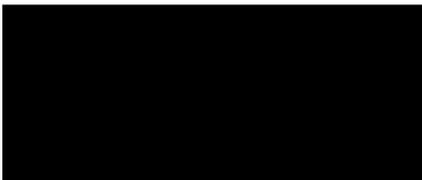


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**U.S. Department of Homeland Security**  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



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



B13

FILE:  Office: CALIFORNIA SERVICE CENTER Date: DEC 28 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:**

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, initially denied the employment-based nonimmigrant visa petition for abandonment. The director granted a subsequent motion to reopen and again denied the petition on August 3, 2010. 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 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 minister. The director determined that the petitioner had not established that the beneficiary was qualified for the proffered position and how it intends to compensate the beneficiary.

On appeal, counsel states that the petitioner submitted documentation, including an official transcript, which establishes the beneficiary's qualifications. Counsel further states that the petitioner has provided documentation to establish that its parent church in Venezuela will pay the beneficiary's salary. 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 first issue presented is whether the petitioner has established that the beneficiary is qualified for the proffered position.

The regulation at 8 C.F.R. § 214.2(r)(3) defines religious worker as “an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister.” The regulation also provides:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and
- (D) Works solely as a minister in the United States which may include administrative duties incidental to the duties of a minister.

The regulation at 8 C.F.R. § 214.2(r)(10) requires the petitioner to submit:

*Evidence relating to the qualifications of a minister.* If the alien is a minister, the petitioner must submit the following:

- (i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and
- (ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological education is accredited by the denomination, or
- (iii) For denominations that do not require a prescribed theological education, evidence of
  - (A) The denomination's requirements for ordination to minister;
  - (B) The duties allowed to be performed by virtue of ordination;
  - (C) The denomination's levels of ordination, if any; and

(D) The alien's completion of the denomination's requirements for ordination.

With the petition, filed on April 8, 2008, the petitioner submitted a March 10, 2008 statement from the [REDACTED] in Venezuela, certifying that the beneficiary had been an ordained pastor for the organization since January 7, 2004. The petitioner also submitted a December 9, 2006 statement from the [REDACTED] indicating that the beneficiary had obtained a diploma in pastoral theology. The petitioner also submitted a copy of the beneficiary's transcript from the organization, indicating the beneficiary had taken and successfully passed seven courses in order to obtain the diploma. The petitioner submitted an August 18, 2007 certificate from [REDACTED] reflecting that the beneficiary had received a Bachelor in Pastoral Theology from the organization. The petitioner also submitted a certificate dated the same day from the same organization certifying that the beneficiary had received a Doctor of Divinity.

In a May 27, 2010 Notice of Intent to Deny (NOID) the petition, the director advised the petitioner that a search of public records revealed that in 2006, the State of California had suspended [REDACTED] from conducting business in the state. The director further noted that the beneficiary's certificates from the school were issued in 2007 and therefore do "not appear to be authentic." The director stated:

Furthermore, no documentation was submitted to show the beneficiary has ever completed any course of prescribed theological education from this organization or that the theological education is accredited by the denomination. This brings to issue the creditability [*sic*] of the documentation issued to the beneficiary from the [REDACTED] in Venezuela, and how that diploma reflects the beneficiary's qualification as a minister in the petitioner's denomination.

In response, the petitioner submitted a June 12, 2010 letter from [REDACTED] signed by [REDACTED] the board chairman, in which he stated that the organization "is a religious exempt school sanctioned for service by the Bureau for Private Postsecondary and Vocational Education." The petitioner provided a copy of a June 23, 2005 letter from the Bureau for Private Postsecondary and Vocational Education (BPPVE) of the State of California Department of Consumer Affairs. The letter indicated that [REDACTED] was granted a one-year exemption as a religious organization pursuant to the California Education Code. The letter further stated that the BPPVE had not "made any evaluation, recognition, accreditation, approval, or endorsement for any course of study or degree" offered by [REDACTED]

[REDACTED] stated that [REDACTED] had "explored upgrading [its] status as a school" and incorporated with the intent of no longer operating as a nonprofit. [REDACTED] further stated that, upon discovering that the upgrade would not be accomplished easily, it let the corporation "die" but continued with the school. He stated that the beneficiary graduated in 2007 with a Bachelor in Pastoral Theology degree. The petitioner submitted a copy of a transcript from [REDACTED] that reflects an "entered" date

of September 10, 2007 and that the beneficiary graduated on August 18, 2007 with a "Bachelor PT" degree.

