

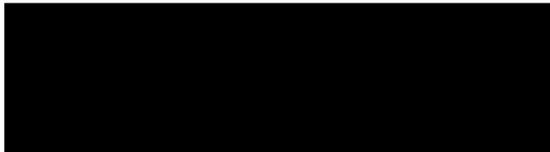
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



D13

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

FEB 18 2011

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:



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.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

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 withdraw the director's decision and will remand the petition for further action and consideration.

The petitioner is a church. It seeks to extend the beneficiary's status as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as a minister. The director determined that the petitioner had not established how it intends to compensate the beneficiary.

On appeal, counsel states that the petitioner has submitted all of the documentation requested even though the demands were duplicative and/or did not apply to the petitioner and beneficiary. Counsel submits a brief and copies of previously submitted 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 [U.S. Citizenship and Immigration Services]. IRS [Internal Revenue Service] documentation, such as IRS Form W-2 [Wage and Tax Statement] 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 an annual salary of \$31,000 per year. With the petition, the petitioner provided an uncertified copy of the beneficiary's unsigned and undated IRS Form 1040, U.S. Individual Income Tax Return, for 2005, on which he reported wages of \$11,660 and income from self employment of \$8,456. The petitioner indicated that his self-employment derived from his work as assistant pastor with the petitioning organization. The petitioner also submitted a copy of an IRS Form 1099-MISC, Miscellaneous Income, on which it reported it paid the beneficiary \$29,360 in nonemployee compensation, and an uncertified copy of the beneficiary's 2006 IRS Form 1040, on which he reported this income plus \$2,000 in unidentified miscellaneous income.

On June 26, 2009, the director issued the petitioner a request for evidence (RFE) in which she instructed the petitioner to submit evidence of the beneficiary's compensation as outlined in the above-cited regulation. In response, the petitioner provided copies of the beneficiary's tax return transcripts for 2005 through 2008. The beneficiary's 2007 return reflected that he reported business income of \$30,035 and the 2008 return reflects that he reported business income of \$31,800. The petitioner also provided a copy of the beneficiary's Social Security Administration records, which conform to the information on his tax returns.

While acknowledging that the petitioner submitted the beneficiary's tax and social security documents, the director denied the petition, finding that the petitioner had failed to provide verifiable evidence of how it intends to compensate the beneficiary.

We withdraw the director's decision. The petitioner submitted documentation as outlined in the regulation. The documentation provided sufficiently establishes how the petitioner intends to compensate the beneficiary.

The director also stated that the petitioner had failed to provide other documentation, including a detailed description of the work to be done, hours to be worked and organization literature. However, a review of the record indicates that the petitioner provided the requested documentation.

Nonetheless, the petition cannot be approved as the record now stands. Therefore, the petition will be remanded to the director for further action and consideration as discussed below.

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 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 5, 1957 letter from the IRS to [REDACTED] granting that organization exemption from income tax under section 501(c)(3) of the IRC as a religious organization. The petitioner also submitted a July 29, 2009 letter from the [REDACTED] Offices advising that the Financial Services Department was responsible for certifying all congregations of the [REDACTED]. The accounting manager stated that the petitioning organization is affiliated with the [REDACTED] and that the July 1997 letter confirms its tax-exempt status.

However, the letter from the IRS does not grant tax-exempt status to any subordinate units of [REDACTED]. The petitioner has therefore not submitted a currently valid determination from the IRS granting it tax-exempt status or that it is covered under a group exemption granted to its parent organization.

The matter is therefore remanded to the director to address this issue. 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. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

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.