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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

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DATE: **MAY 31 2011** OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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 matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a Buddhist religious society. 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 monk. The director determined that the petitioner had not submitted sufficient evidence relating to the beneficiary's intended compensation.

On appeal, the petitioner submits a brief from counsel and information about a second temple.

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 USCIS regulation at 8 C.F.R. § 214.2(r)(11) reads, in part:

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.

The petitioner has never claimed that the beneficiary is part of an established program for temporary, uncompensated missionary work. Therefore, the petitioner must establish its ability to provide the beneficiary's salaried or non-salaried compensation.

The petitioner filed the Form I-129 petition on August 3, 2009. Information printed on the form advised the petitioner: "If you do not completely fill out this form and the required supplement . . . the petition may be denied." Nevertheless, the petitioner omitted information about compensation

from the petition form and its accompanying attestation. Asked for the amount of the beneficiary's intended wages, the petitioner answered "n/a" (not applicable). A space marked "Other Compensation" remains blank. Asked for the petitioner's gross and net annual income, the petitioner again responded "n/a." On the accompanying attestation, the petitioner left blank the space designated for a "[d]escription of the proposed salaried compensation or non-salaried compensation." The petitioner claimed a total of seven employees.

In a letter accompanying the initial submission, counsel stated that the beneficiary "works seven days a week without salary or gift of any kind. The temple provides him with all of the necessities of life. . . . Food and other resources are provided by members of the temple." The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In the same letter, counsel stated that the beneficiary used to work for a different Buddhist monastery, which declared bankruptcy in 2008. Several of the petitioner's subsequent submissions have revisited this issue, which illustrates the need for a religious organization to provide verifiable evidence of its ability to compensate or support its religious workers.

On September 21, 2009, the director issued a request for evidence (RFE), instructing the petitioner to submit further documentation to fill various deficiencies in the petitioner's initial submission. The petitioner's response included a letter from its president, Soravuth Srey, who stated: "We have the sufficient funds to support [the beneficiary], in accordance with his religious vows. We will provide him with all of his needs for food, shelter, clothes, medical care, and all other needs. His necessities are provided by the temple and are not dependent upon the solicitation of funds."

The petitioner submitted a copy of an IRS determination letter from July 11, 2003, acknowledging the petitioner's tax-exempt status. The IRS informed the petitioner: "You are required to file Form 990 [an annual filing similar to a tax return] only if your gross receipts each year are normally more than \$25,000." The record does not contain any of the petitioner's Form 990 returns. If those returns do not exist, then the implication is that the petitioner takes in less than \$25,000 per year. If, on the other hand, the returns do exist, the AAO cannot consider them because the petitioner has chosen to exclude them from the record.

On May 10, 2010, the director issued another RFE, instructing the petitioner to submit evidence "to establish the arrangements that have been made, if any, for remuneration for services to be rendered by the alien." The director specifically requested the petitioner's most recent "federal tax return." As a tax-exempt organization, the petitioner would not be required to file a tax return, but its IRS determination letter indicated that the petitioner may have to file an annual IRS Form 990 return.

In response, [REDACTED] stated: "our agreements regarding material needs are broad and since promises to provide for all of our monks' material needs – including any requirements [the beneficiary] would have, now or in the future."

An attached printout of an August 1, 2010 electronic mail message to counsel from temple official Not Sot reads, in part:

On the 9[th] of February 2010, the [petitioner's] temple was burned in a fire. Since that time the temple is temporarily closed for fixing. The monks who resided in our temple were relocated to the South park temple in West Seattle. Since then our temple doesn't have any activity, even raised fund. So in our bank statement is very limited, but we don't worry about it because our insurance [covers] all our expenses. The temple will be reopened as soon as the fixing is finished, probably in . . . November of 2010.

The petitioner submitted copies of three bank statements, showing the following figures:

Dates covered	11/1-12/31/2009	1/1-3/31/2010	4/1-6/30/2010
Beginning balance	\$4,501.53	\$4,501.90	\$3,578.27
Deposits/credits	0.37	0.54	200.46
Withdrawals/debits	0	924.17	0
Ending balance	4,501.90	3,578.27	3,778.73

The message from Not Sot implies that a fire in February 2010 curtailed the petitioner's fundraising activities, but the bank statements do not show any deposits (apart from minimal interest payments) before the claimed date of the fire. Indeed, the statements show so little activity overall that it seems unlikely that the petitioner supports its monks through that account. Most of the withdrawals in the March 2010 statement are in the form of transfers to a separate checking account, but the petitioner did not submit any information about that account. A nearly static savings account balance of around \$4,000 is not sufficient evidence of the petitioner's ability to support the beneficiary. If a 2010 fire left the temple unusable and destroyed its contents, then still further questions arise as to how the petitioner can continue to provide for the beneficiary and six other workers.

The director denied the petition on August 26, 2010, stating that the petitioner had not established how it will support or compensate the beneficiary. On appeal, counsel states: "Petitioner will demonstrate that it has, and can continue to, compensate the Beneficiary, by submitting additional evidence and a Brief within thirty days."

Subsequently, counsel stated that the February 2010 fire "completely destroyed the [petitioner's] Temple complex where monks reside and all records are kept." Counsel stated that "a sister organization, the [redacted] of Seattle," houses and supports the beneficiary "on a temporary basis while the [petitioner's] temple is rebuilt." An official of that entity attests to this arrangement. Counsel contends that "a monk such as [the beneficiary] requires approximately \$200.00 per month in food and other maintenance costs, in addition to housing. Previously submitted bank records indicate that the Petitioner has been able to afford this."

The previously submitted bank records did not show that the petitioner had spent anything on the beneficiary's food or other material needs, before or after the February 2010 fire. The minimal activity on that account provides little information about the petitioner's overall financial status. The petitioner submits no documentary evidence to support the claim that the beneficiary can live on "approximately \$200.00 per month."

Whatever level of support the beneficiary requires, the USCIS regulation at 8 C.F.R. § 214.2(r)(11) requires the petitioner to submit evidence, including IRS documentation if available, to show how it intends to provide that support. The record contains no direct evidence that the petitioner has ever supported the petitioner or anyone else. The assertion that fire has destroyed the petitioning temple does not relieve the petitioner of that burden or lead to a presumption in the petitioner's favor. Accordingly, the petition may not be approved.

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 dismiss the appeal.

ORDER: The appeal is dismissed.