The petitioner submitted copies of pages from [REDACTED] website. However, the document is in Spanish and the petitioner did not submit an English translation. The regulation at 8 C.F.R. § 103.2(b)(3) provides:

*Translations.* Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

In denying the petition, the director stated:

[A]s noted in [the NOID], the school was suspended from conducting business in 2006 and the degree issued to the beneficiary is dated September 18, 2007. The transcript indicates an "Entered" date of September 10, 2007 and a "Graduated" date of September 18, 2007, eight days later. It is unreasonable to assume one could enter a school of higher education to obtain a Bachelor degree, complete 72 units of study, and graduate with a Bachelor degree in Pastoral Theology eight days later. Furthermore, although the school listed courses of study and offered various theological degrees, there is no evidence to show it had received any accreditation from the State or USCIS.

We note that the director incorrectly stated that the transcript showed the beneficiary graduated in September 2007. Rather, the transcript indicated that the beneficiary graduated in August 2007, before the "entered" date listed on the transcript.

On appeal, the petitioner submits a copy of a September 21, 2010 e-mail from [REDACTED] from [REDACTED] in which he reported that [REDACTED] stated that the entered date on the transcript is "the date the information was entered with [REDACTED]". The petitioner resubmitted the letters from [REDACTED] however, the petitioner submitted no documentation from [REDACTED] to explaining the "entered" date on the transcript. Further, there is insufficient documentation in the record to establish that [REDACTED] was operating in any capacity on the date that the beneficiary allegedly graduated. Additionally, the record contains no documentation to explain the beneficiary's receipt of a bachelor of theology and a doctor of divinity degree from [REDACTED] on the same date. Thus, the documentation of the beneficiary's educational qualifications from [REDACTED] is less than credible.

The petitioner submitted documentation to establish that the beneficiary received a diploma in pastoral theology from the [REDACTED] in 2006. However, documentation from the [REDACTED] in Venezuela indicates that the beneficiary was ordained on January 7, 2004, before he completed any religious training.

The petitioner submitted none of the documentation outlined in the regulation at 8 C.F.R. § 214.2(r)(10). The record does not reflect that the beneficiary had completed any specified theological training prior to his ordination and the petitioner submitted no documentation of any other requirements for ordination within its denomination and evidence that the beneficiary had met those requirements.

Accordingly, the petitioner has submitted insufficient documentation to establish that the beneficiary is a minister as that term is defined by the regulation and therefore qualified for the proffered position.

The second issue 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, that the beneficiary would receive a salary of \$30,500. The petitioner submitted no documentation with the petition to establish how it intends to compensate the beneficiary. In her NOID of May 27, 2010, the director instructed the petitioner to submit documentation of the proposed compensation as outlined in the above-cited regulation.

In response, the petitioner submitted a June 15, 2010 letter from [REDACTED] the senior pastor and president of the [REDACTED] in Venezuela, the petitioner's parent church, in which he certified that the Venezuelan church was currently paying the beneficiary a monthly salary of \$3,500 and that the church was "willing to keep this salary, if it [is] necessary." The petitioner provided documentation of the financial status of its parent church but provided no evidence of the petitioner's ability to financially compensate the beneficiary. The director denied the petition, in part, because the petitioner failed to provide verifiable documentation of how it intends to compensate the beneficiary.

On appeal, the petitioner submits additional financial documentation from its parent church. The petitioner also submits an August 25, 2010 letter from [REDACTED] a "sister church" to the petitioner, in which its pastor states that the church is "able to give economic support to" the petitioner "if it was necessary, to sustain" the beneficiary and "to guarantee his income as a pastor . . . if it's necessary." The petitioner submits financial documentation relating to [REDACTED]

The petitioner has applied for immigration benefits for a nonimmigrant worker and promises to pay the worker a salary of \$30,500. The regulation requires the petitioner to establish how it intends to compensate the beneficiary. The regulation contains no provision for the petitioner to arrange for others to pay the beneficiary if it cannot. By petitioning for the beneficiary for an employment-based visa, the petitioner certifies that it is able to pay the beneficiary the proffered salary. The responsibility of meeting the obligations of the petition belongs to the petitioner and to no other entity. The vague promises of help "if necessary" are insufficient to meet the petitioner's burden of proof in this proceeding.

The petitioner submits for the first time on appeal copies of its monthly bank account statements for the period ending June, July and August of 2008. Each of these statements reflects ending balances in excess of \$47,000. While these statements would seemingly imply that the petitioner had the financial means to pay the beneficiary, we note that the petitioner stated on the Form I-129, filed on April 8, 2008, that it was established only four days earlier, had no gross income, and had a membership of 80. The record contains no documentation to explain the large balance in the petitioner's bank account two months later. 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).

Furthermore, the petitioner failed to submit this documentation when instructed to do so by the director. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

The petitioner failed to submit competent and verifiable documentation of how it intends to compensate the beneficiary.

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.