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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

813

Date: FEB 27 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 (the 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 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.

On appeal, counsel asserts that the petitioner has submitted sufficient documentation to establish that it has met all of the requirements of the regulation. 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 U.S. Citizenship and Immigration Services (USCIS) 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.

The petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, filed on November 24, 2010, and in its October 30, 2010 letter submitted in support of the petition, that the beneficiary would "receive a basic salary of \$2,300 a month." However, on the Form I-129, the petitioner stated that it had no gross or annual income. With the petition, the petitioner submitted an unaudited copy of its 2009 financial report. The document does not provide an itemized list of the petitioner's income and expenses but reflects an ending balance in an operating account of approximately \$11,496, a "Harvest" account of \$20,596, and a negative balance of approximately \$64,117 in a building account. An asterisk next to the latter figure is unexplained in the record.

In a March 2, 2011 request for evidence (RFE), the director instructed the petitioner to:

Submit recent audits, tax returns (if the organization elected to file) OR an annual financial statement (complete and itemized, listing your sources of income and all your expenses). Provide documentary evidence such as bank statements, certificates, and/or letters from financial institutions to support the financial statement. Provide verifiable documentation that room and board will be provided.

In response, the petitioner, through its resident minister and official who signed the petition on behalf of the petitioner, the [REDACTED] stated that the church currently had two employees, the resident minister position with a monthly salary of \$1,600 and an organist with a monthly salary of \$400. In a description of the beneficiary's proposed duties, [REDACTED] stated that the beneficiary would be his replacement, as he expected to retire on September 30, 2011. The petitioner provided copies of photographs that [REDACTED] stated were of the church, office, and the residence of the head minister. The petitioner also submitted an unaudited copy of its 2010 financial reports, which reflected an ending balance of negative

\$19,285.38. The document also indicates that the petitioner paid the pastor a stipend of \$4,770 during the first quarter but in no other quarters, a guest preacher \$800 in the first quarter, \$1,650 in the second quarter, and \$300 in the third and fourth quarters.

The director denied the petition, finding that the 2010 financial statements are inconsistent with the petitioner's ability to pay the proffered salary, as they reflect that the current pastor received only \$4,770 for the year and that the total paid to all compensated positions was less than the salary offered to the beneficiary.

On appeal, the petitioner states:

[T]he understanding between the Minister and the Church is that seven hundred dollars (\$700.00) of the stipend of two thousand three hundred dollars (\$2,300.00), will be the pastor's contribution toward the rent, which will be taken care of by the Church. Thus, the pastor's stipend stands the same as the current: \$1,600.00 per month.

Secondly, and more importantly, the 2010 financial statement . . . listing the amount of \$4770.00 as the total stipend for the pastor position was an unfortunate oversight. That amount, truly represents only the total stipend for the 1st quarter of the year 2010. The stipends for the following months, (2nd, 3rd, & 4th Quarters), that is, beginning from April – December 2010, were paid into the central fund of the Mission Circuit, from which the Minister received his stipend, as shown on the Circuit Account Statement: pages 3-5. [Emphasis omitted.]

The petitioner submits partial copies of the budget proposal for [REDACTED] [REDACTED] for the last three quarters of 2010 and for the year 2011. The documents do not support the petitioner's statements that they reflect stipends paid to the minister, as the documents are incomplete and contain no verifiable documentation to support the figures included. The petitioner also submits information from its bank accounts for the period December 2010 to February 2011, and May to June 16, 2011. However, 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'r 1978). All of the petitioner's bank statements are dated after the filing date of the petition on November 24, 2010. Therefore, they are not evidence of how the petitioner intended to pay the proffered wage at the time the petition was filed.

The petitioner's documentation fails to establish how it will compensate the beneficiary. The petitioner stated that the beneficiary would replace its current pastor who was expected to retire in September 2011. However, it submitted no documentation of its ability to pay the beneficiary in addition to the current pastor from the date the petition was filed to the date the current pastor retired. Its unaudited financial statements for 2009 and 2010 reflect negative balances. Additionally, the partial budgets from the [REDACTED]

Circuit do not indicate any payments received from the petitioner to support its pastors or any documentation from [REDACTED] it to indicate that it paid the petitioner's pastor on behalf of the petitioning organization.

Accordingly, the petitioner has failed to 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.