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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 19 2012**

Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE:

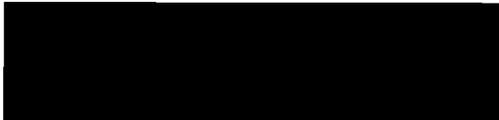
Petitioner:

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.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

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 sustained.

The petitioner is a Sikh temple. 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 priest. The director determined that the petitioner had not established how it intends to compensate the beneficiary.

On appeal, counsel asserts that the petitioner has submitted sufficient documentation to establish its ability to pay the beneficiary.

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 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 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 its December 2, 2010 letter submitted in support of the petition, the petitioner indicated that it was applying for R-1 nonimmigrant religious worker status for the beneficiary and two other individuals, and that each would receive an annual salary of \$6,000 and free boarding and lodging at the petitioning temple.

With the petition, filed on January 12, 2011, the petitioner submitted partial copies of its monthly bank statements for the period December 2009 to March 2010 and May to September 2010. The statements reflect ending balances ranging from \$2,073.26 in February 2010 to \$23,747.62 in September 2010. The petitioner also submitted an unaudited copy of its profit and loss statement for January through December 2010 reflecting a net income of \$17,074.49. The petitioner submitted photographs of at least two buildings but did not identify any of them. The photographs do not include any identifiable living quarters.

In an April 12, 2011 request for evidence (RFE), the director instructed the petitioner to submit documentary evidence of religious activity at the address at which the beneficiary would be working, including photographs inside and outside of the building. The director also stated:

The petitioner indicates that the beneficiary will be provided with room, board, and food. Provide verifiable documentation that room and board will be provided. Evidence may include copy of lease, mortgage payments, description/photos of the location where the beneficiary will be residing, etc. 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.

The petitioner submitted a copy of the deed of ownership for the temple property, two photographs that it identifies as the entrance to the property, a photograph that it identifies as the interior, a photograph of the outside of a building, two photographs of the outside of a building that it identifies as the residence where the beneficiary will live, and photographs that it describes as the interior of the residence including one bedroom. The petitioner also resubmitted the partial copies of its monthly bank statements for July through September 2010.

In denying the petition, the director stated:

Public records for the petitioner's address show that the petitioner's facility is a single family residence built in 1988. The home consists of two bed rooms and two bath rooms with 1,817 square feet.

The petitioner intends to temporary [sic] employ the beneficiary for a period of 30 months along with other two employees. According to the petitioner, all three employees will be residing at the petitioner's location and will be provided food and \$6,000 salary annually.

The petitioner did not indicate the cost of food that will be provided to the beneficiary. As for the lodging, the submitted photos of the residence where the beneficiary will live show only one bedroom. It is unclear how many people are already residing at this two bed-room residence, And, it is unclear if the photographed bedroom is intended for the beneficiary and his dependent or the other employees that the petitioner also intends to employ.

The petitioner has not submitted sufficient evidence to demonstrate that it has sufficient funds to compensate the beneficiary the proposed compensation. . . .

On appeal, counsel asserts that the director erred in her decision, that the petitioner receives food in the form of donations and that the kitchen always has surplus food that it uses to ritually feed the public on Sunday. The petitioner submits photographs of what it states are of excess food in the kitchen. In an August 15, 2011 affidavit, the petitioner's treasurer, [REDACTED] stated that the organization has "donations in the amount of almost \$6000.00 and food items. We have a four-bedroom house on the property for accommodation of our workers. In addition to this as members of the board of directors we have a commitment of \$1200 per year to continue our membership." Each member of the petitioner's board also attests to the facts in the treasurer's affidavit. The petitioner also submits an August 9, 2011 appraisal of its property at its address of record. The report reflects that the property consists of three buildings, one of which contains four bedrooms and another that has one. Counsel states that the petitioner's property offers 11 rooms including five bedrooms.

The petitioner submits copies of its monthly bank statements for April through July 2011 with balances ranging from \$1,586.90 in July 2011 to \$36,580.25. The petitioner also submits an unaudited balance sheet for August 24, 2011 indicating that it had current assets of \$26,873.03, all of which were contained in the petitioner's checking account. The AAO notes that the petitioner's July bank account reflected a balance of only \$1,586.90; the petitioner provided no documentation to explain the sudden increase in its checking account.

Nonetheless, the record reflects that the petitioner has submitted sufficient documentation to establish how it intends to compensate the beneficiary. The petitioner's bank statements generally show a continued growth, and the 2010 profit and loss statement, although unaudited,

appear consistent with the petitioner's income. The financial documentation indicates that the petitioner has sufficient excess income to pay the beneficiary and his fellow R-1 religious workers with the proffered salary. The petitioner also provided sufficient documentation to establish that it can provide the beneficiary and the other individuals for whom it filed R-1 petitions with lodging.

The director's decision is withdrawn. The petitioner has submitted sufficient documentation to establish how it intends to compensate the beneficiary.

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 met that burden.

ORDER: The appeal is sustained.