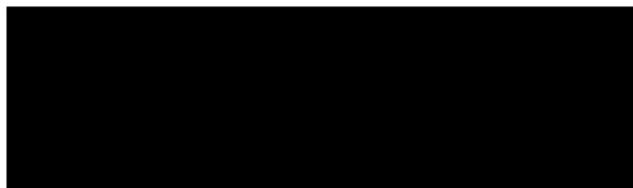


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



D13

Date: **AUG 20 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.

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 AAO will withdraw the director's decision and will remand the petition for further action and consideration.

The petitioner is a church. 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 minister. The director determined that the petitioner had not established how it intends to compensate the beneficiary.

On appeal, the petitioner states that there was a "misinterpretation[]" of the financial documents" submitted. 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 issue presented is whether the petitioner has established how it intends to compensate the beneficiary.

The U.S. Citizenship and Immigration Services (USCIS) 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 Nonimmigrant Worker, filed on June 23, 2011, that it would compensate the beneficiary at the rate of \$1,200 in addition to “gas and maintenance, and a room to stay with utilities in the church building for housing will be provided by the church as non-salaried compensation.” In its June 10, 2011 letter submitted in support of the petition, the petitioner, through [REDACTED] its “directors,” stated that the “church has been without a residing pastor since September 2010 and has a temporary visiting pastor travelling 5 hours round trip from Billings, Montana almost every Sunday.” The petitioner further stated:

Our church is small (regularly 20 in attendance) and our services are conducted in the Korean language. . . . Also, our annual receipts are relatively small (\$25,735) so we have a tight budget. Therefore, the church building has a bedroom and bathroom for the exclusive use of the pastor, along with a kitchen for shared use with the congregation.

With the petition, the petitioner submitted unaudited copies of its “finance reports” for the years 2008 through 2010. The finance reports do not identify specific categories of disbursement but show ending balances of \$5,448.97, \$3,703, and \$2,254.66 for 2008, 2009 and 2010, respectively.

In an August 17, 2011 request for evidence (RFE), the director instructed the petitioner to provide evidence of compensation in accordance with the above-cited regulation. In response, the petitioner stated:

After having its own church building, [the petitioner] still had a visiting pastor from Billings for Sunday worship service until April, 2007. Around that time a pastor and his family came from Philadelphia, Pennsylvania and they stayed in

Bozeman until August, 2010. During his stay in Bozeman, he did his pastoring the church as a missionary pastor. He got support for his living from the church in Philadelphia who sent him to Bozeman, and allowances for housing and automobile expenses from [the petitioning organization].

The petitioner submitted a copy of IRS Form 1099-MISC, Miscellaneous Income, for the year 2010 that it issued to [redacted] indicating that it paid them nonemployee compensation in the amount of \$17,100 and \$1,400, respectively. The petitioner submitted documentation indicating that it owned the property on which its sanctuary was located and a floor plan that shows the rooms that the beneficiary would occupy. The petitioner also submitted a copy of its July 2011 bank statement for the month of August showing a balance of \$6,439.82 in two accounts, and a copy of its 2011 budget. The budget contained a line item of \$14,400 for the pastor's stipend and a \$1,200 automobile allowance. The budget also contained a column for actual expenses through June 30, 2011, which showed no payments for a minister but showed an unbudgeted expense of \$3,000 for "contract payment."

The director denied the petition, finding that the petitioner's finance reports for 2008 through 2010 did not indicate that it had sufficient funds to compensate the beneficiary, and that the 2011 budget "indicates total revenues of \$16,254.00 [a]s of June 30, 2011. Total expenses are listed at \$10,200.00 with a \$3,000.00 'contract payment' that [was] apparently not included when the budget was proposed." The director also stated, "The petitioner's bank statement shows only \$1,250.77 in the savings account as of June 30, 2011 indicating that they have had to move approximately \$1,000.00 from savings to help meet ongoing expenses."

On appeal, the petitioner states that the disbursements made in 2008, 2009 and 2010 included compensation paid to the visiting pastors in the amount of \$18,000 in 2008 and 2009 to Pastor [redacted] and a total of \$18,500 in 2010 paid to Pastor [redacted] and Pastor [redacted]. The petitioner stated that it budgeted \$14,400 for its pastor on the assumption that it would have a "full-time minister for 2011." However, since it has not hired a full-time minister, it continued to pay Pastor [redacted] for his services and listed it on its budget as "contract payment." The petitioner also stated:

The [petitioner] holds two bank accounts[:] Savings [] and Non-profit Organization []. The bank statement shows the total balance of \$7,173.77, which is the sum of \$1,250.72 (savings) and \$5,923.05 (non-profit organization) as of July 06, 2011 . . . [T]he actual balance as of July 6, 2011 would have been \$10,173.77 . . . if the "contract payment" was not paid. As a result, this balance is more than sufficient to pay the 6 month[s] compensation of \$7,200 to the beneficiary. Therefore, the church does not need to move any amount of money from savings account to help its ongoing expenses.

The petitioner submits a December 19, 2011 affidavit from its treasurer, certifying that the petitioner paid Pastor [redacted] \$1,500 per month in 2008, 2009 and for nine months in 2010 plus \$1,200 for three months in 2010, and that it paid Pastor [redacted] \$1,400 in 2010. The IRS Forms

1099-MISC that the petitioner submitted in response to the RFE are consistent with the information provided in the affidavit.

It is unclear how the director concluded that the petitioner was forced to move money from its savings account to meet its ongoing expenses. The July 2011 bank account statement does not support the director's conclusion and there is no other documentation in the record that reflects the petitioner's bank balances as of June 2011. Further, money in savings accounts is a current asset available to the petitioner for its immediate use and does not constitute a basis for denying the petition.

The petitioner's explanation as to the "contract payment" included in its budget is reasonable and adequately explains this line item in the budget. Additionally, the budget reconciliation through June 2011 reflects that there were no payments paid for the pastor's stipend. The budget indicates that the petitioner's revenues are on target and its estimated expenses are below the budgeted amount. The petitioner has submitted sufficient documentation to establish how it intends to compensate the beneficiary. Accordingly, the director's decision will be withdrawn.

Nonetheless, the petition cannot be approved as the record now stands. Therefore, the petition will be remanded to the director for further action and consideration as discussed below.

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 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.

The record does not reflect that the petitioner has successfully completed an inspection or other compliance review. The petition is remanded to the director to determine whether or not an onsite inspection or other review is appropriate in the instant petition.

The matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.