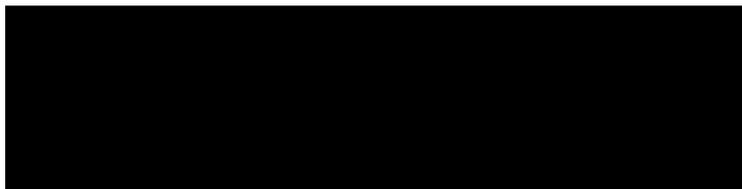


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



A13

Date: **FEB 24 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 (the 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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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 church. It seeks to extend the beneficiary's status 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 religious iconographer. The director determined that the petitioner had not established how it intends to compensate the beneficiary.¹

The director also determined that the beneficiary had not maintained the R-1 nonimmigrant religious worker employment certification previously approved and that the beneficiary had violated the terms of her visa by working for other employers. 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 IRS documentation if available). The regulation at 8 C.F.R. § 214.1(e) states that a nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act. Under 8 C.F.R. § 214.2(r)(5), extension of status is available only to aliens who maintain R-1 status.

The issues of the beneficiary's prior employment and maintenance of R-1 status are significant only insofar as they relate to the application to extend that status. 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 and maintenance of status are extension issues, rather than petition issues, the AAO lacks authority to decide those questions and will address them only insofar as they relate to the petition to extend the beneficiary's status.

On appeal, counsel states that the director erred in denying the petition because she "alleges Beneficiary engaged in unauthorized employment in Schererville, Indiana" and asserts that the beneficiary has not worked without authorization.² 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:

¹ The petitioner has been re-designated as [REDACTED]. [REDACTED] The designation became effective prior to the filing of the current petition; however, the petitioner used its old name on the petition and the tax-exempt certification letter from the Internal Revenue Service (IRS) reflects the old name. The petitioner submitted no documentation that it has notified the IRS of its name change.

² New counsel represents petitioner on appeal. Previous counsel will be referred to as "prior counsel" in this decision.

(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 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 Supplement R that the beneficiary would work at [REDACTED] in Schererville, Indiana, at [REDACTED] Lansing, Illinois, and at the petitioning organization in Third Lake, Illinois. It also indicated that it would pay the beneficiary \$350, provide food for the beneficiary and her family, and had net annual income of \$12,810. In its December 2, 2010 letter submitted in support of the petition, the petitioner, through the Diocesan Secretary, the [REDACTED], the official who signed the petition on behalf of the petitioner, stated that, although the beneficiary previously received non-salaried compensation in the form of room and board:

Her current employment terms . . . will include compensation with a monthly salary direct payment of \$1400. She will continue to be offered food for her and her family at [REDACTED] Church in Schererville, Indiana and at the various churches she will serve in the Diocese. In addition, as in the past, she will be allowed to retain any funds received for religious icon work completed for individual parishioners.

With the petition, the petitioner submitted copies of the uncertified financial statements for the [REDACTED] for 2009 and 2010 and its year-end financial reports to the petitioner for 2008 that also included its proposed budget for 2009, its 2009 report and its proposed budget for 2010. These documents reflect that the St. George Church has sufficient funds to provide the beneficiary with food.

The petitioner also provided uncertified copies of the beneficiary's unsigned and undated IRS Form 1040, U.S. Individual Income Tax Return, on which she reported wages of \$2,285 and "other income" of \$15,400 in 2008, and wages of \$1,268 and "other income" of \$26,400 for 2009. The petitioner submitted copies of IRS Form W-2 that was issued to the beneficiary in 2009 by [REDACTED] for \$967.50 and [REDACTED] Church for \$300. The beneficiary's tax returns do not identify the source of the "other income," and neither the petitioner nor the beneficiary provides any explanation for the reported "other income." The petitioner submitted no documentation of its own ability to compensate the beneficiary.

In an April 13, 2011 Notice of Intent to Deny (NOID) the petition, the director instructed the petitioner to submit documentation of the non-salaried compensation paid to the beneficiary from April 8, 2008, photographs of the living quarters provided by the [REDACTED] church in Schererville, Indiana, and a record of the medical care and insurance provided to the beneficiary and her dependents by the Schererville church.

In response, the petitioner submitted a May 11, 2011 letter from the [REDACTED] the parish priest for [REDACTED] Church, in which he attested that the petitioner directed the church to provide the beneficiary with housing in a rectory house on the church ground and that she received food from the parish pantry as part of her compensation. He further stated that the beneficiary performed miscellaneous work during

2009, including cooking, for which she received \$1,250 in miscellaneous income. Reverend Milunovic stated:

This income was incidental to her non salaried room and board provided by the Diocese and took place outside of her normal working hours[,] She was needed and she had an opportunity to earn some extra income outside of her normal working hours for her family and reported it as miscellaneous income on her tax return. She was never an employee of [REDACTED] Church and should have been issued an IRS Form 1099 from the Diocese rather than a W-2 Form. She was at all times employed and continues to be employed as an iconographer by the [petitioner].

[REDACTED] also stated:

[The beneficiary] renegotiated her continuing employment terms with the Diocese in late July of 2010, and it was agreed that [she] would be paid \$1400 per month plus food by the Diocese during her continued employ as a Diocesan Iconographer and that she would be required to perform iconography duties at other churches within the Diocese in addition to [REDACTED].

In a May 11, 2011 affidavit, [REDACTED] confirms the above statements of [REDACTED]. The petitioner also provides photographs that prior counsel states are of the rectory occupied by the beneficiary and her family residence. The petitioner submitted no other documentation to establish how it intends to compensate the beneficiary.

On appeal, the petitioner submits a copy of its budget for 2010. The budget does not indicate any funds set aside for the beneficiary's salary. Additionally, it reflects a net income of \$12,810 for the year 2010, which would be insufficient to pay the beneficiary's salary of \$1,400 per month.

The beneficiary's past compensation by the [REDACTED] Church is not relevant to the instant petition and are inapplicable as the terms of employment have changed. The petitioner has submitted no documentation to establish that it has compensated a similar position in the past at the same level that it offers to compensate the beneficiary. The petitioner has therefore failed to submit competent and verifiable documentation of how it intends to compensate the beneficiary.

The petition will be denied 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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.