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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

D13

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: DEC 28 2010

IN RE: Petitioner: [redacted]
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:

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, with a fee of $630. 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 seeks to classify the beneficiary 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 an assistant pastor. The director determined that the petitioner had not established how it intends to compensate the beneficiary.

The petitioner submits a letter and 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.

The petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, filed on September 7, 2006, that the beneficiary would be compensated at the rate of $300 per week and would also receive housing. The petitioner stated that it had no other paid employees and that it had a net annual income of $80,000. The petitioner submitted no documentation to establish that it had an annual net income of $80,000 or other evidence of how it intends to compensate the beneficiary.

In response to the director's February 7, 2007 request for evidence (RFE), the petitioner stated that its membership consisted of "four families and a few individuals [sic] families totaling around 20 members" who regularly attended services. The petitioner also provided copies of monthly bank statements for the [redacted] in Staten Island, New York. The statements are for February and March of 2007. The petitioner submitted no documentation to establish that it is the same organization as the Staten Island organization or how they are related. The petitioner again failed to provide documentation of how it intends to compensate the beneficiary.

Following a June 18, 2008 onsite inspection of the petitioner's premises that raised questions regarding its bona fides, the director notified the petitioner of her intent to deny the petition and again requested documentation to establish how the petitioner intended to compensate the beneficiary. The director specifically requested that the petitioner:

> Submit <u>recent</u> audits or an <u>annual</u> financial statement (complete and itemized, listing your sources of income and all your expenses), signed and certified by the petitioner AND supported by documentary evidence such as bank statements, certificates, and/or letters from financial institutions. [Emphasis in original.]

In response to the director's notice, the petitioner again stated that it had no paid employees. The petitioner also submitted a partial copy of its April 2010 monthly banking statement, indicating that it had a balance of approximately $4,814. The petitioner submitted no other documentation of its financial ability to compensate the beneficiary. The director denied the petition, determining that the petitioner had failed to submit sufficient documentation to establish how it intends to compensate the beneficiary.

On appeal, the petitioner states:

> Our Sources of revenue are two fold. Direct bank remittances by some of our International Students and additional support received from our in as and when needed. Since our total revenue was less than $25,000, we filed form 990-N (Electronic Post Card).

The petitioner submits documentation reflecting compensation for two individuals, one in New York and one at the petitioner's location. The employer's address shown on the year 2007 Form W-2, Wage and Tax Statement, issued to these two individuals is the Staten Island address. We note that the petitioner maintained that it had no compensated employees. 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 its monthly bank statements for May 2007, June 2008 through August 2009, and October 2009 through March 2010. All of the documentation submitted by the petitioner on appeal is dated subsequent to the filing date of the petition. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not 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 Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

Furthermore, the petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

Based on the record before the director, the petitioner failed to submit competent and verifiable documentation of how it intends to compensate the beneficiary.

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.