



U.S. Citizenship  
and Immigration  
Services

113

[REDACTED]

Date: DEC 18 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)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(R)(1)

ON BEHALF OF PETITIONER:

[REDACTED]

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 appeal will be dismissed.

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 pastor. The director determined that the petitioner had not established how it intends to compensate the beneficiary. The director also determined that the petitioner had not established a need for the beneficiary's services.

On appeal, counsel asserts that the director failed to consider the totality of the evidence provided. 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 first 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:

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.

(ii) *Self support.*

(A) If the alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.

(B) An established program for temporary, uncompensated work is defined to be a missionary program in which:

- (1) Foreign workers, whether compensated or uncompensated, have previously participated in R-1 status;
- (2) Missionary workers are traditionally uncompensated;
- (3) The organization provides formal training for missionaries; and
- (4) Participation in such missionary work is an established element of religious development in that denomination.

(C) The petitioner must submit evidence demonstrating:

- (1) That the organization has an established program for temporary, uncompensated missionary work;
- (2) That the denomination maintains missionary programs both in the United States and abroad;

- (3) The religious worker's acceptance into the missionary program;
- (4) The religious duties and responsibilities associated with the traditionally uncompensated missionary work; and
- (5) Copies of the alien's bank records, budgets documenting the sources of self-support (including personal or family savings, room and board with host families in the United States, donations from the denomination's churches), or other verifiable evidence acceptable to USCIS.

In its December 9, 2011 letter submitted in support of the petition, filed on December 15, 2011, the petitioner stated that the beneficiary has been volunteering his services with the petitioning organization. The petitioner now seeks to hire the beneficiary on a full time basis and pay him compensation consisting of a \$24,000 base salary, an allowance for health insurance, and "car and other expenses." The petitioner also stated that the beneficiary "has personal funds in Korea which had been the source of his financial support during his stay in the United States on F-1 status. [The beneficiary] will continue to use the personal funds for support for himself and his family."

Regarding the beneficiary's personal funds, an alien seeking status as a nonimmigrant religious worker can only be self-supporting if he or she is in a missionary program that meets specific requirements. The regulation at 8 C.F.R. § 214.2(r)(11)(ii) provides that if the position is self-supporting, the petitioner must submit documentation establishing that the position is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination. The petitioner has not alleged, and has submitted no documentation, that the proffered position will be self-supporting or is part of an established program for temporary, uncompensated missionary work. Therefore, the personal funds of the beneficiary are not at issue in this petition. The petitioner must provide verifiable documentation of how it intends to compensate the beneficiary, either through salaried or non-salaried compensation.

With the petition, the petitioner submitted an unaudited copy of a combined financial report for 2007 through 2010 reflecting total income ranging from \$6,005 in 2007 to \$37,847.79 in 2010, and total expenses ranging from \$1,462.13 in 2007 to \$35,992.90 in 2010. The document does not contain complete information, with missing income details for May and August 2010, and reflecting expenses in 2008 for the period January through May. The petitioner also submitted a copy of an unaudited financial report for 2011, consisting of monthly statements of its income and expenses through October 2011. The report reflects balances ranging from \$1,688.16 in January to \$12,193.84 in October. This document also contains errors in the July statement. The statement shows total income of \$58,862.25; however, itemized income reflects a total of \$5,862.25. This error does not carry over into the petitioner's other calculations. However, the balance carried over from the previous month does not match the ending balance reflected in the

June statement. The petitioner also submitted copies of its monthly bank statements for October and November 2011, which reflect balances in its savings and checking accounts of \$8,843.33 and \$10,691.48, respectively.

In a request for evidence (RFE) dated December 29, 2011, the director instructed the petitioner to submit additional documentation in accordance with the above-cited regulation to establish how it intends to compensate the beneficiary. In response, the petitioner submitted an amended petition, asking that the petition be adjudicated for consular processing as the beneficiary had left the United States following the expiration of his nonimmigrant student visa.

The petitioner also submitted an unaudited copy of its "2011 Total Revenue and expenses & Monthly Statements." The document reflects a year-end balance of \$8,242.27 with total income of \$50,263.88, which included \$1,855.02 carried over from the previous year, and total expenses of \$42,021.61. Beginning with July, the amounts reflected on the monthly statements differ from those on the statements previously submitted. For example, the petitioner previously reported \$941.25 for offering in July. On the newer statement, the petitioner reported \$891.25. The amount carried over from the previous month is also different (although it appears to be the correct amount versus what was originally reported). Additionally, the petitioner reported different amount for expenses in certain categories. For example, it originally reported \$710.33 for "office" on the August monthly statement. However, on the document submitted in response to the RFE, it reported "administrative" expenses of \$639.00 and reported the difference of \$71.33 under "other expenses." On the initial August statement, the petitioner reported communication expenses of \$81.01 and reported \$50 on the statement presented in response to the RFE. While total expenses were reduced by only \$31 for the month, differences occur in the September and October 2011 statements and raise questions about the accuracy and reliability of the petitioner's unaudited financial statements.

