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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

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 15 2010

IN RE: Petitioner: 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:

[redacted]

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 $585. 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 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 an assistant pastor. The director determined that the petitioner had failed to comply with a request for evidence (RFE) and therefore failed to establish how it intends to compensate the beneficiary and that the beneficiary sought to enter the United States to work at least part time (20 hours per week).

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 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 stated on the Form I-129, Petition for a Nonimmigrant Worker, which was filed on June 25, 2009, that the beneficiary would be paid a monthly salary of $1,800. With the petition, the petitioner submitted a copy of its March 2009 monthly bank statement.[1] Copies of checks processed by the bank for that month do not include any made payable to the beneficiary.

In an RFE dated August 26, 2009, the director instructed the petitioner to:

> Provide verifiable evidence showing how the petitioning organization will provide compensation for the beneficiary (and dependents) or how the beneficiary will be self-supporting nonimmigrant. Evidence may include last three month banking/savings statements and the last two year-end summary (a summary report of account activities for the entire year) banking statements, audited financial statements and W-3s (if available) for the last two years of the petitioner, or other verifiable evidence acceptable to USCIS.

The director further stated:

> The beneficiary has worked since her entry or authorization. Provide verifiable records showing the beneficiary's employment and work location in detail and submit computer generated copies of her federal tax returns filed and W-2s and/or 1099s filed for the preceding years. The computer generated copies must be obtained from and certified (or stamped by an Internal Revenue Service local district office.
>
> If compensation is non-salaried, submit IRS documentation for the non-salaried compensation paid by the petitioner to the beneficiary, if available. If IRS

[1] The director incorrectly stated that the statement was for February 2008.

> documentation is unavailable, provide an explanation for the absence of documentation and submit comparable and verifiable evidence showing compensation paid for the beneficiary.

The director also instructed the petitioner to submit a copy of the beneficiary's social security record.

In response to the RFE, the petitioner submitted partial copies of its monthly checking account statements for June, July and August of 2009 and copies of its savings account statements for the period of April 7, 2009 to September 8, 2009. In her letter accompanying the petitioner's response, counsel stated that the beneficiary's social security record and IRS Forms 1099-MISC, Miscellaneous Income, were not available because "the petitioner has not kept an accurate record of payments to the beneficiary."

The director denied the petitioner based on the petitioner's failure to provide the requested documentation. On appeal, the petitioner submits copies of the beneficiary's social security record that shows the beneficiary reported self-employment earnings of $13,485 in 2007 and $7,365 in 2008, and copies of the beneficiary's tax return transcripts from the IRS reflecting that the beneficiary reported business income of $14,601 in 2007 and $7,975 in 2008. The record does not reflect the source of the beneficiary's income. The petitioner also submitted a document that purports to be a savings account statement from Chevron Federal Credit Union and appears to be that of the beneficiary. The document covers a period from January 1, 2009 to October 29, 2009; however, it does not indicate an account holder. The document does not show any payments to the beneficiary by the petitioner.

The evidence does not sufficiently establish how the petitioner intends to compensate the beneficiary. The petitioner stated that it will pay the beneficiary $1,800 per month. The petitioner submitted copies of its monthly bank statements; however, without a reconciliation of those documents to reflect outstanding charges and obligations, it is unclear whether the petitioner had funds available to pay the beneficiary. The petitioner's savings account reflects a balance of approximately $4,000, which was unchanged during the six-month period, with no additions or subtractions. The record does not reflect that the petitioner had sufficient savings to pay the beneficiary a wage of $1,800 per month. Additionally, the tax returns submitted on appeal reflect that the beneficiary reported self employment income of $14,601 in 2007 and $7,975 in 2008. If we assume that the petitioner was the source of this income, the beneficiary's tax returns do not establish that the petitioner has paid the beneficiary the proffered salary in the past.

Accordingly, the petitioner has failed to establish, through verifiable documentation, how it intends to compensate the beneficiary.

The director also determined that the petitioner had not established that the beneficiary sought to enter the United States to work at least 20 hours per week.

The regulation at 8 C.F.R. § 214.2(r) provides:

> (1) 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:
>
> . . .
>
> (ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);

In its May 7, 2009 letter, the petitioner stated:

> [The beneficiary's] duties include assisting in the administration of the sacraments of the church, including preaching the gospel of Jesus Christ, laying hands on and praying for the sick, burying the dead, baptism, amongst others. She will also assist with the overall administration of the church, but those administrative duties will be solely incident to the religious duties and responsibilities.

In her RFE, the director advised the petitioner that it had submitted insufficient documentation regarding the specific duties of the position and instructed the petitioner to submit a copy of the employment contract and to:

> Submit a weekly work schedule of the beneficiary, showing work in break down hours in performing specific services and duties at specific location(s). Please describe such services and duties and their requirements in details and provide supporting evidence.

In response, counsel stated that the petitioner's letter submitted with the petition provided a detailed description of the proffered position. The petitioner submitted a work schedule indicating that the beneficiary would work a total of 35½ hours per week as follows:

> Sunday – 10:00am to 11:00—usher
> 11:00am to 12:30—assistant with youth
>
> Monday through Friday—9:00am to 3:00pm—various church duties
> Wednesday—7:00pm to 8:30pm—nursery and youth
> Friday—7:00pm to 8:30pm—nursery

In denying the petition, the director found that the petitioner had not provided the detailed weekly schedule requested in the RFE. On appeal, the petitioner provides a detailed, yet confusing, work schedule for the beneficiary reflecting that she will work overlapping hours from 9:00 am to 10:00 pm on Monday through Friday, and on Sundays from 11:00 am to 12:30

pm and 10:00 pm to 11:00 pm. If we assume that the petitioner made a typographical error and confused morning and afternoon hours, then the schedule would indicate the beneficiary would work at least 20 hours per week.

However, the schedule raises an additional issue in that the duties reflected in the schedule do not indicate that they are of a religious nature and do not correlate with the duties outlined in the petitioner's letter of May 7, 2009.

The regulation at 8 C.F.R. § 214.2(3) provides:

> Religious occupation means an occupation that meets all of the following requirements:
>
> > (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination;
> >
> > (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination;
> >
> > (C) The duties do not include positions which are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible; and
> >
> > (D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

The petitioner stated that the proffered position was that of an assistant pastor. However, the duties reflected on the weekly schedule include "nursery" and "assistant with youth." The schedule does not reflect duties involved with assisting with the administration of the sacraments, preaching, or any sacerdotal duties such as funerals or baptisms as enumerated in the petitioner's letter. The documentation submitted is insufficient to establish that the duties described in the weekly schedule primarily relate to a traditional religious function, and primarily relate to and clearly involve inculcating or carrying out the religious creed and beliefs of the denomination.

Accordingly, the petitioner has failed to establish that the beneficiary seeks to enter the United States to work at least part time (20 hours per week) in a religious occupation or vocation or that the proffered position is a religious occupation within the meaning of the regulation.

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 (9th 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.