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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: **SEP 22 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, 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 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 missions assistant. The director determined that the petitioner had not established how it intends to compensate the beneficiary.

On appeal, the petitioner asserts that the position of missionary is not determined by legal terms but by biblical mandate and that support from members of the church is support from the church. The petitioner submits a brief 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.

(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.

In Part 5 of the Form I-129, Petition for a Nonimmigrant Worker, the petitioner stated that the beneficiary would be provided with room and board and a stipend for personal needs. In Section 2 of the Form I-129 Supplement, the petitioner stated that the stipend and room and board would "be provided by various Church members . . . involved in Missionary work." The petitioner also stated that "[t]his is part of [the] Church's established program of uncompensated missionary work."

The petitioner submitted a copy of an April 17, 2007 affidavit from [REDACTED] the official who signed the Form I-129 on behalf of the petitioner, attesting that he was aware of the petitioner's missionary work in the Ukraine, that the beneficiary was a member of the church, and that she would be provided with room and board from a church member while in the United States. The petitioner also submitted a copy of an April 18, 2007 affidavit from [REDACTED] attesting that she had been a missionary to the Ukraine with the petitioning organization and that upon her return, she began sponsoring the beneficiary "as she has been participating in the local church." The beneficiary stated in an April 17, 2007 affidavit that she had been a participant in the petitioner's missionary activities in the Ukraine and in the United States since 2003. The petitioner submitted no verifiable documentation of any compensation provided to the beneficiary or evidence that it has an established missionary program as defined by the regulation.

In a request for evidence (RFE) dated July 29, 2009, the director observed that the position of missionary was not included in the petitioner's bylaws and requested additional documentation regarding the position and information regarding compensation to be provided to the beneficiary in the form of the evidence outlined in the regulation at 8 C.F.R. § 214.2(r)(11) discussed above.

In response, the petitioner stated that the position of missionary within its organization, although not specifically defined, is an "intrinsic" part of Christian life and the bible, which instructed apostles to make disciples, and forms a "binding part" of its bylaws. The petitioner resubmitted the copies of the affidavits from [REDACTED] and the beneficiary but provided no other documentation, including any verifiable documentation of the support provided by [REDACTED] or other church members. The petitioner also failed to provide any additional documentation that it had an established program for temporary, uncompensated work as defined by the regulation. The petitioner submitted a single affidavit from [REDACTED] who stated that she served as a missionary in the Ukraine with support from the petitioner for eight years and from the beneficiary who stated that she came to the United States as a missionary. This single missionary exchange does not provide evidence of an "established" missionary program. The petitioner provided no specifics of its program, how participants were selected or that the

position is traditionally uncompensated. [REDACTED] stated that she was supported by the petitioner but did not specify the nature or frequency of that support.

In her RFE, the director advised the petitioner that “[s]upport and remuneration must come from the petitioner, not members of the church.” In response, the petitioner stated:

This statement by USCIS evidently results from a misunderstanding of what constitutes the Church. **The members are the Church.** . . . In the past, members of [the petitioning organization] have directly supported missionaries in this way who have worked within [the petitioner’s] ministries in various capacities. This will be the practice in [the beneficiary’s] case as well. Documentation of this is difficult since there have been no written agreements nor contracts of any sort, just verbal agreements from the church families who have opened their homes and provided the room and board. However, I am attaching documentation showing current value of room and board for one person in our market as a means to communicate the value of the remuneration . . . Obviously, no IRS documentation can be provided for this type of compensation. [Emphasis in the original.]

The petitioner failed to provide any verifiable documentation of any support provided to the beneficiary. In denying the petition, the director determined that the petitioner had provided no binding agreement for the beneficiary’s remuneration, no evidence of a “long standing and continuous pattern of traditional missionary work as part of the religious protocol,” and no “formal financial plan to support the missionary work.” The director also found that the petitioner had failed to provide verifiable documentation of the support provided by the beneficiary’s host family.

On appeal, the petitioner takes issue with the director’s statement regarding a “binding agreement for remuneration,” stating that the director abused her discretion and applies a double standard. The petitioner asserts that the affidavits should be accepted as verifiable documentation of the beneficiary’s compensation. The petitioner discusses missionary work in general and concludes with the statement that missionary work is a biblical mandate and cannot be determined by “legalistic bylaws.” The petitioner also asserts that since the members are the church, any support provided by the members is support provided by the church.

The petitioner provides a January 9, 2010 letter from the petitioner’s senior pastor, [REDACTED] who states:

[T]here have been several families who have already committed to supporting [the beneficiary] during her time of service here . . . As you already know, [REDACTED] has been, and will continue to supply [the beneficiary’s] room and board. Other families have agreed to support [the beneficiary] with direct financial contributions. This support, paid by church members and disbursed through our churches [sic] administrative office, will be at least \$500 per month, beginning when the Visa is granted. . . .

The petitioner also submitted a document indicating that it was the organization's "Policy Concerning Mission Support" that was revised on January 18, 1999. The document provides that "missions or individuals" are provided with monthly support but does not specify the nature or amount of the support. The petitioner also provided copies of monthly bank statements for its "missions fund" for the period August through October 2009 and a copy of the December 2010 monthly budget for [REDACTED]

The issue of the beneficiary's compensation is two-fold. First, if the beneficiary is compensated by the church, as the petitioner claims, then it must submit verifiable documentation of the beneficiary's compensation as provided by the regulation at 8 C.F.R. § 214.2(r)(11)(i). The petitioner argues that since room and board are provided by church members, no IRS documentation can be provided. Nonetheless, the petitioner also argues that the church members are the church and support from them constitutes support from the church. Therefore, room and board provided by the church is unsalaried compensation required to be reported to the IRS. Furthermore, the petitioner provided no verifiable documentation of the financial support provided to the beneficiary or expected to be provided. The petitioner argues that an affidavit, unsupported by any other evidence in the record, is sufficient to meet the petitioner's burden of proof. However, the petitioner offers no explanation as to how the affidavit itself is self-proving. On appeal, the petitioner submits a budget from [REDACTED] however, it submits no documentary evidence of her claimed income, claimed expenses, or documentation that the beneficiary actually resided with [REDACTED]. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The second part of the issue is whether the beneficiary is a missionary for purposes of this visa petition. The petitioner claimed on its Form I-129 that the position offered to the beneficiary is part of its established program of uncompensated missionary work. The petitioner also states that while the beneficiary is a missionary, she is not self-supporting. The petitioner provided no documentation of an established program for temporary, uncompensated work as that term is defined in 8 C.F.R. § 214.2(r)(11)(ii)(B). On appeal, the petitioner submits a document of its policy on mission support but the document does not contain the information required by the regulation. The petitioner argues that its missionary work is a biblical mandate. However, while the determination of an individual's status or duties within a religious organization is not under the purview of USCIS, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with USCIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

The petitioner has failed to submit competent and verifiable documentation of how it intends to compensate the beneficiary or that it has an established program for temporary, uncompensated missionary work.

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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.