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



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



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Date: JUL 29 2011

Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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 \$630. 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 "Christian ministry." It seeks to extend the beneficiary's classification 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 "missionary worker." The director determined that the petitioner had not established how it intends to compensate the beneficiary and that the position qualifies as that of a religious worker. The director further determined that the petitioner had not provided an attestation that meets the requirements of the regulation at 8 C.F.R. § 214.2(r)(8).

The director also determined that the petitioner had failed to submit evidence of the beneficiary's compensation in her prior R-1 nonimmigrant status. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(12) requires that any request for an extension of stay as an R-1 must include initial evidence of the previous R-1 employment (including Internal Revenue Service (IRS) documentation if available). The regulation at 8 C.F.R. § 214.1(e) states that a nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act. Under 8 C.F.R. § 214.2(r)(5), extension of status is available only to aliens who maintain R-1 status.

The issues of the beneficiary's prior employment and maintenance of R-1 status are significant only insofar as they relate to the application to extend that status. An application for extension is concurrent with, but separate from, the nonimmigrant petition. There is no appeal from the denial of an application for extension of stay filed on Form I-129. 8 C.F.R. § 214.1(c)(5). Because the beneficiary's past employment and maintenance of status are extension issues, rather than petition issues, the AAO lacks authority to decide those questions.

On appeal, counsel asserts that the director "ignores a mountain of evidence in the record that addresses how the petitioner will compensate the beneficiary . . . [, and] erroneously concludes that the position offered . . . does not qualify as a religious occupation in conflict with both the evidence submitted and the regulatory requirements." 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 first 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 [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.

(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.

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner stated that the beneficiary's compensation would consist of a monthly stipend, housing allowance, food and personal items allowance, and personal savings and support from Australia. The petitioner submitted letters from individuals and organizations who stated that they had provided, and would continue to provide, financial support to the beneficiary. [REDACTED] stated in a May 4, 2010 letter that he had made a residence available free of charge to the beneficiary and the members of her singing group, including her parents, for the duration of their stay in the United States. The petitioner provided copies of the bank statements of the beneficiary and her parents and a copy of an unaudited financial statement that allegedly shows its profit and loss for 2009. The apparent income section of the document does not indicate any credit for the beneficiary and the expense portion does not show any outlay on behalf of the beneficiary.

On August 5, 2010, the director notified the petitioner of her intent to deny the petitioner based, in part, by the petitioner's failure to establish how it intended to compensate the beneficiary. In her Notice of Intent to Deny (NOID), the director advised the petitioner that while it submitted

documentation of how the beneficiary was compensated by others, the regulation requires that the petitioner must establish how it intends to compensate the beneficiary. In response, the petitioner again provided documentation that the beneficiary received housing from [REDACTED]. A May 5, 2010 letter from [REDACTED], pastor of the Accepted in the Beloved church stated that the beneficiary's group [REDACTED] had "supported us when we do community outreaches thru [sic] their music and ministry" and that the church "plan[s] to continue to be part of their support system by providing them food and other necessities as long as they remain within our sphere of influence." In an August 12, 2010 letter [REDACTED] the pastor of the petitioning organization and the Community Gospel Truth Church of God, Inc, stated:

Over the past couple of years [REDACTED] has been giving [the beneficiary], [REDACTED] and [REDACTED] also known as the band [REDACTED], a biweekly gift of \$200.00 for their assistance as Missionary Cantors. They lead worship in our weekly services and are key elements in our service to the community and our various outreaches.

As long as it is economically feasible it is our intent to continue to provide missionary support in the form of biweekly gifts to them during their tenure in our church here in America.

The petitioner also submitted an "estimated budget for future compensation," indicating that it represents payments to employees averaging \$378 over the one-year period from June 22, 2009 to June 28, 2010. The document further provides: "Based on 12 months of donations paid to R1 employee's by [the petitioner] we estimate to compensate our employee's in the future with \$400 per month but not limited to this amount as we constantly receive donations and are confident that they will continue." The petitioner submitted copies of checks indicating that it paid [REDACTED] various amounts in February 2009, June 2009, August 2009, September 2009 and June 2010. The petitioner, however, submitted no documentation of any payments that it made to the beneficiary.

