

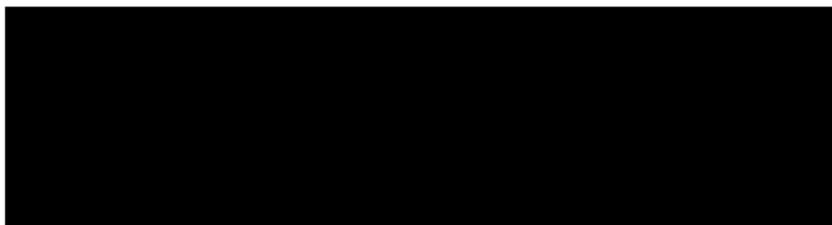
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



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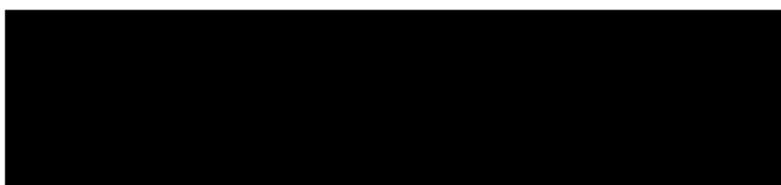
Date: **JAN 18 2012**

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IN RE:

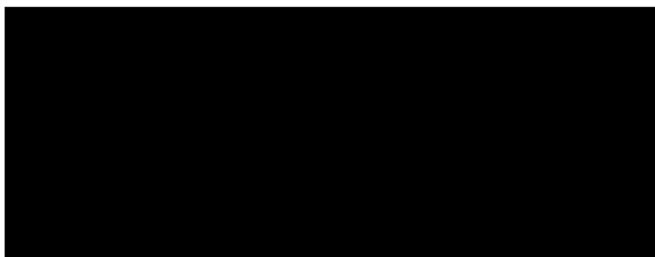
Petitioner:

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 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 an evangelist. The director determined that the petitioner had not established how it intends to compensate the beneficiary.

On appeal, counsel alleges that the director's "assertion that Appellant has not established its ability to compensate the Beneficiary is not supported by evidence. Appellant has sufficient financial means and resources to compensate the beneficiary" 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:

- (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 stated on the Form I-129, Petition for a Nonimmigrant Worker, which it filed on September 17, 2010, that it would pay the beneficiary wages of \$24,000 per year. It further indicated it currently had two workers. At question 10 of Part 5 of the Form I-129, the petitioner entered "nonprofit organization" in the blocks that requested gross and net annual income. The petitioner submitted a copy of its 2010 budget, in which it budgeted for \$185,000 in revenue and \$168,500 in expenses, including a \$42,000 salary for a senior pastor, and salaries of \$30,000 and \$24,000 for two assistant pastors. The budget did not include an expense for the salary of an evangelist. The petitioner's unaudited 2009 income statement reflected income of \$164,770 and expenditures of \$161,330, with \$42,000 indicated for the salary of the pastor and \$30,000 for the salary of an assistant pastor. The petitioner also submitted copies of its monthly bank statements for June, July and August of 2010, which reflect ending balances of \$2,781.42, 755.58, and \$1,836.27, respectively.

On February 9, 2011, the director issued the petitioner a request for evidence (RFE) advising the petitioner:

As evidence of compensation, the petitioner submitted a copy of Ministry Budget for 2010 and a copy of 2009 Income Statement . . . The petitioner also submitted copies of June, July, and August 2010 bank statements showing the average available balance of \$3638.51, \$2,864.78, and \$3,828.63 respectively. The copies of the budget and statement alone are not sufficient evidence of compensation because they are not audited budget/statement. USCIS cannot verify the validity of the facts presented in the financial statements. Please submit verifiable evidence to establish the petitioner's ability to compensate the beneficiary. Evidence may include the last three bank statements showing sufficient reserve[,] budget for salaries or W-2 forms/IRS income tax returns of other employees (Pastor & Assistant Pastor). 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 copies of its monthly bank statements for December 2010, January 2011 and February 2011, that reflect balances of \$4,969.32, \$2,519.08, and \$7,210.24, respectively. The petitioner also provided a copy of its 2010 IRS Form W-3, Transmittal of Wage and Tax Statements, on which it reported it paid wages of \$12,000; and a copy of a 2010 IRS Form W-2 that it issued to [REDACTED] on which it reported that it paid him wages of \$12,000. The petitioner provided a copy of the IRS Form 1040, U.S. Individual Income Tax Return, for [REDACTED]'s senior pastor, on which he reported \$24,865 of business income that he identified as receipts from his business as a tutor and as a radio broadcaster. The petitioner also submitted a copy of its 2010 income statement, which [REDACTED] stated he audited with the petitioner's budget committee. The 2010 income statement reflects total revenue of \$128,009 and expenditures of \$91,460, with the senior pastor receiving no salary and the assistant pastor receiving a salary of only \$12,000.

