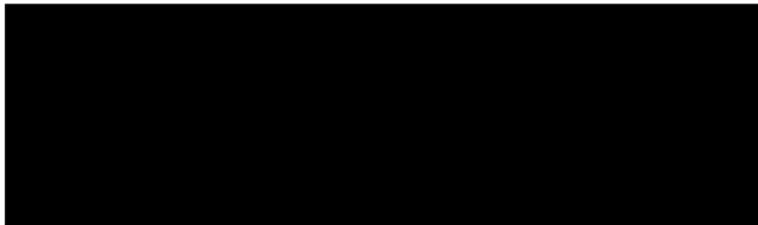


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

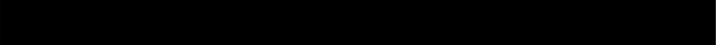


U.S. Citizenship
and Immigration
Services



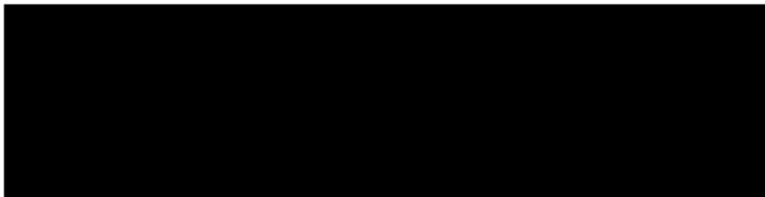
D13

DATE: DEC 03 2012 OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(i)

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,

Ron Rosenberg
Acting 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 dismiss the appeal.

The petitioner is a [REDACTED] 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 *vidhikar*, or priest. The director determined that the petitioner had not submitted sufficient evidence regarding the beneficiary's intended compensation.

On appeal, the petitioner submits letters from a temple official and other witnesses, along with copies of background materials. The petitioner asserts that the petition must be approved before June 15, 2012, because the petitioner requires the beneficiary's presence for religious ceremonies that month. USCIS records show that the AAO did not receive the appeal from the California Service Center until July 2, 2012.

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) regulation at 8 C.F.R. § 214.2(r)(1) states that, to be approved for temporary admission to the United States, or extension and maintenance of status, for the purpose of conducting the activities of a religious worker for a period not to exceed five years, an alien must:

- (i) Be a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least two years immediately preceding the time of application for admission;
- (ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);
- (iii) Be coming solely as a minister or to perform a religious vocation or occupation as defined in paragraph (r)(3) of this section (in either a professional or nonprofessional capacity);
- (iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and
- (v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

The denial of the petition rests on the issue of compensation. The USCIS regulation at 8 C.F.R. § 214.2(r)(11) requires the petitioner to state how it 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.

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.

8 C.F.R. § 214.2(r)(11)(i). The petitioner filed the Form I-129 petition on January 17, 2012. On the accompanying employer attestation, the petitioner indicated that its membership included over “1200 families,” and that it had no employees. The petitioner stated that the beneficiary’s compensation would consist of “[f]ree room, board, all meals, lodging, boarding, all necessities and incidental expenses and transportation, [and] return ticket.” The petitioner claimed gross annual income of \$1.8 million, but left blank the line for net annual income.

secretary of the petitioner’s board of trustees, stated:

We require the services of [the beneficiary] for the upcoming Grand Opening celebration, and installation of (GOD), to perform all religious rites, rituals, [and] prayers. We expect more than 5000 people and continuously thereafter.

He is a highly recognized person in [redacted] religion and we all have to gain his knowledge [and] expertise in [redacted]. Therefore, we request that R-1 [nonimmigrant status] be granted at your earliest [convenience] so that he can come by June 1st, 2012 and be ready with all the preparations before the grand opening ceremonies.

Copies of letters and promotional materials indicate that the beneficiary has traveled to several [redacted] temples in the United States for short-term engagements of the type described above. The petitioner submitted a copy of the beneficiary's "biodata" (essentially a résumé), in which the beneficiary stated: "All the lodging and boarding, medical and other expenses are provided by the [redacted] or Organisation inviting me."

The initial submission did not include any IRS documentation or verifiable evidence showing the petitioner's intention and ability to support the beneficiary during his visit.

