

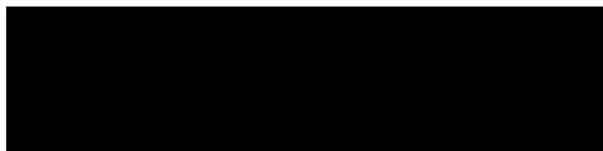
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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D13

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **SEP 23 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:



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 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 associate pastor. The director determined that the petitioner had not established how it intends to compensate the beneficiary.

On appeal, counsel asserts that the petitioner has paid the beneficiary in the past. Counsel 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.

The petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that it filed on May 13, 2008, that it would pay the beneficiary \$35,870 per year with a two-week paid vacation. In an April 22, 2008 letter, the petitioner stated that the beneficiary would be paid an "annualized salary of \$30,000." The petitioner submitted an uncertified copy of its IRS Form 990, Return of Organization Exempt from Income Tax, for 2007, on which it reported net assets of \$48,520 and that it compensated the beneficiary in the amount of \$36,000. The IRS Form 990 did not indicate compensation for any other employee. The petitioner also submitted a copy of an IRS Form 1099-MISC, Miscellaneous Income, for the year 2006, on which it reported it paid the beneficiary \$30,000 in nonemployee income, and a copy of an IRS Form W-2, Wage and Tax Statement, on which it reported that it paid the beneficiary \$30,000 in wages in 2007. The petitioner provided uncertified copies of the beneficiary's IRS Form 1040, U.S. Individual

Income Tax Return, on which she reported income from the petitioner of \$30,000 in 2006 and wages of \$30,000 in 2007. The petitioner submitted no documentation to explain the difference in the salary that it allegedly paid to the beneficiary in 2007. 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).

During a compliance review verification visit to the petitioner's location on May 4, 2009, an immigration officer (IO) met with the petitioner's pastor, [REDACTED], who also signed the Form I-129 on behalf of the petitioner. Also present were the petitioner's counsel and the beneficiary. During the interview, the IO obtained information that brought into question the financial status of the petitioning organization and caused her to request additional financial documentation from the petitioner. The IO was also informed during that interview that Reverend Solomon was the petitioner's only paid employee.

The petitioner, through counsel, responded to the IO's request on May 6, 2009; however, the documentation provided was current only through 2006. Counsel stated that the more recent documentation would be delivered to the IO by May 8, 2009; however, the petitioner provided no other documentation prior to the director's decision on July 13, 2009.

On appeal, the petitioner states that it stopped paying the beneficiary in May 2008 after her visa expired under the mistaken assumption that it could no longer compensate her. The petitioner states that at that time, she was supported by her children, who pledge to continue to support their mother. The petitioner also stated that the chief executive officer of [REDACTED], LLC, has also offered to provide financial support to the beneficiary if the need arises. However, as provided in the regulation at 8 C.F.R. § 214.2(r)(11)(ii), the only religious workers who may rely on self-support rather than actual salary or in-kind support are those workers in an established missionary program. The petitioner does not claim, and submitted no documentation, to establish that the proffered position is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by its denomination.

On appeal, the petitioner also submits copies of its monthly bank statements for the period January through June 2009 and a copy of its 2007 tax transcript from the IRS, which shows that it did not file a return for 2007.

The evidence does not sufficiently establish how the petitioner intends to compensate the beneficiary. First, the petitioner provided two accounts as to the amount of the beneficiary's compensation. In an April 2008 letter, it stated that it would pay the beneficiary \$30,000 per year. On the Form I-129 petition, it stated that it would pay her \$35,870 plus a two-week paid vacation.

Although the petitioner submitted copies of an IRS Form W-2 and an IRS Form 1099-MISC that it issued to the beneficiary, there is nothing in the record to indicate that these forms were filed with the Social Security Administration, IRS, or any other taxing authorities. The petitioner submitted copies of the beneficiary's IRS Forms 1040; however, the returns were not certified as required by the regulation at 8 C.F.R. § 214.2(r)(11)(i), and there is no evidence that the beneficiary timely filed her returns with the IRS. Further, while the petitioner provided a copy of an IRS Form 990 for 2007, IRS records indicate that the petitioner did not file a return for that year. As discussed previously, the petitioner reported on the IRS Form 990 that it paid the beneficiary \$36,000 while the beneficiary's IRS Form W-2 from the petitioner reflects that she was paid \$30,000. Further, the petitioner indicated on the 2007 IRS Form 990 that the beneficiary was the only paid employee; however, in May 2009, the petitioner alleged that [REDACTED] was also on its payroll.

The record reflects that the petitioner encountered a financial situation that may have affected its ability to compensate the beneficiary at the level that it stated in its April 2008 letter and on the Form I-129. The documentation submitted by the petitioner is contradictory as to the amount it intends to pay the beneficiary and the amount that it compensated the beneficiary in the past, and is insufficient to establish how it intends to compensate the beneficiary pursuant to the instant visa petition.

Beyond the decision of the director, the petitioner has failed to meet the requirements of the regulation at 8 C.F.R. § 214.2(r)(8), which requires the petitioner to submit a detailed attestation with details regarding the petitioner, the beneficiary, the job offer, and other aspects of the petition. The record contains no such attestation.

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 (9<sup>th</sup> 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.