The petitioner additionally submitted copies of its 2011 and 2012 budgets. The 2011 budget reflects total income of \$32,395.02 with total expenses of \$31,006.60, resulting in net income of \$1,388.96. The budget contains no line item for pastoral salary. The petitioner also submitted an unaudited copy of its "2011 Total Revenue and Expenses," which reflects, *inter alia*, weekly offerings of \$14,743.59, total tithes of \$22,618.95, "thanks offering" of \$6,419, and a total income of \$50,263.88. The petitioner's 2012 budget contains a line item of \$24,000 for pastoral salary. The budget also reflects expected income from Sunday offerings of \$16,000, an 8.5% increase over its reported offerings for 2011; tithes of \$33,000, a 45.9% increase over its 2011 reported tithes of \$22,618.95; and "Thanksgiving" offerings of \$11,500, a 79.2% increase over its reported offerings of \$6,419 for 2011. The expected income on the 2012 budget is \$70,000, a 39.3% increase over its 2011 reported income of \$50,263.88. The petitioner also carried over an unexplained balance of \$4,500 from the previous year. In a February 9, 2012 letter submitted signed jointly by the petitioner and counsel, the petitioner stated:

The enclosed 2012 Annual Budget was made based on a projected income of \$70,000.00. The budget indicates that an amount of \$24,000 is set aside for pastor

salaries. The projected income of \$70,000 was derived by doubling the total income for the last six months of 2011 and increasing the total by 20%. Considering that the increase from 2010 to 2011 was 55%, the projected increase of 39% from 2011 to 2012 is reasonable [sic] set.

The AAO cannot concur that the petitioner's projected increase in revenue for 2012 is "reasonabl[y] set." The record does not explain why the petitioner would choose to double its revenue for the last six months of the year and increase the projections by another 20%. A review of the petitioner's reported weekly offerings reveal that the amount dropped from a high of \$1,996.70 in October to \$833.25 in November and \$711.07 in December, both of which are less than any other amount reported by the petitioner during the latter half of 2011. Additionally, the petitioner reported fluctuations in tithes from \$3,773 in July to \$1,677 in August.

In their letter, counsel and the petitioner stated that the petitioner "is leasing space formally occupied by the Holy Cross Deaf Lutheran Church." The petitioner submitted a January 18, 2012 letter from [REDACTED] signed by the [REDACTED] stating that the petitioner paid \$3,250 for rent of its facilities for the period March through December. The letter indicates the petitioner paid \$600 for rent in April for the months of March and April, \$300 in May, \$600 in July for the months of June and July, \$700 in September for the months of August and September, and \$350 in each of the remaining months.

The AAO notes that the monthly income and expense reports initially submitted by the petitioner do not contain a line item for rent but do contain a line item for "building" or "build." On the March and April statements, the petitioner reported it expended \$300. On the May, June, July and October statements, the petitioner reported it expended \$1,150. The August statement showed \$850 and the September statement reflected \$1,450. On the statements submitted in response to the RFE, the petitioner reported "chapel expenses" of \$300 in March through July, \$700 in September, and \$350 in October through December. The petitioner did not report any "chapel expenses" in August 2011. The petitioner also reported "parsonage rent" in the amount of \$850 beginning in May. The petitioner does not state that it will provide the beneficiary with lodging, the beneficiary is not, and was not, authorized to work for the petitioner, and the petitioner indicates it has no other employees. Therefore, the line item for "parsonage rent" is of questionable validity, and with the other inconsistencies in the petitioner's financial documentation, raises questions regarding the reliability of the evidence submitted by the petitioner.

The petitioner also provided a copy of its monthly banking statement for December 2011, which reflects an ending balance of \$8,342.28, and information retrieved from the bank's website on February 8, 2012, reflecting a balance of \$6,890.83 on January 31, 2012.

In denying the petition, the director stated, "Although the petitioner maintains that the Organization has collected revenues amounting to \$32,000.00 for 2011 and income in 2012 in

the amount of \$70,000.00, bank statements submitted to USCIS do not support such claims.” On appeal, counsel asserts:

Based upon the . . . evidence of record, the USCIS clearly made an erroneous finding of fact and as a result erroneous conclusion of fact. The 2011 Revenue and Expenses was corroborated by bank statements dating far back as October 2011 . . . . The petitioner never maintained that the Organization collected revenues amounting to \$32,000.00 for 2011 and income of \$70,000.00 in 2012.

