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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
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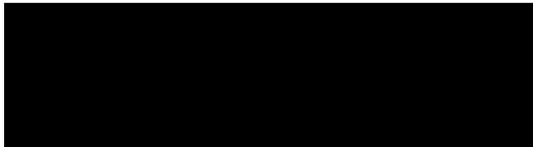
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DATE: **JAN 03 2012** Office: CALIFORNIA SERVICE CENTER FILE:

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 Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and a motion to reconsider. The motions will be dismissed.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

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 AAO affirmed the director's decision on appeal.

On motion, counsel asserts that the petitioner provided sufficient documentation that it had current assets to pay the beneficiary and that the AAO raised a new issue on appeal. Counsel submits a brief and additional documentation in support of the motion.

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 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 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 stated that it would pay the beneficiary \$30,000 to \$40,000 per year in addition to vehicle insurance, gasoline expenses, and bonuses. As evidence of its ability to pay this salary, the petitioner submitted a copy of a December 12, 2009 letter from its bank certifying that it had a checking account with a balance of \$53,431 and a certificate of deposit (CD), opened in May 2006, of \$52,063. The petitioner also submitted a copy of an undated budget indicating that it had budgeted \$40,000 for pastoral wages.

The AAO determined that the petitioner had submitted insufficient documentation to establish that the proceeds of the CD would be specifically used to compensate the beneficiary and that it had failed to provide documentation to establish that the budget was based on realistic expectations of future income.

On motion, counsel asserts that the petitioner “successfully and convincingly argued that its CD proceeds are current assets available to . . . compensate the Beneficiary.” Counsel also argued that the AAO raised a “new issue” when it stated that the record did not establish that any of the proceeds of the CD had been designated for the beneficiary’s salary. The petitioner submits a January 24, 2011 affidavit from the petitioner’s treasurer in which he states that the church has “earmarked” all of the funds in the CD for the purpose of compensating the beneficiary. Counsel also asserts that the petitioner “was operating below budget (with lower than projected revenues and lower than projected costs) during the First Quarter, 2010 period.”

The AAO rejects counsel’s assertion that the AAO raised a new issue on appeal. The petitioner submitted a December 12, 2009 statement from its bank indicating that as of that date, the

petitioner had a checking account with a balance of \$52,430.90 and a CD with a balance of \$52,063.07. This statement is only a snapshot of the petitioner's finances and does not provide the comprehensive picture that a statement of cash flow, for example, would show. On appeal, the petitioner submitted a partial copy of its July 2010 monthly bank statement, which reflects total deposits of \$1,894.35 and withdrawals/debits of \$850. As noted by the AAO in its previous decision, the bank statement is after the filing date of the petition and the petitioner did not submit any similar documents for the period prior to the filing date. Despite counsel's argument that the AAO erred in not considering the letter from the bank as "similar evidence" as the monthly bank statement, the bank statement provides at least some details of the petitioner's cash flow for the month which cannot be determined from the bank's letter. Neither the checking account balance nor the existence of a CD alone offer evidence of the funds that would be available for the beneficiary's support and that would also provide the funds necessary for the petitioner to meet the remainder of its financial obligations.

In her August 3, 2010 decision, the director stated:

Although the checking account balance could provide the beneficiary with compensation for approximately 21 months, those funds would be depleted and are insufficient to compensate the beneficiary for the duration of the proposed employment of 30 months. The CD indicates additional funds available to the petitioner, however, it can not be concluded these are current assets available to the petitioner to use for the beneficiary's salary.

On appeal, counsel argued that the director "acknowledged" that the petitioner's bank account balance was "useful" or "useable" for the beneficiary's compensation, "USCIS erred in refusing to acknowledge that the CD balance may also be used for the same purpose." Counsel then argued:

The USCIS Decision had already acknowledged the ability of the Petitioner's checking account to cover nearly two (2) years – about twenty-one (21) months of the Beneficiary's compensation. Given that the Petitioner's CD has a maturity of less than one year from the date of the Petition filing and is therefore by definition a "current asset," the CD should be able to more than cover the Beneficiary's salary for the remaining nine (9) months in the thirty (30) month period of proposed employment.

As discussed above and in the AAO's prior decision, neither the director's statement or counsel's argument takes into account any other financial obligations that the petitioner has that would require use of the funds that both counsel and the director apparently assume in their argument to be available for the beneficiary's compensation. The record did not establish that any or all of the funds in the bank or in the CD were available to compensate the beneficiary. This was not a "new issue"; rather, it indicates that the petitioner failed to provide sufficient documentation for the director and the AAO to evaluate its claim.

On motion, the petitioner submits a January 24, 2011 affidavit from its treasurer, [REDACTED] who attests that the petitioner has "earmarked" the funds in the CD "for the exclusive use and purpose of covering [the beneficiary's] compensation in the event that there is any shortfall in church donations or operating budget to cover this pastoral salary expense." The petitioner also submits a January 25, 2011 letter from the [REDACTED] offering its financial support for the beneficiary in his ministry with the petitioner; however, in a September 23, 2011 letter submitted by the church to the AAO, the [REDACTED] withdrew this support.

Counsel also asserts on motion that the fact that the petitioner "was operating below budget (with lower than projected revenues and lower than projected costs) during the First Quarter, 2010 period" and its growing bank balance is sufficient to establish that it has sufficient funds to pay the beneficiary.

The petitioner submitted an undated budget, which projects income of \$75,000 and budgets \$40,000 for pastoral wages. The first quarter 2010 financial statement projected income of \$26,000 with actual receipts of \$8,126.25. Projected expenditures were \$22,500 and actual expenditures were \$5,590.89. Counsel's argues that the lower than projected revenue in the petitioner's budget is offset by the lower than projected expenses and therefore is evidence that the petitioner has the necessary financial ability to compensate the beneficiary. As the AAO stated in its previous decision, however, the record does not establish that the petitioner's budget was based on realistic expectations. The first quarter 2010 financial statement confirms that the projected income and expenses shown on the budget are unreliable.

The petitioner's CD and bank balance, without reliable evidence of the petitioner's expenditures, are not adequate documentation of how the petitioner intends to compensate the beneficiary.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. As no new evidence has been presented to overcome the grounds for the previous dismissal, and no reasons set forth indicating that the decision was based on an incorrect application of law, the previous decisions of the AAO and the director will be affirmed. The petition is denied.

ORDER: The AAO's decision of December 28, 2010 is affirmed. The petition is denied.