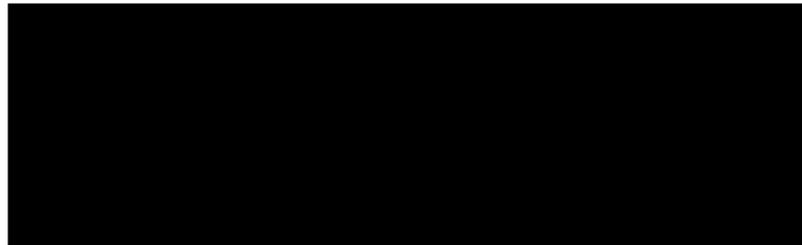


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



413

Date: **AUG 14 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.

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 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 musician and granthi. The director determined that the petitioner had not established how it intends to compensate the beneficiary.

The director also determined that the petitioner had failed to provide evidence of the beneficiary's compensation during the period of his prior approved R-1 status. The U.S. Citizenship and Immigration Services (USCIS) 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 Internal Revenue Service 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 eligibility issue, the AAO lacks authority to decide that question and it will not be addressed in this decision.

Counsel asserts on appeal that the director "overlooked" the petitioner's one-time investment in upkeep and maintenance that skewed its 2009-2010 expenses and that the petitioner has sufficient funds to compensate the beneficiary. Counsel submits a brief and 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 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.

In its petition, filed on September 26, 2011, the petitioner stated that it would pay the beneficiary \$12,000 per year plus room, board, travel and miscellaneous expenses. In its September 11, 2011 letter, submitted in support of the petition, the petitioner, through its president, [REDACTED], stated that the beneficiary "will serve as a member of the Ragi Jatha, a group that sings the religious hymns from the scriptures of the Sikh Faith" and would be joined at the petitioning organization "by two fellow religious colleagues, [REDACTED] and [REDACTED] so as to comprise the Ragi Jatha group."

The petitioner submitted unaudited copies of its income and expense statement for the period November 1, 2009 through October 31, 2010, on which it indicated total income of \$172,572 and total expenses of \$174,572. The financial statement includes a line item for nonemployee compensation of \$16,800; however, there is no further explanation of this expense in the record. The petitioner also provided an unaudited copy of its October 21, 2010 balance sheet, which reflected current assets of \$45,384. The balance sheet did not include any current liabilities.

In a September 30, 2011 request for evidence (RFE), the director instructed the petitioner to submit evidence in accordance with the above regulation to establish how it intends to compensate the beneficiary and the beneficiaries of the petitions filed by the petitioner for the two members of the beneficiary's musical group. In response, the petitioner submitted an October 6, 2011 joint letter from its treasurer and auditor, in which they stated:

[The petitioner] maintains an operating budget that outlines both the income and expenses undertaken on an annual basis. Income is derived primarily through contributions from members of our congregation, although we also receive smaller percentages of funds from other sources Expenses range from the mortgage of the temple premises and insurance to maintenance and building improvements. Currently, the [petitioner] has *no* paid employees, as all of our staff members and individuals in key administrative and religious position function on a solely volunteer basis. All moneys coming in and flowing out of Foundation accounts are reviewed by the Treasurer and ultimately audited, therefore both of us undertake a financial review of the Foundation's resources on a weekly basis (by Treasurer) and through review (Treasurer and Auditor).

Due to the significant growth that we have experienced, the [petitioner] now seeks to employ [redacted], along with two of his fellow *Granthis*, [redacted] and [redacted]. All three individuals are religious Musicians, which are particularly important positions in the observance of our religious creed. Given the resources available to [the petitioner] by way of saved contributions, we will be providing each individual with \$12,000 in monetary compensation, while also providing them with room, board and transportation as non-monetary compensation. The availability of funding is evidenced on the attached Income and Expenses Balance Statement, which shows the Foundation's income to be \$172,572. While most of this income was used towards major expenses such as our temple's parking lot renovation, such expenses are not reoccurring and therefore [the petitioner] will have ample moneys to be provided to these here religious workers. As further evidence of this fact, please find the enclosed bank statement for the Foundation, which showcases more than enough accessible funds for payment of each individual's salary.

