

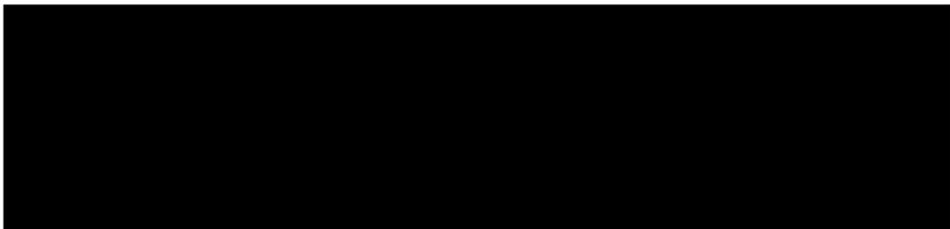
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



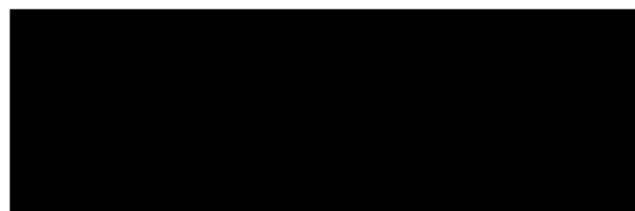
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Date: **AUG 07 2012** Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 private international lay association of the faithful.” It seeks to classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as a pastoral worker. The director determined that the petitioner had not successfully completed a compliance review, that it had not established it is operating as a bona fide nonprofit religious organization, and had not established how it intends to compensate the beneficiary.

On appeal, counsel asserts that the director erred in her “appreciation of the documentary evidence submitted establishing the fact that the petitioner is a duly accredited non-profit organization that is actually engaged in religious activities,” erred “in finding that Petitioner lacks the financial ability because the board and lodging of the beneficiary will be covered by a third party,” and “to consider the absence of pay stubs or other documents showing compensation paid to the beneficiary.” Counsel submits a brief in 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 first issue presented is whether the petitioner has successfully completed a compliance review.

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

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS [U.S. Citizenship and Immigration Services] 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.

In Part 1 of the Form I-129, Petition for a Nonimmigrant Worker, filed on October 15, 2009, the petitioner identified its address as [REDACTED]. In Part 5, question 5, which asks for the address where the beneficiary will work if different from the petitioner's address listed in Part 1, the petitioner stated, "Alien will be performing pastoral work in the east coast." Section 2 of the Form I-129 Supplement Q/R directs the petitioner to list the "specific address(es) or location(s) where the alien will be working." The petitioner entered:

1. Home office - [REDACTED]
2. Location of service will be assigned churches retreat facilities or rental function rooms throughout New York State.

On December 30, 2009, an immigration officer (IO) visited the petitioner's address at [REDACTED]. The IO reported that the address was that of a single family home with no indication that it was the business site of a religious organization. The IO also reported that the woman who answered the door indicated that it was the home of [REDACTED] who signed the petition on behalf of the petitioner, and that she had never heard of the beneficiary.

In a report dated April 16, 2010, the IO stated that officers again visited the petitioner's premises.¹ During the second visit, the IOs met with [REDACTED] who informed them that "the church is not located at that address, that church members met "three nights a week at 7:30 PM, inside the [REDACTED]" and that the beneficiary works at the church "every Wednesday and Sunday from 7:30 PM to 10:00 PM. Sometimes he works more." The IO also reported:

¹ The date of the second visit is unclear. The 2009 date in the IO's report is apparently a typographical error and should read 2010. An interoffice memorandum indicates the visit was conducted on April 16, 2010, the date of the report.