In denying the petition, the director stated:

The petitioner has not overcome the raised issue because a printout of the estimated future budget alone is insufficient to determine the petitioner's ability to compensate. The petitioner could have submitted bank[] statements and financial records showing budgets set aside to compensate the beneficiary. Additionally, the documentation showing that housing, food, and necessities to be provided to the beneficiary are from other sources, not the petitioning organization. R1 is the classification for the beneficiary to be temporarily admitted to the U.S. to work in a religious capacity, for the petitioner and at the request of the petitioner. The petitioner needs to establish that the organization has the ability and intent to compensate the beneficiary at a level at which the beneficiary and accompanying family members will not engage in secular employment or become public charges. The petitioner has not submitted

sufficient evidence to permit a conclusive determination as to the petitioner's ability to compensate the beneficiary. Therefore, the petitioner has not established how they will compensate the alien.

On appeal, counsel asserts that the "[p]etitioner has submitted adequate documentation, in light of its size, revenue stream, and structure, to address how it will compensate the Beneficiary in accordance with" the regulation. Counsel further asserts:

USCIS also takes issue with in-kind compensation to the Beneficiary allegedly from "other sources" and not the Petitioner. As explained above, the Petitioner thrives on charitable donations and its network and affiliation with other religious and charitable organizations. The food, housing, and necessities provided by three of those organizations – Support 100 Property Management (██████████), Accepted in the Beloved, and Community Gospel Train Church are in fact formally gifted to the Petitioner for use by the Beneficiary . . . The petitioner is the evangelical arm of the larger ██████████ and the two organizations share a pastor.

The evidence of record does not support counsel's argument. The record clearly shows that the beneficiary and other members of Jael received money directly from the organizations named and not from the petitioner. Additionally, according to the pastors of the Accepted in the Beloved and the ██████████ the "gifts" to the beneficiary and her fellow band members were compensation for their service to those organizations. ██████████ stated that he allowed use of a house by the beneficiary and her band but does not indicate that usage of the house was a gift to the petitioning organization. The petitioner submitted no verifiable documentation that it has provided compensation, either salaried or non-salaried, to the beneficiary at any time.

The regulation at 8 C.F.R. § 214.2(r)(11) requires the petitioner to establish how it intends to compensate the beneficiary or how she will be self-supporting. Although the petitioner stated on the Form I-129 that the beneficiary would rely, in part, on personal savings, the record does not clearly reflect that the beneficiary uses her own resources for support. Regardless, in order for the beneficiary to rely on self-support, the petitioner must submit documentation establishing 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 the denomination. The petitioner submitted none of the documentation outlined in 8 C.F.R. § 214.2(r)(11)(ii)(C) and (D) to establish that it has an established program for temporary, uncompensated missionary work. The evidence provided by the petitioner indicates that it relies on other organizations to directly provide the beneficiary with non-salaried compensation including housing and food. Such an arrangement does not satisfy the requirements of the regulation.

The petitioner has failed to submit competent and verifiable documentation to establish how it intends to compensate the beneficiary.

The second issue is whether the petitioner has established that the position qualifies as that of a religious occupation.

The regulation at 8 C.F.R. § 214.2(r)(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 record reflects that the beneficiary is a member of a Christian rock group called [REDACTED]. In a May 13, 2010 letter, the petitioner stated:

[The petitioning organization] is associated with [REDACTED] as the community outreach arm. In the past 3 years [REDACTED] and [the petitioner] have utilized our Religious Workers in many ways to outreach the community both locally and nationally. The past 3 years have been very productive for both the church and our organization as we have had a growth in church members and have successfully reached many in the community in a positive way. Due to this growth and effectiveness, [REDACTED] has purchased a new building and will be re-locating our expanding church.

[The petitioner] will be taking part in out-fitting and building the church, preparing it for occupancy and we believe that these applicants would play a key role in accomplishing this goal. The applicants [including the beneficiary] are involved in music ministries within the church as the [REDACTED]

██████████ worship team. Additionally the applicants, when ministering nationally do so under the name, ██████████. We feel at this time they provide a service to the community that no one has yet filled and therefore we would be at a loss if they were not able to extend their current status.

In an August 22, 2010 letter, ██████████ provided a “definition of a ‘Missionary Worker’ under [our] non-denominational belief” as follows:

A Missionary worker of a local branch of the church assists the Minister in Evangelism in the home circuit or in other districts of the community or country where they reside. They do not have the full power of Foreign Missionary, but can be appointed to such office when the need arises, and they can qualify to the satisfaction of the Ministerial Board, or other proper church authorities in their locality.