In denying the petition, the director noted that the petitioner stated that the senior pastor supported himself with his part-time jobs. The petitioner offered no explanation as to why the salary of the assistant pastor was reduced from \$30,000 to \$12,000. The director stated further that although the petitioner's 2010 income statement reflects a "surplus" of \$36,549, there is nothing in the record, specifically in the bank statements, that would support the figure. The director determined that the petitioner had not submitted verifiable documentation of how it intends to compensate the beneficiary.

On appeal, the petitioner submits a copy of its financial statements for 2010 that were audited by a certified public accountant (CPA). The statement indicates that as of December 31, 2010, the petitioner had cash assets of \$37,210 and a loan receivable of \$15,000. It had no liabilities. The petitioner's June 30, 2011 bank statement reflects a balance of \$19,168.76.

The petitioner also submits a copy of a June 1, 2011 letter from the [REDACTED] Church in Korea, which states that on May 29, 2011, the organization's "Committee of Elders has agreed that we pledge our financial support for our sister church" and "particularly support [the beneficiary] who is filling the position of Evangelist. We understand [the petitioner's] church expansion in its congregation and wish to make a contribution of \$7,500 USD annually." The petitioner submits a copy of a June 28, 2011 wire transfer, indicating that the [REDACTED] Church had wired the petitioner \$7,550. Counsel alleges in his brief that according to its letter, the [REDACTED] had supported the beneficiary for the past three years; the letter from the church does not support counsel's statement. Counsel also states:

Furthermore, the Beneficiary has been receiving ministry funds from former church members and received \$31,300.00 for a period from August 2010 to June 2011. . . . The Beneficiary will continuously receive such ministry funds granted

in support of her missionary activities even after hired and being compensated by the Appellant.

The petitioner provides documentation indicating that the beneficiary received wired transfers from [REDACTED] in Korea in the amount of \$15,000, \$5,300, \$1,000, and \$10,000, on August 4, 2010, October 15, 2010, March 23, 2011, and June 3, 2011, respectively. There is nothing in the record to support counsel's assertions that this money was "ministry funds" and that the beneficiary would continue to receive such funds. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of [REDACTED]*, 17 I&N Dec. 503, 506 (BIA 1980). In its September 8, 2010 letter submitted in support of the petition, the petitioner stated that the beneficiary served the organization on a voluntary basis while she attended Cohen University and Theological Seminary, from which she graduated with a bachelor's and master's degree, respectively, in 2007 and 2009. According to the letter, she was appointed as an evangelist in August 2010. The beneficiary is present in the United States as the spouse of an E-2, nonimmigrant trader/investor, visa recipient and is not authorized to work without prior authority.

The petitioner alleged that it would pay the beneficiary \$24,000 in wages. Therefore, regardless of whether she receives additional income from another source, the petitioner must establish that it has the ability to compensate the beneficiary in the proffered amount as of the date the petition was filed. The petitioner has failed to do so.

The petitioner's 2010 income statement does not indicate that it had sufficient funds to pay the beneficiary in 2010. Although it budgeted for \$72,000 to pay the salaries of its pastors, the petitioner claimed on its financial statements that it paid only \$12,000. The petitioner explained that the senior pastor chose to forego his salary and subsist on his income from his part-time work. On appeal, counsel alleges that one of the assistant pastors "spent most of his time in overseas [sic] for missionary activities and thus was not compensated through the Appellant last year" and that the other "left the Church for establishment of native Indian mission and development of a rural church in Canada." The record does not support counsel's statement.

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). The petitioner's three bank statements for 2010 that it submitted with the petition reveals that it would not have had sufficient funds to pay the beneficiary in any of the months reflected except June. Additionally, despite the petitioner's financial statements for 2010 reflecting that the senior pastor did not receive a salary for 2010 and that the assistant pastor was paid only \$12,000, the 2010 budget that it submitted in September 2010 indicates that the petitioner had budgeted for a salary of \$42,000 for the senior pastor and \$30,000 for the assistant pastor. If the senior pastor had indeed refused a salary and the assistant pastor had either left or performed missionary work overseas, it is not clear why the

petitioner's budget, submitted to USCIS during the latter part of its financial year, did not reflect those changes.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The petitioner's 2010 financial documentation indicates that it could afford to pay the beneficiary only if it did not pay its senior pastor or did not pay the assistant pastor his full salary.

When a job offer is the basis for an immigration benefit, there must be a high degree of certainty that the employment will not end or be modified because the employer is no longer able to meet the terms agreed upon in the job offer. It must be established, with some degree of certainty, that the petitioner is viable to the point where the beneficiary's employment will not end or change because the petitioner is unable to meet the terms of the job offer. The documentation submitted by the petitioner does not provide sufficient verifiable evidence 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.