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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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[REDACTED]

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:
[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
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 minister. The director determined that the petitioner had not established how it intends to compensate the beneficiary.

On appeal, counsel asserts that the director failed to consider all of the documentation submitted in support of the petition and that with assets “in the extraordinary amount of \$1,025,709.79 from which \$351,065.41 is the available fund balance . . . clearly show that” the petitioner “has the ability to pay the Beneficiary’s salary.” Counsel submits what he states is previously submitted documentation.

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 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.

In an October 6, 2006 letter, the petitioner, through its senior minister [REDACTED] stated that it would offer the beneficiary a compensation package “including but not limited to \$350.00 a week, room and board, and means of transportation.” With the petition, the petitioner submitted copies of accountant’s compilation reports of its financial documents for the years 2002 through 2004 and January through June 2005.

In a request for evidence dated March 15, 2007, the director instructed the petitioner to provide evidence to establish how it planned to remunerate the beneficiary:

- **Evidence of Remuneration:** The petitioner has alleged that it would pay the beneficiary \$18,200 on a yearly basis. Submit financial information including bank letters; recent audits; the organization’s membership figure; the number of employees currently receiving compensation; federal tax return for the most recent fiscal year; annual reports, audited financial statements.
- **Federal Tax Return:** Submit a copy of the petitioner’s most recent IRS Form 990, Return of Organization Exempt from Income Tax. If this form has not been filed with the IRS, please explain why.
- **State Tax Return:** Submit a copy of Form 199, California Exempt Organization Annual Information Return, for the most recent fiscal year, or other equivalent state tax document. If this form has not been filed with the California Franchise Tax Board, please explain why.

In response, the petitioner resubmitted the accountant’s compilation reports for 2002 through June 2005 and submitted a copy of a 2006 accountant’s compilation report of its financial documentation for 2006. The director denied the petition, finding that petitioner had failed to

submit any of the documentation requested by the director in her RFE and that the documentation submitted by the petitioner was insufficient to establish how it intends to compensate the beneficiary.

On appeal, counsel states that the petitioner submitted documentation to the immigration officer who conducted the compliance review verification visit at the petitioner's location that had not been considered in the director's decision. This documentation included an accountant's compilation report of the petitioner's financial documentation for 2007 and copies of its monthly bank statements for July, August and September 2008.

The documentation submitted by the petitioner, however, fails to overcome the director's ground for denial. The accountant's compilation is based primarily on the representations of management and the accountant expressed no opinion as to whether they fairly present the financial position of the petitioning organization. In light of this, limited reliance can be placed on the validity of the facts presented in the financial statements that have been submitted. No further supporting documentation is included in the record to reflect the assertions made by the accountant in the financial documentation, or contained within the unaudited financial statements. Thus, the accountant's compilation reports alone are not sufficient documentation to establish how the petitioner intends to compensate the beneficiary.

The petitioner submitted copies of three monthly bank statements, each dated after the filing date of the petition. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. §§ 103.2(b)(1), (12). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

The petitioner submitted no verifiable documentation of the room and board that it stated it would provide to the beneficiary and has failed to submit sufficient and verifiable documentation of how it intends to provide other compensation to the beneficiary.

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.

Additionally, the petitioner has failed to establish that the beneficiary is qualified for the proffered position. The regulation at 8 C.F.R. § 214.2(r)(3) defines minister as an individual who:

- (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.

Additionally, the regulation at 8 C.F.R. § 214.2(r)(10) provides:

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.

The petitioner submitted documentation reflecting that the beneficiary was commissioned as an officer in the [REDACTED] and had completed several training courses with the [REDACTED]. The beneficiary's résumé indicates that he as a pastor with the [REDACTED] Church. The petitioner, however, submitted no documentation to establish the requirements for minister in its denomination or that the beneficiary meets those requirements. The petitioner also failed to provide documentation to establish that its denomination accepted the qualifications of a pastor within the Salvation Army as qualifications for a minister within its own organization.

Accordingly, the petitioner has failed to establish that the beneficiary is qualified for the proffered position.

Finally, we withdraw the director's determination regarding whether the petitioner adequately established that it is a bona fide nonprofit tax-exempt religious organization.

The regulation at 8 C.F.R. § 214.2(r)(5) 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). 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 an October 20, 1972 letter from the IRS to the [REDACTED] Tennessee, granting that organization tax-exempt status for its subordinate units. The petitioner also submitted a partial copy of a 1995 [REDACTED] Directory that included "Ft. [REDACTED] The petitioner, however,

submitted no documentation to establish its relationship to [REDACTED] at the listed address or that the petitioner was included in the most recent version of the [REDACTED] Directory.

Accordingly, the petitioner has failed to provide a currently valid determination letter from the IRS or sufficient documentation to establish that it is covered under the group exemption granted to the [REDACTED].

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.