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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**

D13

DATE: **NOV 04 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)(i) of the
Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(i)

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.

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 withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further action and consideration.

The petitioner is a Christian missionary organization. It seeks to classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act, to serve on the petitioner's discipleship training school staff. The director determined that the compliance review process contradicted the petitioner's claims about the beneficiary's intended compensation.

On appeal, the petitioner submits a brief from counsel, a letter from an official, and supporting exhibits.

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.

U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. § 214.2(r)(1) state 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 issue in this proceeding concerns the beneficiary's intended compensation and support. The USCIS regulation at 8 C.F.R. § 214.2(r)(11) reads:

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 [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.

(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.

The USCIS regulation at 8 C.F.R. § 214.2(r)(16) states:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The petitioner filed the Form I-129 petition on November 6, 2009. In an employer attestation accompanying the petition, asked to describe the beneficiary's proposed compensation, the petitioner stated: "[the petitioner] asks its participants to raise their own financial support through churches, family and friends. In that sense, all of our staff, including [the beneficiary], are self-funded." An attachment to the Form I-129 petition indicated that the petitioner "provides [the beneficiary] accommodations and meals at a subsidized rate," and referred to "evidence of [the beneficiary's] financial support, which is given through . . . the branch of [the petitioner's parent organization] located in British Columbia, Canada."

Allison Smith of the petitioner's personnel office stated:

No one in [the petitioning organization] earns a salary, but they receive donations from individuals and churches who desire to partner with them in reaching the world for the gospel. These donations are used to cover living expenses. While [the beneficiary] has been with us, she has been prompt in meeting her financial obligations. Her support from her church and individuals has been consistent. She will not be soliciting funds in the United States.

The petitioner submitted printouts identifying various donations to the beneficiary, specifying the amounts and identifying the donors. Most of the identified donors have addresses in Canada, but the printouts also show several small donations from the petitioner itself. A transaction record shows that the beneficiary has paid the various invoices that the petitioner issued to her since 2006.

The director denied the petition on January 10, 2011, stating:

On August 20, 2010 a compliance review was conducted by an immigration officer from the Denver, Colorado District Office with [redacted] Director of Personnel for the petitioning organization. [The petitioner] has reported to USCIS that the beneficiaries are paid a salary as documented on their W-2's and are provided with room and board. The petitioner failed to report to USCIS that the beneficiaries are responsible for generating their own salary by participating in deputized fundraising. The money they receive in donations is processed through the organization for a fee and the money is earmarked in their name. The organization then pays the beneficiary with the same money. There is no money set aside that is paid by the organization. If the beneficiary does not receive any donations then they will not get paid. To be considered for employment, the beneficiary must have at least one year's salary in the bank. The organization also failed to inform USCIS that the beneficiaries do not get free room and board. The beneficiaries pay the organization \$600.00 a month to rent a 2 bedroom apartment and \$400.00 a month for a one bedroom apartment. This is a reduced rate. They also have the option of participating in a meal plan at a reduced rate of \$180.00 per person a month. . . . The employees are also responsible for their business expense. . . .

The petitioner has not established how they will compensate the beneficiary.

On appeal, counsel alleges adjudicative error and argues that the beneficiary is not merely a fundraiser for the petitioner. [REDACTED], evidently [REDACTED]'s successor as the petitioner's director of personnel, states: "It was inaccurate to state in the decision, that our organization had stated that we provided free housing and food to our workers. It is not accurate to say that our workers are responsible for their business expenses."

The record clearly shows that, in this proceeding, the petitioner never claimed that "the beneficiaries are paid a salary . . . and are provided with room and board." Rather, the petitioner stated that the beneficiary "receives no salary – rather, she is self-funded. [The beneficiary] depends largely upon donations from family and friends." The petitioner also stated, at the outset, that the beneficiary purchased "accommodations and meals at a subsidized rate."

It may well be that, in earlier petitions, the petitioner had claimed that workers received a salary and free room and board. The findings from the 2010 site inspection would contradict those claims. In this proceeding, however, the petitioner never made such claims. The information from the site inspection does not contradict the information that the petitioner provided in the Form I-129 petition, employer attestation, and accompanying documents. The AAO will, therefore, withdraw the finding from the compliance review that the petitioner's claims about the beneficiary's compensation were false.

Nevertheless, a related issue remains to be addressed before the director can approve the petition. Counsel states that the petitioner provides "non-monetary benefits" to the beneficiary in the form of reduced rates for housing, utilities and food. [REDACTED] asserts that the petitioner provides "free internet and computer use, office space, and staff support at no charge to our workers," and absorbs "a large portion of our missionary staff's costs of housing, utilities and food."

The petitioner appears to make these arguments in an effort to show that the beneficiary receives non-salaried compensation, and therefore is not self-supporting. These arguments, however, are not persuasive. Use of office space and office equipment appears to be a necessary condition for employment in an office environment, rather than a "benefit" that an employer provides to its employees. Furthermore, the assertion that lodging and food are "benefits" provided to workers, even though workers pay for them, is not persuasive. [REDACTED] asserts that the petitioner charges its workers only half the rent that comparable nearby apartments would command, but it does not follow that reduced rental rates represent an actual expense to the petitioner. The petitioner's audited financial report sheds no light on this issue, because it does not itemize the petitioner's expenses beyond "Program Expenses" and "Supporting Activities."

[REDACTED] asserts that "[a] conservative estimate of the food subsidy we provide to our workers is a value of \$90 per person per month." The petitioner offers no documentation to support this estimate. Going on record without supporting documentary evidence is not sufficient for purposes of meeting

the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The reduced rates on food and lodging appear to be optional benefits, comparable to the employee discount granted to many workers at secular businesses, rather than direct compensation for services rendered. The preponderance of evidence in the record indicates that the petitioner's workers are essentially self-supporting, arranging for donations to cover their expenses, and purchasing food and lodging from the petitioner rather than receiving it as outright in-kind compensation.

The petitioner, on appeal, submits copies of three IRS Form W-3 Transmittal of Wage and Tax Statements, showing the employer identification number that the petitioner used on Form I-129. The 2007 Form W-3 indicates that the organization issued 88 Form W-2 Wage and Tax Statements, reporting a total of \$585,770.00 in wages, averaging \$6,656.48 per employee. In 2008, the petitioner reported a total of \$562,730.66 in wages over 90 Forms W-2, averaging \$6,252.56 per employee. The Form W-3 for 2009 shows \$709,292.15 on 99 Forms W-2, for an average of \$7,164.57 per employee.

On the employer attestation, prepared in late 2009, the petitioner claimed that 150 employees work at the same location where the beneficiary would work. This number significantly exceeds the 99 IRS Forms W-2 that the petitioner reported in 2009. This evidence, on its face, suggests that many of the petitioner's workers do not receive IRS Forms W-2. The logical inference, then, is that the petitioner compensates many, but not all, of its workers. It remains unclear whether the beneficiary would number among the compensated or uncompensated workers.

If the beneficiary is to be a self-supporting participant in a missionary program, then the petitioner must submit sufficient evidence to satisfy the regulatory requirements at 8 C.F.R. § 214.2(r)(11)(ii), quoted in full elsewhere in this decision. The petitioner has submitted some, but not all, of the required evidence. If, on the other hand, the beneficiary is to receive non-salaried compensation in the form of material support, then the petitioner must submit further evidence as described in the regulation at 8 C.F.R. § 214.2(r)(11)(i).

For the reasons discussed above, the director's decision cannot stand and the AAO hereby withdraws that decision. At the same time, however, the record as it now stands does not permit approval of the petition. Therefore, the AAO will remand this matter to the director. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.