

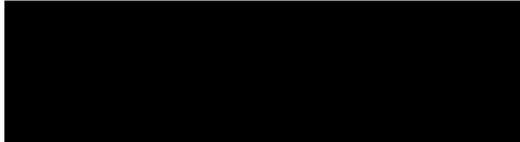
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: MAR 05 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, 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.

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 sustained.

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 associate pastor. The director determined that the petitioner had not established 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 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 that it would compensate the beneficiary with an annual \$26,000 salary plus room, board and transportation. The petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, filed on January 20, 2011, the petitioner stated that it had a net annual income of \$36,884.02. With the petition, the petitioner submitted a copy of its unaudited income statement for the year 2009, reflecting a net income of \$36,884.02.

In a March 17, 2011 request for evidence (RFE), the director instructed the petitioner to submit, *inter alia*, evidence pertaining to compensation to include evidence as enumerated in the above-cited regulation. In response, the petitioner submitted affidavits attesting to the salaries of its currently compensated employees.

In denying the petition, the director stated that the 2009 income statement reflected personnel costs of \$42,480 while the affidavits indicated that the salaries for the current employees exceeded \$60,4240, which is \$17,944 more than the 2009 budget. The director found that the petitioner had submitted no documentation for the year ended 2010 and no evidence of the non-salaried compensation that it stated that it would provide to the beneficiary.

On appeal, the petitioner submits an unaudited copy of its income statement for the year ended 2010, which reflects net income of \$90,882.36, with personnel costs of \$59,800. The petitioner also provided copies of its various bank statements for February 2010 through July 2011 and copies of lease agreements that it has with three other churches that pay the petitioner monthly rent of \$800 each. The petitioner has submitted sufficient documentation to establish how it 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. The petitioner has met that burden.

ORDER: The appeal is sustained.