

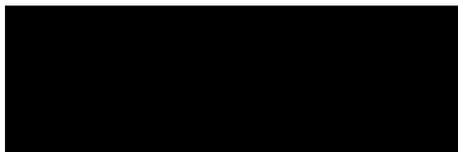
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: **MAR 30 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 matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to extend the beneficiary's status as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as a pastor. The director determined that the petitioner had not established how it intends to compensate the beneficiary or that the proffered compensation meets the standards for religious workers.

On appeal, counsel asserts that the petitioner submitted documentation in response to the director's request for evidence (RFE) showing that it "has sufficient income and assets to pay [the beneficiary's] salary" and that "the beneficiary has sufficient income as not to seek secular employment." 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 first issue presented on appeal 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 [Internal Revenue Service] 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.

(ii) *Self support.*

(A) If the alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.

(B) An established program for temporary, uncompensated work is defined to be a missionary program in which:

- (1) Foreign workers, whether compensated or uncompensated, have previously participated in R-1 status;
- (2) Missionary workers are traditionally uncompensated;
- (3) The organization provides formal training for missionaries; and
- (4) Participation in such missionary work is an established element of religious development in that denomination.

(C) The petitioner must submit evidence demonstrating:

- (1) That the organization has an established program for temporary, uncompensated missionary work;
- (2) That the denomination maintains missionary programs both in the United States and abroad;

- (3) The religious worker's acceptance into the missionary program;
- (4) The religious duties and responsibilities associated with the traditionally uncompensated missionary work; and
- (5) Copies of the alien's bank records, budgets documenting the sources of self-support (including personal or family savings, room and board with host families in the United States, donations from the denomination's churches), or other verifiable evidence acceptable to USCIS.

The petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that the beneficiary would receive compensation of \$24,000. The petitioner submitted no documentation with the petition to establish how it intended to compensate the beneficiary. In a February 8, 2011 RFE, the director instructed the petitioner:

Salaried or non-Salaried compensation: Please submit evidence to establish the petitioner's ability and intent to compensate the beneficiary. Evidence may include past evidence of compensation for similar position (W-2); audited financial statements/budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided (lease documentation, mortgage payment, etc.). 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.

Self-Support: If the alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination. . . .

The petitioner did not submit documentation responsive to the director's request. The AAO notes that the petitioner indicated in a March 14, 2011 letter that it hired the beneficiary on December 1, 2009, apparently in violation of his previously approved R-1 visa. The letter indicated that the beneficiary received housing of \$150.00. The petitioner also submitted copies of processed checks to the beneficiary from his previous employer, [REDACTED] and copies of processed checks to the beneficiary from [REDACTED] CA, which is the beneficiary's home address, according to a June 30, 2011 letter from his brother, and the address the beneficiary used as his mailing address on his IRS Form 1040, U.S. Individual Income Tax Return, for 2008 through 2010. The petitioner does not acknowledge that these checks were issued by the petitioning organization, although four are dated on December 31, 2009, February 5, 2010, March 1, 2010, and April 1, 2010, after the beneficiary's alleged hire date of December 1, 2009. It is incumbent upon the

petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The director determined that the petitioner failed to submit verifiable documentation of how it intends to compensate the beneficiary and denied the petition. On appeal, counsel asserts that the petitioner's previous representative did not "provide [in response to the RFE] an adequate explanation that financial documents were submitted showing that the Petitioner had resources to pay the beneficiary's salary." Counsel alleges that the petitioner submitted a 2009 profit and loss statement which indicated total revenues of \$875,000, pastor salaries and allowances of "over" \$312,000 and an unspecified net loss that was the result of legal fees in excess of \$252,000. However, the record does not reflect that the petitioner submitted this document in response to the RFE.

On appeal, the petitioner submits a copy of its unaudited profit and loss statements for the years 2008, 2009, and 2010, and for the first half of 2011 that show a net loss of over \$500,000 in 2008 and almost \$400,000 in 2009. The petitioner also submits copies of its monthly bank statements for the period September 2010 through March 2011. With the exception of the September 2010 statements, all of the bank statements are dated after the September 2, 2010 filing date of the petition.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director. Furthermore, 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 record before the director did not establish how the petitioner intends to compensate the beneficiary. The petitioner submitted no verifiable documentation of how it would pay the beneficiary a salary of \$24,000 despite clear instructions from the director in the RFE.

The director also determined that the proposed compensation for the proffered position did not meet the standards for religious workers. In her RFE, the director advised the petitioner that:

In conjunction with evidence of compensation, please note that INA 212(a)(4) addresses the inadmissibility of aliens based upon public charge grounds as follow[s]:

. . . or in the opinion of the Attorney General at the time of application or adjustment of status, is likely at any time to become a public charge is inadmissible.

The petitioner indicates that the beneficiary will be working 30+ hours a week and will be compensated \$24,000 a year. The beneficiary has three dependents that are listed on the petition. According to the Department of Health and Human Services (HHS), the amount of 125% of poverty guidelines for a family of four is \$27,563. Based on the petitioner's proposed wage for the beneficiary, the petitioner has not established that the beneficiary will be compensated at a level at which the beneficiary and accompanying family members will not become public charges. The beneficiary is therefore maybe left to secure his support through secular employment which is clearly precluded by 8 C.F.R. [§] 214.2(r)(1)(iv) and 8 C.F.R. [§] 214.2(r)(1)(v).

The petitioner did not address this issue in response to the RFE. On appeal, counsel states, "The fact that a religious worker does not earn income over the amounts provided in the poverty guidelines is not in itself indicate that they will become a public charge or take on additional work in a secular position." The beneficiary provides a statement in which he states that he lives rent-free in a home owned by his brother and sister and that he is "in no danger of going on public support." The petitioner also provided a letter dated June 30, 2011 from [REDACTED] who stated that he and his sister bought a condominium located at [REDACTED] CA for the purpose of providing his brother with a place to live while he worked in the local community.

The regulations governing R-1 nonimmigrant religious workers permit the alien to work for a minimum of 20 hours per week and provide that an alien can be self-supporting while working in the United States. Thus, there is no "standard" compensation requirement for religious workers. The proposed salary of \$24,000, the lodging provided by the beneficiary's brother and sister, and the lack of any evidence that the beneficiary has in the past either become a public charge or engaged in secular employment while receiving the same salary, require a withdrawal of this determination by the director.

The director also found that the petitioner had failed to submit documentation of the beneficiary's previous R-1 employment. The regulation at 8 C.F.R. § 214.2(r)(12) requires that any request for an extension of stay as an R-1 must include initial evidence of the previous R-1 employment (including IRS documentation if available).

The issue of the beneficiary's prior employment is significant only insofar as it relates to the application to extend that status. An application for extension is concurrent with, but separate from, the nonimmigrant petition. There is no appeal from the denial of an application for extension of stay filed on Form I-129. 8 C.F.R. § 214.1(c)(5). Because the beneficiary's past

employment is an extension issue, rather than a petition issue, the AAO lacks authority to decide those questions, and it is not addressed in this decision.

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.