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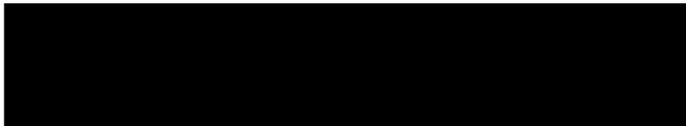
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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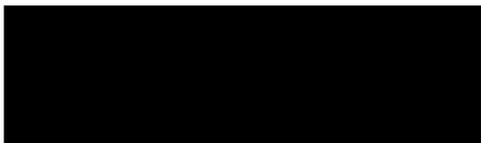


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAR 30 2011**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(i) of the
Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(i)

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 \$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 petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO subsequently remanded the petition to the director for a new decision based on revised regulations. The director determined that the petitioner had failed to submit required evidence, and therefore the director again denied the petition and certified the decision to the AAO. The AAO will affirm the director's decision.

The petitioner is a mosque. 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 Quran teacher. The director determined that the petitioner had not submitted sufficient evidence to show that it can compensate the beneficiary.

In response to the certified decision, the petitioner submits an attorney brief with supporting exhibits.

We note that, in addition to denying the petition based on the issue of compensation, the director also separately denied the petitioner's application to change the beneficiary's nonimmigrant status, citing the beneficiary's failure to maintain her prior H-1B nonimmigrant status. Under the U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. §§ 103.4(a)(4) and (5), the AAO cannot review a decision on certification unless that decision is within the AAO's appellate jurisdiction. Under the USCIS regulation at 8 C.F.R. § 248.3(g), there is no appeal from the denial of an application for change of status. Therefore, the AAO has no jurisdiction to review that denial, and we will not discuss the petitioner's response to that finding. Our decision must focus instead on the separate denial of the nonimmigrant petition.

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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(1) states that, 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:

- (i) Be a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least two years immediately preceding the time of application for admission;
- (ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);
- (iii) Be coming solely as a minister or to perform a religious vocation or occupation as defined in paragraph (r)(3) of this section (in either a professional or nonprofessional capacity);
- (iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and
- (v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

The director's denial concerns the beneficiary's intended compensation. The petitioner filed the Form I-129 petition on October 13, 2006. At that time, the USCIS regulation at 8 C.F.R. § 214.2(r)(3)(ii)(D) required the petitioner to specify the arrangements made, if any, for remuneration for services to be rendered by the alien, including the amount and source of any salary, a description of any other types of remuneration to be received (including housing, food, clothing, and any other benefits to which a monetary value may be affixed), and a statement whether such remuneration shall be in exchange for services rendered.

On Form I-129, the petitioner indicated that the beneficiary would work full time for \$26,400 per year plus health insurance. The petitioner claimed gross annual income of \$120,808.14 and net annual income of \$30,561.77. Asked to specify its "Current Number of Employees," the petitioner answered "27 Volunteers," implying that it had no paid staff.

On February 8, 2007, the director issued a request for evidence (RFE), instructing the petitioner to submit, among other things, "financial information" to establish its ability to provide the claimed level of compensation. In response, the petitioner submitted a "Revenue & Expense Statement" for February 28, 2005 to March 1, 2006, showing figures consistent with those previously shown on

Form I-360. The petitioner repeated the assertion that its staff, as of early 2007, consisted of 27 unpaid volunteers, with no paid employees.

In a separate letter, [REDACTED] and chief executive officer of the petitioning mosque, stated that the beneficiary “would like to accept our offer of employment at a salary of \$2,200.00 . . . per month. We will also provide health insurance, as well as the other necessities. We pray for approval of her R-1 visa so that after four years of volunteering, [the beneficiary] can join our religious faculty full-time.” Clearly, the petitioner was not yet compensating the beneficiary.

The director denied the petition on October 8, 2009, for reasons unrelated to the petitioner’s financial status. The petitioner appealed this decision, and the AAO withdrew the decision on April 9, 2010. The AAO noted that the director had based the decision on obsolete regulations, and remanded the petition for a new decision based on revised and updated regulations.

On October 25, 2010, the director issued a new RFE, instructing the petitioner to submit newly required evidence. The new USCIS regulation at 8 C.F.R. § 214.2(r)(11)(i) reads:

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.

