



U.S. Citizenship
and Immigration
Services

D13

[Redacted]

Date:

Office: CALIFORNIA SERVICE CENTER FILE: [Redacted]

OCT 15 2012

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.

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,

U. Deardnd
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 its Brazilian pastor. The director determined that the petitioner had not established that it qualifies as a bona fide nonprofit religious organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code (IRC) and how it intends to compensate the beneficiary.

On appeal, the petitioner states that its “mistakes were inadvertent, made on the basis of inaccurate counsel from both individuals and professionals.” 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 first issue presented is whether the petitioner has established that it is a bona fide nonprofit tax-exempt religious organization.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(3) defines a tax-exempt organization as “an organization that has received a determination letter

from the IRS [Internal Revenue Service] establishing that it, or a group it belongs to, is exempt from taxation in accordance with section [] 501(c)(3) of the [IRC].” The regulation at 8 C.F.R. § 214.2(r)(9) provides:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the IRS showing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or
- (iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3), or subsequent amendment or equivalent sections of prior enactments, of the [IRC], as something other than a religious organization:
 - (A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;
 - (B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;
 - (C) Organizational literature, such as books, articles, brochures, calendars, flyers, and other literature describing the religious purpose and nature of the activities of the organization; and
 - (D) A religious denomination certification. The religious organization must complete, sign and date a statement certifying that the petitioning organization is affiliated with the religious denomination. The statement must be submitted by the petitioner along with the petition.

The petitioner submitted none of the required documentation with the petition, filed on June 24, 2011, to establish that it is a bona fide nonprofit religious organization. In a September 15, 2011 request for evidence (RFE), the director instructed the petitioner to submit documentation in

accordance with the above-cited regulation. The petitioner again failed to provide any of the required documentation.

On appeal, the petitioner submits a copy of a February 3, 2012 letter from the IRS advising the petitioner of its employer identification number (EIN). The petitioner has submitted no documentation to establish that it is a bona fide nonprofit religious organization as defined by the regulation.

The director also determined that the petitioner had failed to establish how it intends to compensate the beneficiary.

The 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 [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 indicated on the Form I-129, Petition for a Nonimmigrant Worker, that the beneficiary would receive wages of \$300 per week. The petitioner also indicated that it had a gross annual income of \$299,192.77 and an annual net income of \$235,639. At question 9 in Section 1 of the Form I-129 Supplement R, the petitioner stated that the beneficiary would be supported by the petitioning organization and the Southern Baptist Convention.

The petitioner submitted a letter from the [REDACTED] verifying the beneficiary's position as an assistant pastor with the petitioning organization but containing no offer of financial assistance to the petitioner on behalf of the beneficiary. The petitioner provided a copy of the beneficiary's bank statements but did not explain their relevance in this proceeding. The petitioner submitted no other documentation with the petition to establish how it intends to compensate the beneficiary.

In response to the director's RFE, the petitioner submitted copies of five unprocessed checks dated in July, August, September, October and November of 2011, each payable to [REDACTED] in the amount of \$633 and indicating that it was for the beneficiary's rent. The petitioner also submitted copies of five checks written in September and October 2011 in the amount of \$200. The checks do not contain a payee but indicate that they were for the beneficiary. Bank documentation also includes two debit card transactions for the beneficiary totaling \$96.11.

On appeal, the petitioner submits an unaudited copy of its "Analysis of Revenues & Expenses" for the period January to December 2011. The document reflects total revenue of \$970,623.32, total expenses of \$964,454.62, and net income of \$6,168.70. The petitioner submitted no other documentation, such as bank statements, that would corroborate any of the financial information contained within the unaudited financial statements. In a February 5, 2012 statement, the petitioner stated that this document shows the salary range for its pastors. However, the petitioner does not state that the beneficiary is replacing any of these individuals, and the document does not otherwise establish how the petitioner intends to compensate the beneficiary.

The petitioner has failed to establish how it intends to compensate the beneficiary.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.