

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

813



FILE: WAC 08 196 51241 Office: CALIFORNIA SERVICE CENTER

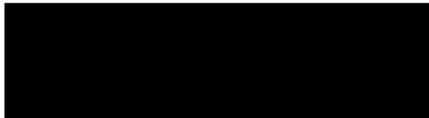
Date: **APR 29 2010**

IN RE: Petitioner:
Beneficiary:



PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew
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 is a Presbyterian church. It seeks to extend the beneficiary's status as a nonimmigrant religious worker under section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1), to perform services as a education missionary. The director determined that the petitioner had not sufficiently documented the beneficiary's compensation.

On appeal, the petitioner submits a brief from counsel.

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 petitioner filed the petition July 7, 2008. On the Form I-129 petition, the petitioner indicated that it has two employees, gross annual income of \$170,000 and net annual income of \$35,000.

The USCIS regulation at 8 C.F.R. § 214.2(r)(11) requires the petitioner to specify how the petitioner intends to compensate the alien. Under 8 C.F.R. § 214.2(r)(11)(i), 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. Internal Revenue Service (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.

In a letter accompanying the initial filing of the petition, [REDACTED] senior pastor of the petitioning church, stated that the beneficiary "has held this position since July 2005" and "is paid \$2100.00 per month for her services to our church, paid out directly from [the petitioner's] account." An accompanying "Certificate of Salary" repeated the claim that the beneficiary "has been working at the church [s]ince July 08, 2005," and that the petitioner "has been paying [the beneficiary] \$2100.00 per month." The petitioner gave no indication that this salary amount had changed since 2005. The beneficiary's monthly salary of \$2,100 is equivalent to \$25,200 per year.

The petitioner submitted copies of "Fed[eral] Tax Deposit" receipts from late 2006 through early 2008, showing monthly deposits into an account for "Tax Type: 941." The number "941" is an apparent reference to IRS Form 941, Employer's Quarterly Federal Tax Return, which employers use to report compensation paid to employees as well as taxes withheld from that compensation. The amounts of the deposits fluctuated between \$1,300 and \$2,100 per month. The most recent deposits, from August 2007 onward, were in the amount of \$1,684.51 per month.

Copies of the beneficiary's 2006 and 2007 income tax returns, with IRS Form W-2 Wage and Tax Statements, indicate that the petitioner paid the beneficiary \$22,020 in 2006 and \$23,835 in 2007. In

both years, the beneficiary's reported compensation was less than the \$25,200 annual wage that the petitioner claims to have paid the beneficiary since 2005.

The petitioner submitted copies of nine processed checks payable to the beneficiary, showing payments of \$1,624.27 each. The checks show the following numbers and dates:

Number	Date	Number	Date	Number	Date
██████████	8/3/2007	██████████	12/13/2007	██████████	11/15/2007
██████████	8/30/2007	██████████	1/13/2008	██████████	4/15/2008
██████████	10/15/2007	██████████	7/15/2007	██████████	5/15/2008

We note that the check numbers are not uniformly in chronological order, the petitioner having issued check ██████████ six months before it issued ██████████.

Copies of the petitioner's bank statements show the following information:

Statement date	Start Balance	Deposits	Debits	End Balance
3/13/2008	\$330.45	\$16,001.39	\$8,926.82	\$7,405.02
4/11/2008	7,405.02	10,011.39	16,781.82	634.59
5/14/2008	634.59	12,512.78	10,251.63	2,895.74
6/12/2008	2,895.74	36,105.00	24,336.75	14,663.99

Only the beneficiary's two most recent paychecks fall within the period covered by the statements listed above. Both of those checks, numbered ██████████ are listed on the petitioner's June 2008 bank statement, having both been processed for payment on June 3, 2008. The March through May 2008 bank statements do not show any checks or withdrawals in the amount of \$1,624.27. Therefore, neither the checks nor the bank statements establish consistent, regular payments to the beneficiary. There is no evidence that the beneficiary received any payment between January 31, 2008 (the processing date of check ██████████ and June 3, 2008 (the processing date of checks ██████████

On November 21, 2008, the director issued a request for evidence (RFE), instructing the petitioner to submit several types of evidence, including additional documentation of the beneficiary's compensation. In response, ██████████ stated that the petitioner "has 4 employees," in contrast to the two claimed on the Form I-129 petition.

