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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: APR 03 2012

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

Beneficiary:

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(R)(1)

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 appeal will be dismissed.

The petitioner is a “fellowship of missionaries.” It seeks to extend the beneficiary’s status 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 “cross-cultural missionary.”¹ The director determined that the petitioner had not submitted sufficient supporting documentation to establish the beneficiary’s eligibility for this visa classification, including the petitioner’s failure to establish that it has an established program for temporary, uncompensated missionary work and how it intends to compensate the beneficiary.

On appeal, counsel asserts that the petitioner has submitted “ample evidence” to support approval of the petition. Counsel submits a brief and copies of previously submitted 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.

¹ Although the petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that it was filing for new employment for the beneficiary, the record reflects that the beneficiary is currently in the United States pursuant to an R-1 nonimmigrant religious worker visa.

In question 6 of Part 5 of the Form I-129, the petitioner indicated that the beneficiary would receive wages of \$23,000. In its October 29, 2010 letter submitted in support of the petition, the petitioner stated:

[The petitioning organization] has an established program for temporary, uncompensated missionary work and [the beneficiary] will be part of such program. This includes actively assisting him with raising support from our numerous financial supporters and providing him with health insurance coverage under our Healthcare Reimbursement Agreement [], which is available to all of our missionaries. [The beneficiary] will receive about \$23,000 per year for the support and maintenance of his family which is sufficient for a household of 3 based on the USCIS [U.S. Citizenship and Immigration Services] thresholds.

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 [Internal Revenue Service] 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.

With the petition, filed on November 8, 2010, the petitioner submitted unaudited copies of its September 23, 2010 balance sheet and profit and loss statement for January 1 through September 23, 2010. The profit and loss statement records a net income of negative \$16,273.81 for the period. The statement contains line items for in-kind ministry expenses of \$2,328.77, missionary care "dir" expenses of \$400, and ministry expenses reimbursement for two couples that did not include the beneficiary.

The petitioner also submitted a copy of a Form W-2 that it issued to another individual in 2008, reflecting wages, tips, and other compensation of \$22,478.20, and statements from individuals who stated that they provided support to the beneficiary during 2010 while he was associated with the [REDACTED]. The petitioner submitted copies of checks written by the beneficiary to [REDACTED] for rent, with an annotation that the rent was \$850 but that the beneficiary only paid \$450 while [REDACTED] paid the remainder, a copy of an unprocessed check written to the beneficiary by [REDACTED] and statements dated October 31, 2010 from two individuals who state that they have committed themselves to supporting the ministry of the beneficiary in the amount of \$200 and \$250.

The petitioner submitted copies of brochures advertising its missionary program in North America and indicating that it has conducted activities primarily in the United States but has also offered “pastoring in Canada” and “training nationals in Mexico.”

In a request for evidence (RFE) dated March 7, 2011, the director advised the petitioner that although it submitted financial documentation, it did not provide documentation such as bank statements or a budget to support the information contained within the documents. The director further advised the petitioner that if the beneficiary was to work in a self-supporting missionary position, the petitioner must submit documentation in accordance with the regulation cited above. The director also requested information regarding the location where the beneficiary would work.

In response, the petitioner submitted a list of its employees, all of which are identified as missionaries, and their salaries and copies of IRS Form W-2 that it issued to several individuals in 2010. The petitioner also provided an uncertified copy of its 2009 IRS Form 990, Return of Organization Exempt from Income Tax, and unaudited copies of its profit and loss statements for 2009 and 2010. The petitioner further submitted a “Statement of Non-cash and Direct Support” for the years 2006 and 2007 for [REDACTED] and his family, identified as missionaries for the petitioning organization, and copies of [REDACTED] IRS Forms W-2 for 2008 and 2009. In a March 13, 2011 letter, [REDACTED] on behalf of the petitioner, stated that the beneficiary’s “compensation is variable but based on the current compensation of comparable [] employees, we expect his compensation to exceed \$2000 per month.”

In denying the petition, the director found that the petitioner had failed to submit certified copies of IRS wage and tax transcripts, failed to provide sufficient documentation of the beneficiary’s proposed work location, failed to provide documentation of the boarding subsidy provided by the petitioner to the beneficiary, and failed to provide sufficient documentation of its established missionary program.

The AAO notes that the beneficiary’s prior work in an R-1 status is not at issue in the instant petition. The 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 IRS documentation if available). 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 is an extension issue, rather than a petition issue, the AAO lacks jurisdiction to examine this issue.

On the Form I-129, the petitioner indicated that the beneficiary would work at the [REDACTED]. In response to the RFE, the petitioner provided a proposed weekly schedule for the beneficiary on which it indicated seven churches at which the beneficiary would work but indicated that his duties would “always [be] under the auspices of and accountability to” the petitioning organization. In its March 13, 2011 letter, the petitioner stated:

[The beneficiary's] duties will include meeting people of Middle Eastern descent in their homes and in his, explaining the tenets of the Christian faith to interested people, conducting Bible studies, encouraging new believers through prayer and life counseling, discipling believers through mentoring relationships, baptizing new believers and serving communion to believers, He will also visit sick and shut-in individuals, facilitate distribution of donated goods and perform a variety of other acts of mercy for Middle[] Easterners, with his fluency in Arabic, French and English.

