

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: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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.

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 withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further action and consideration.

The petitioner is a non-denominational Christian church. 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 its assistant pastor and worship coordinator. The director determined that the petitioner had not established that its finances are sufficient to cover the beneficiary's intended salary.

On appeal, the petitioner submits a statement and copies of financial documents.

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.

U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. § 214.2(r)(1) state 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 USCIS regulation at 8 C.F.R. § 214.2(r)(11)(i) requires the petitioner to submit verifiable evidence explaining how the petitioner will compensate the alien. 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. Internal Revenue Service (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.

The petitioner filed the Form I-129 petition on February 3, 2012. Part 5 of the petition form includes the following information, with the petitioner's statements reproduced in **bold** type:

- 8. Wages per week or per year: **\$2000/month**
- 9. Other Compensation (*Explain*): **\$24,000**
- 14. Gross Annual Income: **non-profit**
- 15. Net Annual Income: **non-profit**

In Section 1, line 5d of the accompanying employer attestation, asked to provide a "[d]escription of the proposed salaried compensation," the petitioner responded: "The beneficiary will be paid \$2000 per month in a salaried compensation. See the attached letter from the employer." In a letter dated January 19, 2012, [REDACTED] of the petitioning church stated: "The salary offered to [the beneficiary] is \$2000 per month."

A compiled "statement of financial position" for calendar year 2010 included the following figures:

Current assets:

[REDACTED]	\$3,997.75
[REDACTED]	86,914.06
[REDACTED]	18,789.72

Total current assets	109,701.53
Expenses:	
Total ministry expenses	34,273.15
Total administrative expenses	139,133.49
Total operating expenses	171,681.93
Income/surplus:	
Total income	188,106.91
Net operating surplus	16,424.98
Other income	12,695.63
Total surplus	29,120.61

The above figures contain an arithmetical error. The amount shown for “total operating expenses” is \$1,724.71 short of the sum of the two figures above it. This difference exactly matches the amount of the line item marked “Taxes-FICA.” Several calculations elsewhere in the report are off by this amount, or by exactly twice this amount. With the arithmetic corrected, the figures provided yield a total surplus of \$27,395.90.

In a request for evidence dated February 9, 2012, the director instructed the petitioner to submit IRS documentation or an explanation for its absence. The director requested a copy of the petitioner’s 2011 financial statement, and noted that the 2010 statement contained errors (but did not elaborate).

In response, Pastor [REDACTED] stated that, because the director provided no details about the errors in the financial records, the petitioner could offer no substantive response. The petitioner submitted a copy of its 2011 compiled financial statement, including the following figures:

Current assets:	
Petty cash	\$227.01
[REDACTED]	10,000.00
[REDACTED]	88,576.60
[REDACTED]	29,197.83
Total current assets	128,001.44
Expenses:	
Total ministry expenses	45,110.27
Total administrative expenses	149,857.67
Total operating expenses	192,806.66
Income/surplus:	
Total income	202,105.51
Net operating surplus	9,298.85
Other income	11,226.06
Total surplus	20,524.91

Like the 2010 expense figures, the 2011 expense figures above contain arithmetical errors. The “ministry” and “administrative” expenses do not add up to the sum given for “total operating

expenses.” (That sum would be \$194,967.94.) Also, the line items under “administrative expenses” add up to \$148,742.28. A second table of administrative expenses showed the correct total, and again stated the total operating expenses as \$192,806.66; but the sum of \$45,110.27 and \$148,742.28 is actually \$193,852.55. That sum, subtracted from the petitioner’s “total income” plus “other income,” yields a total surplus of \$19,479.02, which is short of the beneficiary’s proposed salary of \$24,000 per year.

The petitioner submitted IRS Form W-2 Wage and Tax Statements showing that, in 2011, the petitioner paid three employees a total of \$56,511.71 in salaries, plus a clergy housing allowance of \$24,000 to Pastor [REDACTED]. These figures are consistent with amounts shown in the 2011 financial statement. Pastor [REDACTED] stated that one of the three employees “terminated employment . . . on 5-8-2011.” That employee’s Form W-2 showed \$10,917.82 in wages paid for approximately 18 weeks of work, a figure that extrapolates to roughly \$31,540 per year.

The director denied the petition on March 28, 2012, stating: “On Form I-129, Part 5, Blocks 8 and 9 the petitioner proposes to compensate the beneficiary \$2,000.00 per month (\$24,000 per year) in wages and another \$24,000.00 in other compensation.” The director described arithmetical errors on the 2010 and 2011 financial statements, and found that the petitioner has not shown that its net revenue is sufficient to cover \$48,000 in annual compensation for the beneficiary. The director noted the departure of one of the petitioner’s employees, but stated that any funds already paid to that employee were not available to pay the beneficiary in 2011.