The petitioner resubmitted the copy of its November 2009 through October 2010 income and expenses statement and the October 2010 balance sheet. The petitioner also submitted a copy of its November 1, 2010 through October 31, 2011 proposed budget on which it projected total income of \$153,000 and total expenses of \$147,600, indicating a projected net income of \$5,400. The budget does not include a line item for the beneficiary's salary or that of the others in his musical group that the petitioner indicates it intends to employ. The petitioner submitted copies of its monthly bank statements for August and September 2011, reflecting balances of \$33,484.59 and \$35,724.86, respectively.

The director denied the petition, stating:

The petitioner intends to employ three employees at the proposed annual salary of \$12,000.00 plus room, board, travel, and miscellaneous expenses. With an average account balance between \$33,484.59 and \$35,724.86 (as shown on the two bank statements), a negative net income for the previous financial period, and an estimated net income [of] \$5,400.00 for the current financial period, the petitioner had not sufficiently demonstrated that it has the sufficient resources set aside to compensate the beneficiary.

On appeal, the petitioner submits copies of its monthly bank statements for September 2011 through December 2011, reflecting balances in excess of \$33,000 in each month. The statements from Chase Bank also reflect a business loan with a balance ranging from \$58,154.60 to \$75,577.50. The statements indicate that the petitioner has no available credit in connection with this loan. The petitioner also submits evidence of two accounts with a second bank that reflect a combined balance of less than \$8,000 in the four monthly statements provided.

Counsel asserts:

These statements affirmatively show the [petitioner] to have between \$33,051.52 and \$75,557.50 between two accounts (checking and savings), as well as between \$58,154 and \$75,557.50 in currently loaned amounts. These statements, in addition to those previously provided in the RFE Response, evidence [the petitioner's] financial health over the last ½ of 2011, which provides USCIS with more than a mere "snap shot", but full evidence of sustained financial health. As a result, [the petitioner] typically has approximately \$100,000 in disposable assets to delegate towards the compensation of [the beneficiary].

[The petitioner] has also supplemented the record with evidence of additional funds by way of a Huntington Bank account, which contains approximately \$8000 across two accounts

Overlooked in USCIS' analysis is evidence that [the petitioner] has made significant one-time financial investments in upkeep and maintenance that has heightened the 2009-2010 expenses provided to USCIS. . . . These renovations are hardly expected annual expenses and were costs that skewed the financial figures considerably. However, as indicated above, the bank information submitted herein sufficiently addresses any concerns regarding the [petitioner's] ability to compensate [the beneficiary], as [sic] has more than ample finances to cover his expected salary of \$12,000 annually.

Counsel's argument is not persuasive. Despite the balances indicated on the petitioner's bank statements, the petitioner's 2011 budget reflected a net income of \$5,400 and did not provide for

any compensation to the beneficiary or the other two individuals that the petitioner stated it wanted to hire. Furthermore, the petition was filed on September 26, 2011, almost 11 months after the petitioner's budget year began. However, the petitioner has at no time during the petition proceeding provided documentation of the actual income and expenses that it occurred in 2011. Therefore, the bank statements alone do not provide verifiable documentation of how the petitioner will compensate the beneficiary.

Counsel asserts that the bank statements show that the petitioner has approximately \$100,000 at its disposal which is available to it to compensate the beneficiary. Counsel's argument is specious. The statements do not reflect that the loan is a revolving line of credit but rather that the petitioner has no available credit and therefore no access to additional cash proceeds in connection with this loan. The petitioner provided no documentation to establish that any of the proceeds of this loan are available as compensation for the beneficiary.

Counsel's argument that the director ignored the one-time major expenses incurred by the petitioner in 2009 and 2010 is also without merit. The petitioner provided no documentation that these expenses, which it incurred prior to the filing of the petition, affected its financial position in 2011, the year the petition was filed. The petitioner must establish that it has the financial ability to pay the beneficiary as of the date the petition was filed regardless of any extraordinary expenses it may have incurred in prior years. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 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 has failed to provide 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.