[redacted] [y] said some church members in MD took [the beneficiary] in. He also said that [the beneficiary] is driving up to the Bronx tonight from Maryland to attend church services at the [redacted]. The [IO] asked [redacted] [y] where does [the beneficiary] live, the Bronx or Maryland. [redacted] [y] said he stays in the Bronx with various church members when he is not working at [redacted] [redacted] or the [redacted], [redacted] [redacted]. [redacted] [y] said [the beneficiary's] salary is \$18,000 per year and he is provided free room and board. . . .

The IO reported that he also interviewed the priest of the [redacted] who stated that the petitioning organization meets at the parish once a month, usually on Monday, and that the beneficiary was not a member of that organization and did not appear on the petitioner's membership list held by the church. The IO reported that during a telephonic interview, the beneficiary stated that:

[H]e works in Laurel MD counseling people needing help at his parent's house at [redacted] for [redacted]. The [IO] asked [the beneficiary] how much is he paid for his services. He said, the [petitioner] gives him \$18,000 a year. He was asked if he filed taxes and can he provide a copy of a pay stub. [He] stated that he did not pay or file tax[es] last year or this year because he was not working; his parents were taking care of him. He also stated that he did not have a pay stub because he uses direct deposit and he just started working for [the petitioning organization] in January.

On February 11, 2011, the director notified the petitioner of her intent to deny the petition based on the results of the compliance review and instructed the petitioner to submit additional documentation to establish the beneficiary's eligibility for the proffered position. In response, the petitioner stated that it had never intended for the beneficiary to report to work at the address visited by the IO, and that the beneficiary has not been instructed to report anywhere as he has not yet been hired because the petitioner does not have approval to do so. The petitioner also explained that "unlike our regional office that actually has a formal office and signages, area domiciles are merely situated in the residence of our local principal officer because we observe austere practices."

In denying the petition, the director stated that the petitioner had provided contradictory statements regarding the beneficiary's proposed worksite. On the Form I-129, the petitioner identified the 80th Street address as one of the locations at which the beneficiary would work. However, in response to the director's Notice of Intent to Deny (NOID) the petition, the petitioner stated that it had never been its intent for the beneficiary to report to work at that address. The director also stated that during the site visits the petitioner had alleged that the beneficiary "was working every Wednesday and Sunday from 7:30pm to 10:00pm." The director found that:

At the time of the second site visit, the information provided to the IO by the petitioner indicates that the beneficiary was working at the petitioner's location and [REDACTED]. However, in the letter the petitioner submitted in response to USCIS's Request for evidence, the petitioner stated that the petitioner cannot yet hire the services of the beneficiary as his R1 status has not been approved. The beneficiary has not yet been asked to report to St. Anselm.

The petitioner has more than once, provided conflicting information to USCIS.

On appeal, counsel asserts that the "alleged inconsistencies can be reasonably explained and that any minimal discrepancies are not significant enough to warrant denial of the petition." Counsel further asserts:

With respect to the alleged verbal responses of [REDACTED] regarding the beneficiary working for the petitioner and the response to the NOID saying that petitioner cannot yet hire beneficiary and that the latter has not been asked to report to [REDACTED], [REDACTED] was describing beneficiary's volunteer work who was not yet considered a salaried worker.

Counsel also asserts that the petitioner "listed its business address as one of the work sites in the event that beneficiary is called by the president who is the occupant of the business address, to receive instructions in person." This statement, however, does not explain why the petitioner alleged on the Form I-129 that the 80th street address would be one of the work locations for the beneficiary. Both the beneficiary and [REDACTED] informed the IO that the beneficiary was currently employed by the petitioner. The beneficiary alleged that he began working for the petitioner in January of that year. Furthermore, counsel's statement does not explain why the beneficiary, as a volunteer, was not on the membership list provided by the petitioner to [REDACTED]. Additionally, [REDACTED] reported that the petitioner met at the [REDACTED] three times a week. However, [REDACTED] stated that the organization met there once a month.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

The petitioner's evidence and counsel's explanation do not satisfactorily explain the discrepancies reported by the IO. The petitioner has not satisfactorily completed a compliance review as required by the regulation at 8 C.F.R. § 214.2(r)(16).

