] but an employee of the Diocese.

During the period from November 2011 through November 2012, the Diocese provided direct compensation to [the beneficiary] in the form of medical insurance for himself and his family in an amount of approximately \$20,000 per year. In addition, [the beneficiary] used the funds held by [REDACTED] in the Korean mission account to pay his regular travel expenses, worship expenses and to draw a monthly stipend as needed. At the end of 2012, [the beneficiary’s] employer, the Diocese, did not need to issue form W-2, as all compensation paid to him as an employee was not subject to federal income tax. [REDACTED] reported only the stipendiary payments to the [IRS], since payments for ministry expenses, either direct or as reimbursements, are not required to be reported by [REDACTED] for tax purposes. Likewise, payments for medical insurance are exempted from tax under Int. Rev. Code. Sec. 106. Reimbursement of reasonable and proper expenses of carrying on the trade or business of a minister of the gospel is

excluded from income when properly documented under Int. Rev. Code Sec. 162. As [the beneficiary] was never a [redacted] employee, his income was properly reported on a Form 1099, per Int. Rev. Code Sec. 6041A.

In December 2012, the arrangement between the Diocese and [redacted] was modified—rather than the Diocese paying the medical insurance for [the beneficiary] directly, a payment is now made by the Diocese to the Korean Mission account at [redacted] and the medical insurance is paid directly from that account

In February 2014, [the beneficiary] moved into the rectory owned by [redacted] and located adjacent to the church building. [redacted] acting as agent for the Diocese, agreed to furnish the housing to [the beneficiary] as partial compensation for his duties as priest. The Diocese makes a regular contribution of \$1,700 per month to the [redacted] Korean mission account to help defray the expenses of a rectory, including utilities and maintenance. . . .

[The beneficiary] did not file a tax return for 2012 as he had no taxable income other than the reported stipends that fell beneath the threshold filing requirement. He has filed a return for 2013, even though no income tax is due, but to report income subject to social security taxes only.

The petitioner submitted a copy of a [redacted] ledger listing all purported payments to the beneficiary during the two-year qualifying period immediately preceding the filing of the petition. The ledger included some handwritten notations identifying “stipend” and health insurance payments. The petitioner also submitted copies of [redacted] checking account statements addressed to “[redacted] [redacted] address, for all months of the qualifying period. Although the bank statements did not identify the recipients of posted checks, the deductions listed on the bank statements, as well as the check amounts and check numbers, were consistent with the payments included on the [redacted] ledger. In addition, the petitioner submitted copies of its insurance invoices from the Church Pension Group from January, February, April, and October of 2012, each of which indicated that the beneficiary was currently receiving family medical and dental coverage. The petitioner also submitted copies of internal records and processed checks indicating that it provided monthly payments of \$1,700 to [redacted] for the beneficiary’s support from February 2014 to June 2014.

The director denied the petition on July 23, 2014, finding that the petitioner failed to submit sufficient evidence of past employment under 8 C.F.R. § 204.5(m)(11). The director stated:

Where the religious worker received salaried compensation, regulations specifically require the petitioner to document [the] beneficiary’s qualifying prior 2-year work experience by submitting IRS Form W-2 or certified copies of income tax returns, and where the religious worker received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available. Here,

the petitioner alleges that the beneficiary is an employee of the petitioning organization, assigned to [REDACTED] and in 2012 was paid \$20,000 in salaried compensation and is receiving non-salaried compensation in the form of lodging. However, the petitioner did not provide any evidence to substantiate that the beneficiary has been receiving the compensation as alleged.

On appeal, the petitioner states that the director “misconstrued” its statements regarding the beneficiary’s past compensation. The petitioner states that the beneficiary was receiving non-salaried compensation during the qualifying period and notes that the regulation at 8 C.F.R. § 204.5(m)(11)(ii) only requires IRS documentation of non-salaried compensation “if available.” The petitioner asserts that it has explained the unavailability of IRS documentation and provided “[a]lternative verifiable documentation” of the beneficiary’s compensation.

Contrary to the director’s finding, the petitioner did not state that the beneficiary was paid \$20,000 in salaried compensation during 2012. Instead, Mr. [REDACTED] stated that the petitioner provided direct compensation “in the form of medical insurance” valued at \$20,000. This constitutes non-salaried compensation, and the petitioner has explained that IRS documentation of that compensation is not available. Mr. [REDACTED] stated in his letter that only the beneficiary’s stipend payments were reported to the IRS because medical insurance payments and ministry expenses are not subject to taxation.