[The beneficiary] is expected to work 40 or more hours per week, but this will be on a schedule that varies according to the needs of those he serves. He will report his activities regularly to the [petitioner's] General Director, and coordinate his weekly schedule with [REDACTED] the [REDACTED] [REDACTED] or his designee.

Counsel asserts on appeal that the director "has misunderstood the nature of the missionary work subject to this petition" and that:

The Petitioner seeks to employ the beneficiary as a missionary to the Arabic speaking population in San Diego and its environs (for now) with the option of seconding him wherever his missionary skills are needed. In performance of his duties as a missionary [the beneficiary] would initially be located at the [REDACTED] [REDACTED], which is neither his employer nor the petitioner, from which location he would serve his target group of Arabic speaking people, including refugees. This would call for [him] to go to various churches and other organizations which host Arabic speaking people without being employed by those churches. Accordingly the nature of those churches/organizations being of no relevance to the R-1 petition being discussed and no specific information was provided. The Petitioner's [October 29, 2010] letter in support of the R-1 petition clearly states the above

Despite counsel's statements, question 5 of Part 5 on the Form I-129 requests the address of the location at which the beneficiary will work if it is different from that of the petitioning organization. It seeks no specific information about the "nature of those churches/organizations" and it does not leave it to the petitioner's discretion as to whether or not to provide the information. Additionally, the petitioner's letter does not make clear that the beneficiary will be working in locations other than that specified on the Form I-129. Nonetheless, the director did not indicate how this initial failure to identify all of the locations at which the beneficiary will work is a ground for denying the petition. The petitioner indicated that the beneficiary would work under its auspices and under the direction of the pastor of the [REDACTED] [REDACTED]. The AAO finds no inconsistency in the petitioner's statements regarding the beneficiary's work location that would require a denial of the petition on that basis.

The director also determined that the petitioner failed to provide documentation of the boarding subsidy provided by the petitioner to the beneficiary. However, the record reflects that the beneficiary's housing was provided by his previous employer, the [REDACTED] and there is no evidence in the record to reflect that such compensation was included in the job offer from the petitioner. As discussed above, issues regarding the beneficiary's prior employment are not at issue in the instant petition.

The director additionally determined that the petitioner did not provide sufficient documentation of its established missionary program. Specifically, the director found that:

[T]he wage reports forms do not show how the missionar[ies are] called, accepted, trained, compensated, and supervised for their work in the denomination or interfaith denomination. It is noted that local churches and people offer[] the beneficiary's compensation or support directly, the beneficiary pays the petitioner for rental and the petitioner pays rental subsidy. However, there was no employment compensation agreement nor missionary support agreement in place among supporters, the petitioner, and the beneficiary submitted to USCIS.

It is not clear how the IRS Forms W-2 could establish the beneficiary's calling, acceptance, training, compensation and supervision for his work. In his letter submitted with the petitioner's response to the RFE, counsel stated that the petitioner "does not have an established or formal training program for its missionaries, all of whom come to [the petitioning organization] with much experience and the necessary credentials that the position requires." In its March 13, 2011 letter, the petitioner stated:

[The beneficiary] has a Masters Degree in Religious Studies from the Seminary of Southern California, along with several certificates of training in Christian ministry and evangelism. Further, [he] has done well in this work, and in a similar situation, for the past two years. We are confident that he is well, and uniquely qualified for this position.

The petitioner stated that the beneficiary would work under the supervision of the pastor of the [REDACTED] but would be responsible to the petitioning organization. The petitioner submitted a copy of an agreement with the [REDACTED] in which the two organizations agree to enter into a "ministry affiliation."

The regulation requires the petitioner to show that its established program for temporary, uncompensated work includes evidence that the organization provides formal training for its missionaries and that participation in such missionary work is an established element of the religious development in the petitioner's denomination. The petitioner submitted no such evidence and counsel states that the petitioner has no formal training program. Accordingly, the petitioner has failed to establish that it has an established program for temporary, uncompensated missionary work as that term is defined by the regulation.

In addition to failing to establish that the position is part of an established program for temporary, uncompensated missionary work, the petitioner has failed to provide sufficient verifiable documentation of the sources of the beneficiary's self-supporting income. The regulation requires the petitioner to provide "[c]opies 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 petitioner submitted documents indicating that the beneficiary received monetary support from several individuals while he worked for the [REDACTED] the petitioner submitted no documentation to establish that that support would continue with the beneficiary's employment with the petitioning organization. The petitioner also submitted two pledges that it states are indicative of continuing support for the beneficiary.² One individual, who pledged \$200 on a monthly basis, indicates that the beneficiary and his wife "have a strong ministry that is supported by a big group of donors" and that the pledger is part of that group. The petitioner submitted no documentation of this "big group of donors." The other individual pledged \$250 on a monthly basis. He also stated that the beneficiary was "supported by a big group of donors" and further pledged that he would make up any shortage of the beneficiary's income that fell short of \$2,000 per month. However, there is nothing in the record to establish this individual's ability to contribute any money to the beneficiary's support and specifically his ability to pay up to \$2,000 to help support the beneficiary. The petitioner submitted no other documentation of financial support for the beneficiary.

The petitioner has therefore failed to provide evidence of compensation as required by the regulation at 8 C.F.R. § 214.2(r)(11) in that it failed to establish how it intends to compensate the beneficiary and failed to establish that the proffered position is part of an established program for temporary, uncompensated missionary work.

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.

² The names on the pledges are illegible.