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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**

[Redacted]

b13

Date: **SEP 27 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:

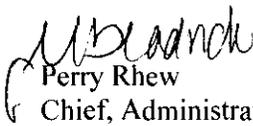
[Redacted]

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,


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 an Islamic society. 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 imam. The director determined that the petitioner had not established how it intends to compensate the beneficiary.

On appeal, counsel asserts that the director “erred in overlooking the fact that Beneficiary’s presence will lead to a significant increase in Petitioner’s income.” 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 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 indicated on the Form I-129, Petition for Nonimmigrant Worker, filed on June 27, 2011, that it would pay the beneficiary \$2,000 per month plus housing. The petitioner also stated that it had gross annual income of \$50,000 but did not indicate its annual net income. The petitioner submitted a copy of its unaudited financial statement for the period January 2010 through May 2011, indicating that it had incurred expenses of \$26,428 on income of \$32,552 during the 17-month period. The petitioner reported it also earned \$125 bank interest and indicated a balance on its financial statement of \$6,500. The petitioner also submitted copies of IRS Form 1099-MISC, Miscellaneous Income, that it issued to [REDACTED] in the amount of \$19,800 in 2006 and \$30,200 in 2007. The petitioner submitted no other documentation to establish how it intends to compensate the beneficiary.

In a September 15, 2011 request for evidence (RFE), the director instructed the petitioner to:

Provide verifiable evidence of all financial support, including room and board, or other support for the beneficiary by submitting a description of the location where the beneficiary will live, a lease to establish where the beneficiary will live, or other evidence acceptable to USCIS.

In response, the petitioner reiterated that the beneficiary would be paid \$2,000 per month and resubmitted a copy of a tax bill that it stated was for the home the imam would occupy. The director denied the petition, finding that although the 2007 IRS Form 1099-MISC indicated that the petitioner paid an imam more than the proffered wages in 2007, its financial statements for 2010 and 2011 do not support its ability to compensate the beneficiary in the amount of \$24,000 per year.

Counsel argues on appeal that the presence of an imam will increase the income of the petitioner and thus contribute to its ability to compensate the beneficiary in the proffered amount. The

petitioner submitted copies of its monthly bank statements in 2011, which counsel alleges is evidence that the beneficiary can increase its income when it has an imam. Counsel also states that the petitioner has accumulated a reserve of \$27,000 during “the past three months” that is “designated for the purpose of covering extra expenses as they arise.” The petitioner submitted copies of its monthly bank statements for November and December 2011 and for January 2012, which show ending balances of \$27,979.68, \$26,961.87, and \$27,030.21, respectively.

Counsel’s argument is without merit. 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’l Comm’r 1978). The petitioner’s documentation does not establish how it would compensate the beneficiary as of the date the petition was filed. Additionally, the petitioner has submitted no documentation to establish how it intends to compensate the beneficiary in the proffered amount at any time in the near future. The petitioner provides only speculation that its resources will increase to a level that it would allow it to be able to compensate the beneficiary at the rate of \$2,000 per month. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm’r 1972)).

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.