The submitted bank statements and ledger, discussed above, are consistent with Mr. [REDACTED] description of the beneficiary’s compensation during the qualifying period. Further, the beneficiary’s progress reports submitted at filing support the petitioner’s assertions that the beneficiary was continuously performing religious work as a missionary throughout that time. Accordingly, the petitioner has submitted sufficient evidence to establish the beneficiary’s continuous qualifying experience during the two years immediately preceding the filing of the petition. 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. We conduct appellate review on a de novo basis. *See 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 petitioner has not established how it intends to compensate the beneficiary.

II. COMPENSATION

A. The Law

The 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 regulation at 8 C.F.R. § 204.5(m)(7) also requires the petitioner to attest to the following statements relating to the proposed compensation:

(vi) The title of the position offered to the alien, the complete package of salaried or non-salaried compensation being offered, and a detailed description of the alien's proposed daily duties; ...

(xi) That the alien will not be engaged in secular employment, and any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer; and

(xii) That the prospective employer has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges, and that funds to pay the alien's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization.

B. Facts and Analysis

In its March 19, 2014, letter accompanying the petition, the petitioner described the proffered compensation as follows:

[The beneficiary] will be compensated at the rate of approximately \$1,100 per month, and will be residing rent-free at the [REDACTED] which is furnished to [the beneficiary] as partial compensation for his services. Certain associated expenses, such as electrical service, water/sewer charges, garbage assessment, and natural gas service, are paid by [REDACTED] for the benefit of [the beneficiary] from [designated funds] held on behalf of the Diocese of Washington. The approximate fair market value of these accommodations is \$2,100 per month. [The beneficiary's] health insurance premiums of \$1,088 per month and miscellaneous travel and other ministry-related expenses will continue to be paid in accordance with the direction of the Diocese of Washington by [REDACTED] from funds for which [REDACTED] serves as custodian on behalf of the Diocese of Washington.

The petitioner stated on Form I-129, Petition for a Nonimmigrant Worker, USCIS receipt number [REDACTED] filed on the beneficiary's behalf on April 5, 2011, that it would provide wages of "app. \$32,000/year." However, the evidence submitted in support of the instant petition does not

indicate that the petitioner provided the proffered compensation. The petitioner instead submitted evidence that, in addition to receiving health insurance, the beneficiary received a monetary stipend of \$4,833 in 2012 and \$3,000 in 2013. The petitioner also submitted evidence that the beneficiary began receiving housing from [REDACTED] in February 2014, with the petitioner contributing \$1,700 monthly towards the housing expenses. The petitioner has provided no explanation as to why it did not provide the compensation described on the Form I-129, despite attesting to its intent and ability to do so. See 8 C.F.R. § 214.2(r)(8)(viii). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

In addition, the submitted parsonage agreement includes the following clause:

(2) Expense Contribution- To assist [REDACTED] with the expenses of owning and maintaining the Parsonage and in providing use of the church premises generally, [the beneficiary] agrees to contribute to [REDACTED] the sum of One Thousand Seven Hundred and no/100 dollars (\$1700.00) (the "Expense Contribution") on the first day of each month of the Term or any Extended Term. [The petitioner] acknowledges that it is providing compensation monthly to [the beneficiary] and agrees to pay the Expense Contribution directly to [REDACTED] from the monthly stipend it intends to provide to [the beneficiary] as support for his ministry. In the event that such payment from [the petitioner] is less than the Expense Contribution, [the beneficiary] agrees to pay any deficiency immediately to [REDACTED] personally. . . .

The agreement also states that billing for utilities would be "paid from the congregational funds of the Korean Ministry Fund" held by [REDACTED] but that "In the event that funds in such account are insufficient to pay such billings, [the beneficiary] agrees to immediately provide funds to pay any such deficiency." As stated previously, the petitioner indicated on the petition that the beneficiary's compensation will include "rent-free housing" and utilities. To the extent that the parsonage agreement may require the beneficiary to provide funds to cover his housing and utilities, such an arrangement would conflict with the petitioner's attestation under 8 C.F.R. § 204.5(m)(7)(xii), which states in part that "funds to pay the alien's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization."

For the reasons discussed above, the submitted evidence is insufficient to establish the petitioner's intent to provide the proffered compensation.

III. COMPLIANCE REVIEW

A. Law

The 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.

B. Facts and Analysis

The record does not indicate that USCIS has conducted a compliance review inspection with regard to the instant petition. The director shall determine whether the petitioner has satisfied the regulation at 8 C.F.R. § 214.2(r)(16) and whether a compliance review, onsite inspection or other verification of the petitioner's claims is appropriate in the instant petition.

IV. CONCLUSION

As discussed above, the petitioner has overcome the stated basis for the denial decision, but the petition is being remanded for the director to consider whether the petitioner has established how it intends to compensate the beneficiary and whether a compliance review is warranted.

The matter will be remanded for a new decision. 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 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 AAO for review.