

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

[REDACTED]

Date: **NOV 16 2012**

Office: CALIFORNIA SERVICE CENTER FILE [REDACTED]

IN RE:

Petitioner:

Beneficiary:

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:

[REDACTED]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you.


Ron Rosenberg

Acting 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 associate pastor. The director determined that the petitioner had not established how it intends to compensate the beneficiary.

On appeal, counsel asserts that the “the plain reading of the probative evidence submitted by the Petitioner clearly delineates a bona fide intention and manner in which Beneficiary will be compensated.” Counsel submits a brief and evidence 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 Nonimmigrant Worker, filed on August 11, 2011, that it would pay the beneficiary a yearly salary of \$24,000. The petitioner also stated that it currently had two employees and gross annual income of \$400,000. The petitioner did not indicate its net annual income, stating instead that it is a nonprofit organization. The petitioner identified its two employees as the senior pastor and the English ministry pastor.

With the petition, the petitioner submitted a copy of its "offering budget and actual" for the period January 1 through June 1, 2011. The document includes descriptions and a total for income but does not reflect any expenses. The petitioner also submitted a copy of its bank statement as of July 21, 2011, which reflected that it had an available balance of \$12,991.15.

In a request for evidence (RFE) dated October 6, 2011, the director instructed the petitioner to submit documentation in accordance with the above-cited regulation to establish how it intends to compensate the beneficiary. In its December 28, 2011 response, the petitioner stated that it had four paid employees, including its senior pastor with a salary of \$2,500 per month, its English ministry pastor, with a salary of \$1,700 per month, its music director, with a salary of \$1,500 per month, and its pianist, with a salary of \$500 per month. With the exception of the senior pastor, all of the employees had a start date in 2011, two in January and one in August. The petitioner also stated:

Assuming the Beneficiary is granted the R-1 visa at issue, [the petitioner] intends to compensate him with a monthly salary of \$2,000. [The petitioner's] ability to pay the stated amount will be derived from the salary which Beneficiary was being paid during his internship which amounted to \$1,000 per month, in conjunction with an additional \$1,000 per month which is accounted for by the former salary of a recently departed Associate Pastor, [REDACTED] As is

indicated on the requested past four California DE-6 (DE-9C) tax documents . . . [the petitioner] paid [REDACTED] \$1,000 in monthly wages since 2010. Furthermore, [the petitioner] initiated the \$1,000 in month compensation to the Beneficiary in October 2010.

[REDACTED] recently vacated his Associate Pastor position in late 2011, thereby, [REDACTED] and Beneficiary's former monthly wages sufficiently account for the offered \$2,000 in month wages for the Beneficiary. Additionally, we have attached for the USCIS' reference, [the petitioner's] mid 2011 Budgeted and Actual Offering . . . which indicates that our church's actual tithes and offering amounts reached \$183,341.31 for the months January to June, which conservatively projects to an annual offering receipt of approximately \$400,00, a sizeable giving amount which easily accounts for Beneficiary's stated wages. Thereby the intention and ability to pay Beneficiary's wages as our Associate Pastor, assuming R-1 visa approval is clearly displayed. This documentation proves that our Church has in the past, and remains capable of paying Beneficiary this salary in the future.

The petitioner submitted an uncertified copy of its State of California Employment Development Form (EDD) Form DE 6, Quarterly Wage and Withholding Report, for the quarter ending December 2010 on which it reported wages of \$3,000 each for the beneficiary, [REDACTED] and [REDACTED] who the petitioner identified as its senior pastor. The petitioner also submitted uncertified copies of its EDD Form DE 9C, Quarterly Contribution Return and Report of Wages Continuation, for the quarters ending March 2011, June 2011, and September 2011. These documents indicate that the petitioner paid four individuals, including the beneficiary and [REDACTED] a total of \$15,500, \$15,600, and \$14,400 in each of the three quarters. The documents also show that the petitioner paid [REDACTED] \$1,000 per month, and paid the beneficiary and [REDACTED] only \$1,000 during the September 2011 quarter. However, the 2011 documents are not signed or dated and the record contains no evidence that any of the wage and reporting reports were filed with the State of California.

In denying the petition, the director stated that the "wage reports show that the beneficiary was paid only half of the wages proffered during that period." The director further stated:

Initially the petitioner submitted a copy of a budget reflecting income but no expenses and a copy of its commercial bank statement ending July 21, 2011. While the statement reflected a balance of \$12,991.15, the statement is merely a snap shot in time and does not reflect the rue financial health of the petitioner.

On appeal, counsel states:

The Petitioner clearly noted that Beneficiary's employment prior to the instant petition was that of an associate pastor intern, a position which was held simultaneously by the departed [REDACTED]. Accordingly, it was the intention

of the Petitioner to hire one full time Associate Pastor at a monthly salary of \$2,000.00 USD, as it substantiated by the fact that Beneficiary and [REDACTED] both accounted for half of the permanent position salary during their internship periods. As such, [REDACTED] vacated monthly wage sufficiently accounts for Petitioner's proffered \$2,000.00 USD full time wages for the Beneficiary. Thereby, Petitioner's intention and method of compensation [sic] Beneficiary were pertinently displayed, solely on the merits of the aforestated facts.

The AAO concurs that the director failed to recognize the petitioner's statement regarding its intention to consolidate the two salaries in order to pay the beneficiary a \$2,000 monthly payment. The AAO, however, does not concur with counsel's assertion that the California EDD Forms DE 6 and DE 9C sufficiently establish the petitioner's ability to pay the intended wage. The regulation at 8 C.F.R. § 214.2(r)(11)(i) provides that the petitioner must submit IRS documentation, such as IRS Form W-2 or certified tax returns or explain why such documentation is not available. The petitioner submitted no IRS documentation nor did it explain the absence of such documentation. The regulation also requires that if IRS documentation is unavailable, the petitioner must submit comparable, verifiable documentation. As previously discussed, the California quarterly tax returns are not certified, the 2011 documents are not signed, and none of the returns contain any indicia that they were filed with the appropriate state authority. Furthermore, although the petitioner states that its pastor's salary is \$2,500 per month, the quarterly wage reports do not reflect that he has received this salary at any time in the quarters reported and raises questions regarding the petitioner's ability to meet its financial obligations.

Counsel asserts that the budget and bank statement submitted by the petitioner "functioned as supplementary evidence demonstrating the existence of sufficient funds to remunerate the beneficiary." Counsel's assertion is without merit. The petitioner's "Offering Budget" alone does not provide evidence of the petitioner's financial standing as it does not reflect any obligations against that income. The regulation provides that the petitioner may establish its ability to compensate the beneficiary through the submission of "budgets showing monies set aside for salaries, leases, etc." The "Offering Budget" provided by the petitioner does not identify any monies set aside for any of its financial obligations. Additionally, a single bank statement on one given day provides no verification of the petitioner's financial status except on that one day.

The regulation requires the petitioner to submit competent and verifiable documentation of how it intends to compensate the beneficiary. The petitioner has failed to meet this requirement.

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.