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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: **JUN 18 2012**

Office: CALIFORNIA SERVICE CENTER

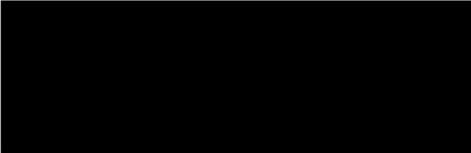


IN RE:



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)

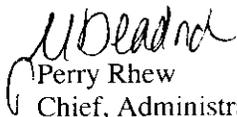
ON BEHALF OF PETITIONER:



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.

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 AAO will withdraw the director's decision and will remand the petition for further action and consideration.

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 its Hispanic worship pastor. The director determined that the petitioner had not established how it intends to compensate the beneficiary.

On appeal, counsel asserts that the petitioner submitted sufficient documentation to meet the requirements of the regulation. Counsel submits a letter 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 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, filed on April 11, 2011, that it would pay the beneficiary a weekly salary of \$600 “including housing allowance, health insurance, and retirement benefits.” The petitioner submitted a copy of its unaudited balance sheet for November 30, 2010 reflecting total current assets of \$2,319,032.61 and total current liabilities of \$117,849.89. The petitioner also submitted a copy of its “Budgeted Financial Statement for Period 08 November” which compares its budget to actual expenses. The budget has a line item for salaries and allowances but does not specify individual salaries. The petitioner submitted similar documentation for the period ending July 2009.

In response to the director’s June 28, 2011 request for evidence (RFE), the petitioner submitted a copy of its budget for fiscal year 2011-2012. As with its other budgets, the 2011-2012 budget contains a line item for salaries but does not delineate individual positions. The petitioner also submitted a July 10, 2011 letter from its bank indicating that as of May 31, 2011, the petitioner had a balance of \$279,479.03.

The director denied the petition, finding that the petitioner had failed to submit IRS documentation or an explanation for its absence. On appeal, counsel states that as the petitioner is a tax-exempt organization, it has no tax returns and, as the beneficiary has not worked, he also has no tax documentation. The petitioner submits a copy of a budget for the Hispanic ministries pastor that includes a salary of \$30,000 and housing valued at \$21,111.

The director’s decision is withdrawn. Although the petitioner’s financial documents are unaudited, the statement from the bank is consistent with the balances reflected in the petitioner’s financial statements. The documentation sufficiently establishes that the petitioner has sufficient funds to pay the beneficiary and sufficiently establishes how it intends to compensate the beneficiary.

Nonetheless, the petition may not be approved as the record now stands. The regulation at 8 C.F.R. § 214.2(r)(6) provides:

An alien who has spent five years in the United States in R-1 status may not be readmitted to or receive an extension of stay in the United States under the R visa classification unless the alien has resided abroad and has been physically present outside the United States for the immediate prior year. The limitations in this paragraph shall not apply to R-1 aliens who did not reside continually in the United States and whose employment in the United States was seasonal or intermittent or was for an aggregate of six months or less per year. In addition, the limitations shall not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. To qualify for this exception, the petitioner and the alien must provide clear and convincing proof that the alien qualifies for such an exception. Such proof shall consist of evidence such as arrival and departure records, transcripts of processed income tax returns, and records of employment abroad.

The record reflects that the petitioner filed a previous Form I-129 petition on behalf of the beneficiary on October 16, 2009 (USCIS receipt number WAC 10 011 50018), which was denied because the beneficiary had exceeded the five-year statutory limitation. The record also reflects that the beneficiary has been physically present in the United States for at least part of the years 2009, 2010, and 2011. While the petitioner indicated in Part 4 of the Form I-129 filed on April 11, 2011 that the beneficiary resides outside of the United States, it stated in Part 3, question 2 that the beneficiary last entered the United States on July 17, 2010 and that his current immigration status is "none." As discussed previously, counsel states in her letter of September 29, 2011 that the beneficiary has not worked and has had no income. The matter is remanded to the director to determine if the beneficiary meets the requirements of the above-cited regulation. On remand, the director should inquire into the beneficiary's presence in the United States since May 2005, the date of his entry in an approved R-1 status.

The matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.