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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

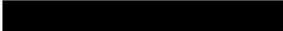


U.S. Citizenship
and Immigration
Services

D13



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:

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.

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 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 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 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 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, that it would pay the beneficiary a salary of \$25,000 per year plus housing and utilities. The petitioner submitted no documentation with the petition to establish how it would compensate the beneficiary in the stated amount.

In a request for evidence (RFE) dated March 1, 2011, the director instructed the petitioner to:

Please submit evidence to establish the petitioner's ability and intent to compensate the beneficiary the proffered salary of \$25,000.00/year. Evidence may include past evidence of compensation for similar position (W-2); audited financial statements/budgets showing monies set aside for salaries, leases, verifiable documentation that room and board will be provided (lease documentation, mortgage payment, description of the location where the beneficiary will live.) 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.

In response, the petitioner submitted a March 28, 2011 letter stating that the beneficiary would not become a public charge or dependent on supplemental employment or the solicitation of funds for his support. The petitioner also submitted a copy of the mortgage agreement, a mortgage statement, and electric bills for January through March 2011 for the church property. It submitted no similar documentation for the housing and utilities that it stated it would provide to the beneficiary.

The director denied the petition on June 10, 2011, finding that the petitioner had failed to establish how it would compensate the beneficiary. On appeal, the petitioner submits copies of its monthly bank statements for June and July 2011, with ending balances of \$862.79 and \$2,556.78, respectively.

The petitioner has failed to submit sufficient documentation to establish how it intends to compensate the beneficiary. The petitioner submitted none of the documentation outlined in the regulation at 8 C.F.R. § 214.2(r)(11) or requested by the director in her RFE.

While the petitioner submits copies of two bank statements on appeal, the statements are after the filing date of the petition. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Furthermore, the statements submitted do not reflect that the petitioner had the ability to pay the beneficiary the proffered wage. Assuming that the beneficiary would be compensated on a monthly basis, the June 2011 ending bank balance was less than half of the \$2,083 that the beneficiary would be expected to receive. Additionally, the ending bank balance of \$2,556.78 in July would not have been sufficient to compensate the beneficiary for two months' salary. Finally, the petitioner submitted no documentation to establish how it would provide the beneficiary's compensation of housing and utilities.

The petitioner has therefore failed submit competent and verifiable documentation of how it intends to compensate the beneficiary.

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.