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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



D13

Date: **FEB 27 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 minister of music and bilingual services. The director determined that the petitioner has not established that the beneficiary had been a member of its religious denomination for two full years immediately preceding the filing of the petition and 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 first issue presented is whether the petitioner has established that the beneficiary has been a member of its religious denomination for two full years immediately preceding the filing of the visa petition.

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

[REDACTED]

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.

The petition was filed on December 16, 2010. Therefore, the petitioner must establish that the beneficiary was a member of its denomination for at least the two years immediately preceding that date.

In Section 1, question 4 of the Form I-129, Petition for a Nonimmigrant Worker, Supplement R, regarding the relationship between the religious organization in the United States and the foreign organization of which the beneficiary is a member, the petitioner stated:

We are both evangelical Bible teaching nondenominational churches who seek to promote the teaching of the Bible and serve the communities we live in as well as support other ministries who are doing the same, as we have ability. We are not opposed to denominations but choose to be identified with the whole scope of Christian churches rather than a narrowed denominational identity.

The petitioner submitted a copy of a July 14, 2009 letter from [REDACTED] of the [REDACTED] who stated that the beneficiary attended the church in 2007 and 2008. The petitioner also submitted two letters written in French that were not accompanied by English translations. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The regulation at 8 C.F.R. § 214.2(r)(3), states in pertinent part:

Religious denomination means a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes one or more of the following:

- (A) A recognized common creed or statement of faith shared among the denomination's members;
- (B) A common form of worship;
- (C) A common formal code of doctrine and discipline;
- (D) Common religious services and ceremonies;

- (E) Common establish places of religious worship or religious congregations;
or
- (F) Comparable indicia of a bona fide religious denomination

In a request for evidence (RFE) dated March 9, 2011, the director advised the petitioner of the definition of religious denomination as described above and instructed the petitioner to:

Explain how the affiliation exists between the religious denomination or organization abroad and the petitioner's religious organization. Provide proof in the form of a corresponding registry, directory or association showing the connection between the religious organizations. . . .

In a March 15, 2011 letter submitted with the petitioner's response [REDACTED], the petitioner's pastor, stated that the churches at which the beneficiary had ministered "are liked minded churches" with the petitioner. "They are non-denominational Bible believing, Bible teaching, Evangelical, community service oriented. As non-denominational churches we have open fellowship and often cooperate together with other churches to share ministry outreach and service." The petitioner stated that one of the churches in which the beneficiary ministered in Mexico used materials produced by the petitioning organization. The petitioner, however, submitted no documentation to establish that it shares ministry outreach, services, or teaching documentation with other churches. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The petitioner also stated that it is "a fellowship of non-denominational churches that share a common theology and philosophy of ministry. We are not a denomination nor are we opposed to denominations except when there is an over emphasis of minor differences that results in sectarian division." The petitioner references a website that it states are "officially affiliated" churches but provides no documentation of comparable indicia to establish that it and the beneficiary's prior church belong to a religious group or community of believers that is governed or administered under a common type of ecclesiastical government.

On appeal, the petitioner states that the beneficiary has two years of membership in an affiliate ministry. Again, however, it submits no documentation to establish that the organizations are of the same denomination, or otherwise are part of the same "fellowship of non-denominational churches."

The petitioner has failed to establish that the beneficiary has been a member of its religious denomination or organization for two full years immediately preceding the filing of the visa petition.

The second issue presented on appeal 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 [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 Part 5, question 7 of the Form I-129, the petitioner did not indicate any wages that it would pay to the beneficiary for his services and in question 15 indicated that it had a net income of negative \$33,866. In section 1, question 5d of the Form I-129 Supplement R, the petitioner stated that the proposed salary was \$7,000. The petitioner submitted no documentation with the petition to establish how it intended to pay the \$7,000 salary.

In her RFE, the director instructed the petitioner to submit documentation to establish how it intended to compensate the beneficiary, to include documentation such as audited financial statements, bank statements, certificates, and/or letters from financial institutions to support the financial statements. The petitioner failed to include any of this documentation with its response to the RFE. On that basis alone, the petition may not be approved. 8 C.F.R. § 103.2(b)(14).

On appeal, the petitioner states that it has “diverse ministry positions and occasionally change[] the composition of our staff and personnel as needed or required by the circumstances.” The petitioner provided a copy of its “corporate resolution” in which the organization resolved to pay the beneficiary “a base salary of \$30,000.” The petitioner states that it has had “several developments” that would allow it to pay the beneficiary the \$30,000 salary but submits no documentation to establish how it would pay the proposed salary. *Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner has 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.