On appeal, counsel states that the director based the denial “upon a misunderstanding and misinterpretation of the evidence submitted.” Counsel states that the beneficiary’s intended compensation is \$24,000 per year, not \$48,000, and that that the director neglected to take other factors, such as the petitioner’s current assets, into account.

Review of the record supports counsel’s claims. Pastor [REDACTED] states that the \$24,000 in “Other compensation” referred to his own housing allowance (reflected on the IRS Form W-2), rather than compensation offered to the beneficiary. Pastor [REDACTED] clarifies that the beneficiary’s total intended compensation is “\$24,000 per year with no additional costs associated with ‘other compensation’ or benefits.” This explanation is consistent with the record. The petitioner consistently referred to the beneficiary’s compensation as either \$2,000 per month or the equivalent sum of \$24,000 per year, and the record contains no other reference to additional compensation. The record shows no consistent pattern of implausible or contradictory claims. Rather, the preponderance of the evidence suggests that the petitioner (or counsel, who prepared the Form I-129) simply made a mistake in preparing the petition form. This mistake resulted in confusion, but did not irretrievably poison the entire proceeding or the petitioner’s overall credibility. To conclude that the petitioner actually intends to pay the beneficiary the higher amount demands a much narrower reading of the record, disregard for several plain statements directly from the petitioner with respect to the beneficiary’s intended compensation, and the arbitrary assumption that one ambiguous statement from the petitioner is more credible than numerous more specific ones from the same source. The petitioner need establish the availability of only \$24,000 per year, not \$48,000.

Counsel is correct that the petitioner had previously claimed significant current assets. Bank documents provided on appeal confirm the existence of these funds. The deficit would pose a greater problem if the petitioner sought to employ the beneficiary permanently, but the petitioner seeks only a temporary immigration benefit for the beneficiary. The USCIS regulation at 8 C.F.R. § 214.2(r)(4)(i) limits the beneficiary's initial admission to 30 months. The available cash reserves are more than sufficient to cover a shortfall of a few thousand dollars between the petitioner's annual net income and the beneficiary's salary during that time. Also, the director is correct that the exact funds used to pay the former employee's salary are no longer available, but the employee's departure frees up those funds in subsequent years. Specifically, the petitioner's 2011 expenses included over \$10,000 in salary paid to an employee who left eight months before the January 2012 filing date; that expense was not repeated in 2012.

Counsel, on appeal, does not address the arithmetical errors in the financial statements. These errors are of concern, but appear to be isolated rather than pervasive evidence of falsified financial records, and are not of a magnitude that affects the overall soundness of the petitioner's finances. Independent documentation, such as IRS Forms W-2, corroborate key elements of those statements such as salaries paid. Bank documents submitted on appeal corroborate prior documentation showing that the petitioner's current assets include a substantial cash reserve sufficient to cover the beneficiary's salary for the entire thirty-month term covered by the petition.

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought. . . .

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. . . . Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof.

*Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). The evidence of record indicates that the petitioner more likely than not has the resources to pay the beneficiary's salary of \$24,000 per year. For the reasons discussed above, the director's decision cannot stand and the AAO hereby withdraws that decision.

At this point, the only evident obstacle to approval of the petition appears to be a lack of evidence that the petitioner has successfully passed compliance review, as described in the USCIS regulation at 8 C.F.R. § 214.2(r)(16):

*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 AAO notes that, on Form I-129, the petitioner provided the then-current location of its church services. That location, however, has subsequently changed. In correspondence dated October 12, 2012, counsel indicated that the petitioner "has a new meeting location from the one indicated in the original I-129 submission. The new address is [REDACTED] This is a change to the petitioner's meeting location, not its mailing address. Therefore, this information is relevant in the context of a site inspection, but not in the context of mailing correspondence to the petitioning church.

The petitioner has overcome the grounds for denial stated in the director's decision, and the AAO's appellate review of the record has revealed no new grounds for denial. Under the terms of a memorandum from Michael Aytes, Associate Director, Domestic Operations, and Louis D. Crocetti, Jr., Division Chief, Office of Fraud Detection and National Security, *Standard Operating Procedures for Religious Worker Petition Anti-Fraud Enhancements* (July 5, 2006), the AAO will remand the petition for additional processing. If routine checks and any necessary follow-up reveal no new basis for denial, the director is instructed to approve the petition. 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 Administrative Appeals Office for review.