The petitioner submits copies of its monthly bank statements for the months of January, February, and March 2012 that reflect ending balances of \$6,890.83, \$3,944.14, and \$3,396.88, respectively.

As discussed previously, the petitioner’s unaudited financial statements contain inconsistencies that prevent an accurate assessment of its financial status. Additionally, the petitioner has not provided a logical analysis of why it projected income for 2012 that is 39% above its 2011 alleged expenditures. The bank statements contribute to the AAO’s concerns, falling from a high balance of \$10,691.48 in November 2011 to \$3,396.88 in March 2012. The bank statements do not support the petitioner’s optimistic view of its 2012 finances, and although the petitioner alleges that the decline in income is the result of the loss of the beneficiary’s services, the petitioner has submitted no other documentation to establish that its 2012 budget is based on realistic expectations.

The petitioner has failed to provide verifiable documentation of how it intends to compensate the beneficiary.

The director also found that the petitioner had failed to establish a need for the beneficiary’s services. In her denial, the director stated:

[T]he record of expenses incurred by the petitioning organization such as lease and utilities does not indicate a vibrantly active establishment with ongoing activities. The informality of the rent record, the lack of IRS documentation, and the use of the beneficiary’s cell phone as contact number for the establishment, coupled with the fact of the beneficiary’s departure from the United States collectively indicate that the Organization is not functioning as actively in the capacity claimed by the petitioner to require a full time employee in service of a congregation in demand.

On appeal, counsel states:

The fact that there is no formal lease agreement should not be a factor in determining whether the organization is a “vibrantly active establishment with ongoing activities.” What the USCIS should have considered is the fact that the

organization became a more self-sustaining organization with increased congregation members resulting in increased income which in turn resulted in the organization's ability to begin making formal rent payments in April 2011. Furthermore, the letter signed by the pastor [REDACTED] of the Deaf shows that the rent payments were increased from \$300 to \$350 in August 2011 as the organization's ability to pay strengthened. In fact, as the enclosed copies of cancelled checks indicate, the rent payments have increased even more to \$420 per month beginning January 2012.

In denying the petition, the USCIS notes "the use of the beneficiary's cell phone as contact number for the establishment." The USCIS has misconstrued the fact that the cell phone number belongs to the organization and the beneficiary carries the phone. . . .

Counsel also states that the beneficiary left the United States because his F-1 visa expired, and that his attempt to comply "with the U.S. immigration laws at all times should not be used against them to deny the petition."

The AAO will withdraw this determination by the director. The fact that the petitioner has an informal leasing arrangement with the [REDACTED] of the Deaf is not evidence that it is not operating as claimed. Many religious organizations share spaces, and often the more established organization lends its facilities, or charges a reduced rent, to the less established organization and often there are no formal agreements.

Additionally, the petitioner stated that it has no employees and therefore does not file wage and tax reports. As a church and exempt under section 501(c)(3) of the Internal Revenue Code, the petitioner is not required to file an income tax return. The petitioner explained the absence of tax documentation in its response to the RFE. Therefore, the lack of IRS documentation is not a basis to find that the petitioner is not operating in the capacity claimed.

Furthermore, in response to the RFE, the petitioner stated, in the joint letter with counsel, that it uses a cell phone as its church phone and that the phone is "usually carried by the beneficiary." This is not the same as stating that the petitioner uses the beneficiary's phone as its contact number. Furthermore, even if that was the case, the beneficiary's use of his own phone would not be evidence that the petitioner did not exist as claimed, as the petitioner could have easily reimbursed the beneficiary for the use of his phone.

Finally, the fact that the beneficiary left the United States as a result of the expiration of his F-1 visa status is not a ground to determine that the petitioner is not a church or could not offer the beneficiary the stated employment. The petitioner stated that the beneficiary volunteered his services while in the United States and that the organization has no other pastor. The petitioner could (and apparently) does still exist as a church although it lacks a leader in the form of a pastor.

As stated by counsel, an onsite review of the petitioner's premises would be more effective in determining whether the petitioner operates as claimed in its petition. The record does not establish that such an inspection, as outlined in the regulation at 8 C.F.R. § 214.2(r)(16), has been conducted. The record as it currently stands cannot support the director's conclusion that the petitioner has not established a need for the beneficiary's services.

However, as the petitioner has not established how it intends to compensate the beneficiary, the petition will be denied. 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.