The second issue is whether the petitioner has established that it is operating as a bona fide nonprofit religious organization.

In her decision denying the petition, the director stated that the copies of the petitioner's 2005, 2006 and 2007 Internal Revenue Service (IRS) Form 990, Return of Organization Exempt from Income Tax, identified the petitioner's address as [REDACTED]. The director also stated that the copies of the receipts for venue rentals were for 2010 and 2011 and that the petitioner provided no similar documentation for any period prior to the filing of the petition on October 15, 2009. The director found that the petitioner had failed to establish that it operated as a bona fide nonprofit religious organization at the time the petition was filed. On appeal, counsel states, "The tax returns years back indicate that the petitioner has been functioning long before this petition was filed, that it has in fact received contributions from members over the years and has been fulfilling its mission as represented in its articles of incorporation."

The petitioner submitted a copy of an April 9, 2008 letter from the IRS, which indicates the IRS had granted the petitioner nonprofit status under section 501(c)(3) of the Internal Revenue Code (IRC) in an advance ruling dated June 30, 2004. The April 2008 letter confirmed the petitioner's tax-exempt status as a public charity under section 509(a)(2) of the IRC. The petitioner submitted a copy of a November 17, 2005 letter from the State of New York Office of the Attorney General, advising the petitioner that it was exempt from registration with the Attorney General's Charities Bureau as a religious organization, an August 4, 2004 "Exempt Organization Certificate" issued by the New York State Department of Taxation and Finance, and an undated certificate of incorporation which does not indicate that it has been filed with the State of New York. The articles indicate that the petitioner will "conduct seminars, called [REDACTED] which is an integrated course leading into a renewed understanding of God's call to Christian couples." The petitioner also provided uncertified copies of its IRS Form 990-EZ, Return of Organization Exempt from Income Tax, for the years 2005, 2006, and 2007. None of the returns contain any indication that they have been filed with the IRS.

The IO reported that during his onsite inspection, he spoke with [REDACTED] who confirmed that the petitioning organization met at the [REDACTED] on a monthly basis. The petitioner submitted a July 1, 2009 certification from the [REDACTED] ([REDACTED]) stating that information about the beneficiary was based on records provided by the petitioner. An April 25, 2005 Vatican degree recognizes [REDACTED] "as an international private association of the faithful, with a juridical personality."

The documentation submitted by the petitioner indicates that it is organized as a bona fide nonprofit religious organization. While the record contains unresolved deficiencies based on the results of the onsite inspection, the documentation of record does not indicate that the petitioner exists on paper only, as alleged by the IO. [REDACTED] confirms that the members meet at the parish on a monthly basis. The regional organization of the [REDACTED] recognizes the petitioning organization as a member and the petitioner provided a list of its individual members. The petitioner's tax returns, while not certified, are timely dated. The record sufficiently establishes that the petitioner operates within the parameters of its articles of incorporation and

its nonprofit status. Accordingly, the director's determination that the petitioner does not operate as a nonprofit organization is withdrawn.

The third issue is whether the petitioner has established how it intends to compensate the beneficiary.

The petitioner stated that the beneficiary would be compensated at the rate of \$18,000 per year and would be provided with free lodging.

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.

With the petition, the petitioner submitted a copy of its budget for the year 2009, in which it budgeted \$18,000 for a full time worker and indicated at this line entry that it was the "same budget as year 2005." The budget reflects estimated receipts of \$59,000, expenses in the same amount and net income of zero. The petitioner's uncertified IRS Form 990-EZ reflects total revenue of \$12,311 in 2005, \$15,405 in 2006, and \$15,746 in 2007. This reported total revenue indicates that the petitioner did not have sufficient funds in either of the years to pay the beneficiary the proffered wage of \$18,000. Additionally, the petitioner submitted no documentation, such as contribution records or bank statements, to indicate that its 2009 budget was based on realistic expectations.