██████████ asserted that the beneficiary "is paid \$2,000.00 per month for her services to our church, and upon this approval, she will be paid \$2,100.00." ██████████ repeated this claim elsewhere on the same page, stating that the petitioner "provides \$2,000.00 per month," and that the beneficiary "will be paid \$2,100.00 per month" upon approval of the requested extension of status. This claim contradicts the petitioner's repeated prior assertions that the petitioner "has been paying [the beneficiary] \$2100.00 per month."

The petitioner submitted copies of the beneficiary's 2008 income tax return and accompanying IRS Form W-2 (both prepared after the director issued the RFE), indicating that the petitioner paid the beneficiary \$24,000 in 2008. The petitioner submitted additional copies of the same checks previously submitted, but no documentation of other payments.

The petitioner submitted copies of more recent bank statements showing the following information:

Statement date	Start Balance	Deposits	Debits	End Balance
11/13/2008	\$3,133.58	\$9,356.40	\$12,018.33	\$471.65
12/11/2008	471.65	13,486.40	9,899.82	4,058.23

The November 2008 statement shows two checks in the amount of \$1,624.27, both processed on October 29, 2008. The December 2008 statement shows no check in that amount.

The director denied the petition on February 13, 2009, stating that the petitioner has presented contradictory information about the beneficiary's rate of compensation. The director also found that the beneficiary's bank balance did not contain "sufficient funds to pay the beneficiary's wages."

On appeal, counsel contends that any discrepancies in the petitioner's financial and tax documents are the result of "clerical error," and that "distractions caused by unexpected personal emergencies" prevented the beneficiary from immediately depositing her paycheck in October 2008. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaighbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel notes that the petitioner has always maintained a positive bank balance, and there is no basis for the director's finding that the petitioner lacks sufficient funds to pay the beneficiary's salary. It is true that the petitioner's fluctuating bank balance has not dipped below zero on the handful of statements that the petitioner has submitted, but it is equally true that the petitioner has produced only fragmentary documentation of the beneficiary's compensation. As noted previously, there are significant gaps in the month-to-month documentation of the beneficiary's compensation, with no explanation for the missing checks or the multiple bank statements that show no paycheck for the beneficiary (or, for that matter, the scrambled chronological order of the beneficiary's paychecks).

At first, the petitioner repeatedly claimed that it was already paying the beneficiary \$2,100 per month, but then the petitioner reduced that amount to \$2,000 per month when the director requested more evidence. The petitioner has reliably documented some paychecks, but there are significant gaps in the record, such as in early 2008 for which the petitioner has produced no paychecks, and the bank statements from that period show none of the beneficiary's paychecks. This sporadic and irregular evidence, combined with the petitioner's inconsistent claims regarding what it has been paying the beneficiary, raises questions that the petitioner cannot resolve simply by blaming "clerical error."

Doubt cast on any aspect of the petitioner's proof may 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). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92.

For the reasons discussed above, we agree with the director's finding that the petitioner has not submitted consistent and credible evidence regarding the beneficiary's compensation.

Beyond the director's decision, we note an additional deficiency in the record. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The USCIS regulation at 8 C.F.R. § 214.2(r)(8) requires an authorized official of the beneficiary's prospective employer to complete, sign and date an attestation answering several questions about the petitioner, the beneficiary, and the job offer. The record contains no such attestation, which presents an additional obstacle to approval of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will dismiss the appeal.

ORDER: The appeal is dismissed.