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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

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 07 2010

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

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
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 appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary 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 religious instructor. The director determined that the petitioner had not established how it intends to compensate the beneficiary.

On appeal, the petitioner asserts that it is “providing adequate compensation for [the beneficiary] to maintain living here with her spouse while he is attending bible training.” The petitioner submits additional documentation in support of the appeal.

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 issue presented is whether the petitioner has established how it intends to compensate the beneficiary.

The 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.

(ii) *Self support.*

(A) If the alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.

(B) An established program for temporary, uncompensated work is defined to be a missionary program in which:

- (1) Foreign workers, whether compensated or uncompensated, have previously participated in R-1 status;
- (2) Missionary workers are traditionally uncompensated;
- (3) The organization provides formal training for missionaries; and
- (4) Participation in such missionary work is an established element of religious development in that denomination.

(C) The petitioner must submit evidence demonstrating:

- (1) That the organization has an established program for temporary, uncompensated missionary work;
- (2) That the denomination maintains missionary programs both in the United States and abroad;
- (3) The religious worker's acceptance into the missionary program;
- (4) The religious duties and responsibilities associated with the traditionally uncompensated missionary work; and

- (5) Copies of the alien's bank records, budgets documenting the sources of self-support (including personal or family savings, room and board with host families in the United States, donations from the denomination's churches), or other verifiable evidence acceptable to USCIS.

On the Form I-129, Petition for a Nonimmigrant Worker, filed on October 19, 2009, the petitioner did not identify any wages that the beneficiary would receive in the proffered position and provided no documentation to establish how it intends to compensate her beneficiary. In a request for evidence dated January 4, 2010, the director instructed the petitioner to provide evidence of compensation and advised:

If the alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.

On the Form I-129 Supplement submitted with its response, the petitioner stated that it had not offered the beneficiary a salary "since her spouse receives scholarship and support from [the petitioner] for his study at a seminary." The petitioner also submitted a statement in which it asserted:

[T]he beneficiary of this application is not receiving support directly from our non-profit organization; however she is able to maintain her stay due to her spouse[. The petitioner] had received a donation in the amount of \$15,000 to provide scholarship for the beneficiary's spouse to attend a bible college here in the state. We are also committed as an organization through its members to provide additional support in the maximum amount of \$14,400 per year to [the beneficiary's] spouse.

The petitioner provided no other documentation of any support received by the beneficiary or her husband and no information to establish that the proffered position is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.

On appeal, the petitioner states that it is committed to provide support for the beneficiary and her husband as follows:

Tuition:	\$14,000
[and]	
Food:	\$ 300 per month
Rent:	755 per month

Car Expenses:	100 per month
Phone	<u>100 per month</u>
Monthly Total	\$1,255

The petitioner submits a copy of its scholarship policy, which provides that the spouse of the scholarship recipient would qualify for living expenses, including medical and dental expenses, and compensation for any "service in the ministry when they do not exceed 20 hours per week." The petitioner also submits copies of its bank statements depicting transactions from March 2010 through May 2010, a statement from Northwestern College verifying the beneficiary's husband's tuition, rent and financial aid for the 2009-2010 academic year, unaudited financial reports for the months of December 2009 through March 2010, and copies of 16 unprocessed checks made payable to the beneficiary's husband and Northwestern College, dated August 2009 to April 2010. With the exception of the August 27, 2009 unprocessed check to Northwestern College, all of the petitioner's financial documentation is dated after the petition was filed on October 19, 2009. 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. 1971). Further, as indicated, none of the checks show that they have been processed by the bank and the checks to Northwestern College do not indicate any payments made on behalf of, or for use of, the beneficiary. All of the alleged payments were made on behalf of the beneficiary's husband and in furtherance of his academic pursuit.

The petitioner has not shown that the beneficiary has received or will receive any financial support as an employee of the petitioner. Further, the petitioner has not provided any documentation that the beneficiary's unsalaried position is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.

The petitioner has therefore failed to provide evidence of compensation as required by the regulation at 8 C.F.R. § 214.2(r)(11) in that it failed to establish how it intends to compensate the beneficiary and failed to establish that the proffered position is part of an established program for temporary, uncompensated missionary work.

Beyond the decision of the director, the petitioner has not established that it is a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 214.2(r)(3) defines a tax-exempt organization as "an organization that has received a determination letter from the IRS [Internal Revenue Service] establishing that it, or a group it belongs to, is exempt from taxation in accordance with section[] 501(c)(3) of the Internal Revenue Code" (IRC). Additionally, the regulation at 8 C.F.R. § 214.2(r)(9) provides:

*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 IRS showing 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), or subsequent amendment or equivalent sections of prior enactments, of the [IRC], 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 statement certifying that the petitioning organization is affiliated with the religious denomination. The statement must be submitted by the petitioner along with the petition.

The petitioner submitted a copy of a July 1, 2009 letter from the IRS advising the petitioner that it had been granted tax-exempt status under section 501(c)(3) of the IRC as an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the IRC.

An organization that qualifies for tax exemption as a publicly supported organization under section 170(b)(1)(A)(vi) of the IRC can be either religious or non-religious. The burden of proof is on the petitioner to establish that its classification under section 170(b)(1)(A)(vi) derives primarily from its religious character, rather than from its status as a publicly supported charitable and/or educational institution. The organization can establish this by submitting documentation that establishes the religious nature and purpose of the organization, such as a copy of its organization instrument, brochures or other literature describing the religious purpose and nature of the activities of the organization. 8 C.F.R. § 214.2(r)(9).

The petitioner submitted a single brochure about its organization and program information about the [REDACTED]. Other than reflecting that the beneficiary's husband preaches at the church on occasion, the petitioner submitted no other documentation to establish a relationship between it and [REDACTED]. The petitioner has therefore failed to provide sufficient documentation to establish that it is a bona fide nonprofit religious organization as defined by the regulation.

Additionally, the petitioner has failed to establish that the beneficiary seeks to enter the United States to work for at least 20 hours per week.

The regulation at 8 C.F.R. § 214.2(r)(1)(ii) provides that the alien must be coming to the United States to work at least in a part time position (average of at least 20 hours per week). The petitioner stated that the proffered position was that of a religious instructor and that the beneficiary would teach at various locations for at least 20 hours per week. On the Form I-129 Supplement, the petitioner stated that the beneficiary would provide individual bible teaching to women in its group, Wednesday and Friday night bible study, and Sunday school. The petitioner submitted no other documentation about the beneficiary's proposed work such as where she would teach, the length of the sessions, or her schedule and duties during bible study. The petitioner has therefore failed to establish that the beneficiary seeks to enter the United States to work for at least 20 hours per week.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.