In response to the director's February 11, 2011 NOID, the petitioner provided copies of its monthly bank statements for October 2010 through February 2011, all dated after the filing date of the petition. The petitioner submitted no similar documentation for the period prior to the filing of the petition in October 2009. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978).

The petitioner also submitted a March 7, 2011 statement certifying that upon his employment, the beneficiary “will be entitled to and guaranteed free board and lodging benefits as long as he is under employment by our organization.” The petitioner stated that the beneficiary’s “designated residence will be care of [REDACTED] of [REDACTED].” The petitioner submitted no other documentation of the residence or living quarters that would be provided to the beneficiary.

The director found that the petitioner had submitted insufficient documentation to show how it intended to compensate the beneficiary. The director also found that the beneficiary’s non-salaried compensation was to be paid by individuals other than the petitioning organization in violation of the provisions of the regulation.

On appeal, the petitioner submits uncertified copies of its 2009 and 2010 IRS Forms 990-EZ on which it reported total revenue of \$4,543 and \$55,599, respectively. Counsel asserts that the petitioner’s 2005 through 2007 tax returns “indicate that it was able to generate contributions approaching \$50,000” and that “its 2009 and 2010 tax return[s] show[] gross revenue of \$44,800.00 and \$55,600.00, respectively. Nonetheless, while the petitioner’s contributions may “approach \$50,000,” its net revenue in 2005 through 2007 and in 2009 is less than the \$18,000 that it states that it will pay the beneficiary. Furthermore, the 2009 and 2010 tax returns, in addition to being uncertified, are after the filing date of the petition and therefore not evidence of the petitioner’s ability to pay the beneficiary the proffered wage as of the filing date of the petition. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Michelin Tire Corp.*, 17 I&N Dec. at 248. Additionally, the petitioner’s 2009 tax return reveals that it did not generate the revenue anticipated in its 2009 budget, reinforcing the AAO’s observation that the petitioner has provided no evidence that this budget was realistic.

Counsel argues that since the petitioner “derives its revenue solely from contributions,” the room and board provided by a “private person . . . should be attributed as payment by petitioner of employment benefit to its worker.” Counsel’s argument is unpersuasive. The petitioner submitted no documentation that the room and board were offered to the petitioner for its use as compensation to the beneficiary. Rather, the evidence indicates that the room and board were offered directly to the beneficiary. Thus, the evidence does not indicate that room and board will be compensated by the petitioner but will be support offered by a “private person” while the beneficiary works for the petitioner.

On November 26, 2008, USCIS issued new regulations for special immigrant religious worker petitions. In supplementary information published with the proposed rule in 2007, USCIS stated:

The revised requirements for immigrant petitions and nonimmigrant status require that the alien’s work be compensated by the employer because that provides an objective means of confirming the legitimacy of and commitment to the religious work, as opposed to lay work, and of the employment relationship. Unless the alien has taken a vow of poverty or similarly made a formal lifetime commitment to a religious way of life, this rule requires that the alien be compensated in the

form of a salary or in the form of a stipend, room and board, or other support so long as it can be reflected in a W-2 [Wage and Tax Statement], wage transmittal statements, income tax returns, or other verifiable IRS documents. . . . In this rule, USCIS is proposing to implement bright lines that will ease the verification of petitioner's claims in the instances where documentary evidence is required.

72 Fed. Reg. 20442, 20446 (April 25, 2007). When USCIS issued the final version of the regulation, the preamble to that final rule incorporated the above assertion by reference: "The rationale for the proposed rule and the reasoning provided in the preamble to the proposed rule remain valid and USCIS adopts the reasoning in the preamble of the proposed rule in support of the promulgation of this final rule." 73 Fed. Reg. 72275, 72277 (Nov. 26, 2008).

The petitioner has failed to establish how it will compensate the beneficiary.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.