In response to the director’s notice, counsel stated that the petitioner “has employed one employee in the position of Facility Administrator since the year 2007.” The petitioner evidently hired this individual after the end of April 2007, when the petitioner responded to the first RFE and stated, at the time, that it had no paid employees.

The petitioner submitted a new letter from [REDACTED], repeating the offer of \$2,200 per month plus health insurance. The petitioner also submitted copies of IRS Form 990-EZ returns (comparable to income tax returns) for 2007 through 2009, including the following information:

	2007	2008	2009
Total revenue	\$165,681	\$166,690	\$167,162
Salaries/compensation/employee benefits	34,639	34,336	28,816
Total expenses	161,554	166,588	166,887
Excess for the year	4,127	102	275
Net assets/fund balances at end of year	4,612	4,714	4,989

The Forms 990-EZ indicated that the petitioner’s treasurer earned \$21,000 in 2008 and \$22,435 in 2009. (The petitioner did not provide these figures for 2007.) The returns did not specify who

received the remaining \$13,336 in salaries in 2008, or the remaining \$6,381 in salaries in 2009. The above figures, however, do not indicate that the petitioner had \$26,200 to pay the beneficiary's salary in any of the above years.

The petitioner also submitted photocopies of bank statements, showing the following figures for the petitioner's checking account:

	August 2010	September 2010	October 2010
Starting balance	\$1,161.97	\$5,974.19	\$2,102.90
Deposits	+19,075.64	+13,180.42	+16,914.00
<u>Withdrawals</u>	<u>-14,263.42</u>	<u>-17,051.71</u>	<u>-14,406.99</u>
Ending balance	5,974.19	2,102.90	4,609.91

On February 10, 2011, the director denied the petition, stating that the documentation "draws into question the petitioner's finances. . . . USCIS questions whether the petitioner has sufficient funds to cover existing expenditures as well as paying the beneficiary the proposed wage." The director also found the petitioner's assertions regarding the beneficiary's compensation to be "vague." For instance, the petitioner did not document the health insurance arrangements in place for its employees.

In response to the certified decision, counsel lists various materials that the petitioner had previously submitted. Counsel observes that the "bank statements from the period August 2010 to October 2010 show[] a sufficient monthly bank balance ranging from \$3000 to \$6000, adequate to pay the Beneficiary's proposed remuneration of \$2,200 per month." Counsel fails to explain how a \$2,102.90 bank balance is "adequate to pay . . . \$2,200." Furthermore, each month's bank balance does not exist independently in a vacuum; it reflects what has come in, what has gone out, and what remains from the previous month. If we factor the beneficiary's \$2,200 monthly salary payments into the three bank statements, we get the following numbers:

	August 2010	September 2010	October 2010
Starting balance	\$1,161.97	\$3,774.19	\$(2,297.10)
Deposits	+19,075.64	+13,180.42	+16,914.00
Withdrawals	-14,263.42	-17,051.71	-14,406.99
<u>Salary</u>	<u>-2,200</u>	<u>-2,200</u>	<u>-2,200</u>
Ending balance	3,774.19	(2,297.10)	(1,990.09)

Because each month's salary would not spontaneously reappear in the next month's bank balance, there would be a cascade effect from each month to the next. Furthermore, we note that the petitioner's starting balance for August 2010 would also have been a negative number if the petitioner had paid the beneficiary in July.

Counsel acknowledges the petitioner's submission of the Form 990-EZ returns, but fails to acknowledge that those forms, on their faces, show that the petitioner has not had enough surplus

income each year to cover the additional \$26,400 expense of the beneficiary's salary, let alone further expenses for other benefits. The beneficiary's salary would exhaust the petitioner's cash reserves in about two months. The petitioner's net income for 2009 was barely one percent of the beneficiary's intended annual salary, and even that was nearly three times the figure for 2008.

We agree with the director's finding that the petitioner's evidence, on its face, indicates that the petitioner cannot afford the beneficiary's stated salary of \$2,200 per month, or \$26,400 per year.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will affirm the certified denial of the petition.

ORDER: The director's decision of February 10, 2011 is affirmed. The petition is denied.