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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 23 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:

SELF-REPRESENTED

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 Buddhist temple and community organization. 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 established how it intends to compensate the beneficiary.

On appeal, the petitioner states that “it is not appropriate for Buddhist monks to accept a job for payment” and that the beneficiary’s support is provided by the community. The petitioner submits additional 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.

The U.S. Citizenship and Immigration Services (USCIS) 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 [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.

The petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that it would provide the beneficiary with food, shelter and other living expenses. The petitioner stated that it was established in 2008, had a gross annual income of \$24,026 and a net annual income of \$2,988.18. The petitioner submitted a list of "donators" for 2009 showing that they donated \$24,026; and a list of its monthly bills that included property tax, utility bills, television and phone bills that total \$21,037.82. The petitioner also submitted a "daily roster for offering of meals to the resident monks for 2010." The petitioner also provided a copy of its 2009 IRS Form 990-N, Electronic Notice (e-Postcard), for those tax-exempt organizations whose income in 2009 was less than \$25,000.

In a May 24, 2011 request for evidence (RFE), the director instructed the petitioner to submit evidence in accordance with the above-cited regulation to establish how it intends to compensate the beneficiary. In response, in addition to the documentation enumerated above, the petitioner submitted documentation reflecting that it owned the property at [REDACTED] copies of its utility bills and phone bills, and photographs of the building. The photographs depict the front and side of the building and the "hall" and basement. The photographs do not depict any living quarters for the monks.

The director denied the petition, finding that the petitioner had failed to provide any documentation from the IRS or explain the absence of such documentation, as required by the regulation. The director noted that the petitioner is required to file an income tax return and that it had submitted a copy of IRS Form 990-N.

On appeal, the petitioner states that its temple at [REDACTED] "is also a monastery where some Buddhist monks live as a common home" and that "[t]he 40 households of the . . . community . . . take rotating turns offering food for the monks at the temple." The petitioner submits a list of names of those who would be donating food to the monks at the petitioning

organization and a copy of its 2010 IRS Form 990, Return of Organization Exempt from Income Tax. The return is dated September 22, 2011 and shows net revenue of \$76,930. The petitioner submitted no documentation to reflect that this return was filed with the IRS. IRS records indicate that the petitioner filed an IRS Form 990-N for 2009 and 2011.

The photographs provided by the petitioner do not indicate any living spaces for the monks. The photographs depict a church building with space for worship and a basement. The petitioner submitted no other documentation of the lodging that the beneficiary would receive as part of his compensation.

Accordingly, the petitioner has failed to submit competent and verifiable documentation of how it intends to compensate the beneficiary.

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.