The petitioner did not provide a source for the information provided. Additionally, there is nothing in the record to indicate that the petitioner has foreign missionaries or a ministerial board. The definition of missionary as provided by the petitioner does not appear applicable to the petitioning organization. If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Reverend Lawrence stated that the beneficiary’s duties of a missionary worker included:

- Assisting the pastor in teaching and evangelizing locally and nationally . . .
- feeding the hungry and homeless
- clothing and ministering to the poor.
- taking care of widows
- assisting other local and national churches and organizations with events
- outreaches and ministries
- continued training in the word, study and prayer.

The petitioner submitted a list of venues (outreach programs) in which it stated the beneficiary and her band would appear on its behalf. Documents announcing the band’s performances do not identify the petitioner or indicate that the band represents or is performing on behalf of the petitioning organization.

In denying the petition, the director determined that the petitioner had not established that the proffered position was traditionally a full time position and that the duties of the position “consist[] of activities normally expected of an active member of a religious congregation rather than a position that would be occupied by a salaried employee who completed training in preparation for a career in religious work.”

On appeal, counsel asserts:

The description of duties submitted by the Petitioner for the position of missionary worker and support letters describing the position and its reach provide sufficient evidence that the regulatory definition has been satisfied. . . . [T]he Petitioner's missionary workers are involved in crucial community outreach and evangelism central to the beliefs of the protestant Christian evangelical faith. The position is recognized as a religious occupation in protestant Christian evangelical tradition and, in turn, by the Petitioner. . . . Missionary workers must have training and experience in evangelism, music ministry and religious work, which the Beneficiary possesses. Indeed, a missionary worker is a quintessential religious occupation.

The petitioner indicates that it is nondenominational and that the position of missionary exists within its organization. However, it has submitted insufficient documentation to support this assertion. As discussed above, the description of the position of missionary provided by the petitioner does not appear applicable to the petitioning organization. Further, the petitioner has not sufficiently established an employer-employee relationship with the beneficiary. The R-1 nonimmigrant religious worker visa is available for those aliens who seek to enter the United States at the request of a petitioner to work for that petitioner. The petitioner has not established that it employs and will employ the beneficiary in any capacity. Regardless, the petitioner has failed to provide sufficient documentary evidence to establish that the proffered position is recognized within the petitioning organization.

Accordingly, the petitioner has failed to establish that the proffered position is a religious occupation within the meaning of the regulation.

The final issue presented on appeal is whether the petitioner has provided an attestation that meets the requirements of the regulation.

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

An authorized official of the prospective employer of an R-1 alien must complete, sign and date an attestation prescribed by USCIS and submit it along with the petition. The prospective employer must specifically attest to all of the following:

- (i) That the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation;
- (ii) That the alien has been a member of the denomination for at least two years and that the alien is otherwise qualified for the position offered;

- (iii) The number of members of the prospective employer's organization;
- (iv) The number of employees who work at the same location where the beneficiary will be employed and a summary of the type of responsibilities of those employees. USCIS may request a list of all employees, their titles, and a brief description of their duties at its discretion;
- (v) The number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past five years by the prospective employer's organization;
- (vi) The number of special immigrant religious worker and nonimmigrant religious worker petitions and applications filed by or on behalf of any aliens for employment by the prospective employer in the past five years;
- (vii) The title of the position offered to the alien and a detailed description of the alien's proposed daily duties;
- (viii) Whether the alien will receive salaried or non-salaried compensation and the details of such compensation;
- (ix) That the alien will be employed at least 20 hours per week;
- (x) The specific location(s) of the proposed employment; and
- (xi) That the alien will not be engaged in secular employment.

On the Form I-129, filed on June 7, 2010, the petitioner answered "N/A" to the questions in Section 2 of the Employer Attestation regarding information about the relationship between the petitioning organization and the foreign organization of which the beneficiary was a member, and information about the position offered, including the title, a detailed description of the beneficiary's proposed daily duties, the beneficiary's qualifications for the position, the proposed compensation, and the location where the beneficiary would be working. In response to the NOID, the petitioner provided an amended attestation in which it provided the information as required by the regulation.

In denying the petition, the director did not consider the amended attestation and counsel did not address the issue on appeal. Nonetheless, the record reflects that the attestation submitted by the petitioner conforms to the requirements of the regulation at 8 C.F.R. § 214.2(r)(8) and the AAO withdraws the director's determination to the contrary.

However, as the petitioner has not established how it intends to compensate the beneficiary and that the proffered position qualifies as a religious occupation, the petition cannot be approved.

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.