On February 14, 2012, the director issued a request for evidence instructing the petitioner to submit, among other things, evidence of salaried or non-salaried compensation as described in the regulation at 8 C.F.R. § 214.2(r)(11). In response, Mr. [redacted] stated that the petitioner "is an entirely volunteer based organization and as such there are no paid employees."

The only documentation submitted with respect to the petitioner's finances consisted of utility bills.

The petitioner submitted additional letters regarding the beneficiary's appearances at various temples. These letters indicated that the various sponsoring organizations covered the beneficiary's expenses during his visits, but they, like the beneficiary's resubmitted "biodata," are not documentary evidence that the petitioner possesses the resources to provide non-salaried compensation to the beneficiary.

The director denied the petition on April 12, 2012, stating: that the petitioner had not submitted any of the required evidence relating to the beneficiary's intended compensation. On appeal, counsel asserts that the beneficiary is the only individual qualified "to perform . . . Installation ceremonies of [redacted] Gods & Deities," and the petitioner again submits copies of letters showing that the beneficiary had performed such duties in the past. These assertions, however, do not address the stated basis for denial.

[redacted] in a new letter dated April 22, 2012, stated that the petitioner's "charity revenue . . . is collected from donations and is all being spent for the construction of the new temple. [The petitioner] is willing to offer \$2500 a month over and above free room, board, meals, etc. for the priest." In a separate affidavit, dated April 30, 2012, [redacted] stated: "I personally Guarantee that during [the beneficiary's] stay I will be responsible for his free room and board, all meals etc., from June 15 to July 15, 2012." An undated resolution signed by all seven members of the petitioner's board of trustees indicates that the board members "hereby resolve to pay a lump sum compensation of \$2500.00 per month to [the beneficiary]," and "to provide a round trip air fare along with the lodging and boarding for his stay."

A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). In this instance, the petitioner had not initially proposed any monetary compensation, and added that provision on appeal, apparently in response to the denial of the petition.

Even if it were acceptable for the petitioner to make this late change to the terms of the petition, the new terms would not address or overcome the grounds for denial. The director did not deny the petition for a lack of a paid job offer; the relevant regulations specifically account for non-salaried compensation such as the room and board offered originally. Rather, the denial rested on the petitioner's failure to provide required financial documentation. The request for evidence provided the petitioner the opportunity to address this deficiency, but the response to that notice did not include the required evidence. Likewise, the appeal neither addresses the deficiency nor explains the petitioner's failure to do so previously.

It cannot suffice for the petitioner simply to state that it will provide non-salaried compensation to the beneficiary. The regulation at 8 C.F.R. § 214.2(r)(11)(i) requires documentation to show the petitioner's ability to abide by the stated terms of compensation. The petitioner did not meet those terms, and it is for that reason that the director denied the petition. The petitioner has not shown that the director's decision was incorrect, and therefore the AAO will affirm that decision and dismiss the appeal.

Review of the record reveals an additional ground for denial. The AAO may identify additional grounds for denial beyond what the Service Center identified in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petitioner has not submitted sufficient evidence relating to the beneficiary's qualifications as a minister. The USCIS regulation at 8 C.F.R. § 214.2(r)(10) states that, if the alien is a minister, the petitioner must submit the following:

- (i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and
- (ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological education is accredited by the denomination, or

(iii) For denominations that do not require a prescribed theological education, evidence of:

- (A) The denomination's requirements for ordination to minister;
- (B) The duties allowed to be performed by virtue of ordination;
- (C) The denomination's levels of ordination, if any; and
- (D) The alien's completion of the denomination's requirements for ordination.

The petitioner has submitted multiple copies of the beneficiary's "biodata" and a number of letters from various sources, describing the beneficiary as a [REDACTED] priest, but no evidence that directly addresses the above points. The request for evidence touched on this issue, but the petitioner's response to the notice did not include evidence to address this point. The assertion that the beneficiary is a well-known priest whose services are in great demand does not answer the key questions of how one becomes a [REDACTED] priest or how the beneficiary met the requirements to do so. This deficiency in the record amounts to a second, independent basis for denial of the petition.

The AAO will dismiss the appeal 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. The petitioner has not met that burden.

ORDER: The appeal is dismissed.