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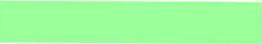
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

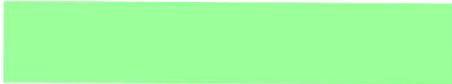
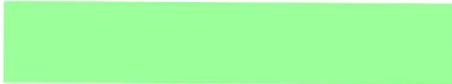


U.S. Citizenship
and Immigration
Services



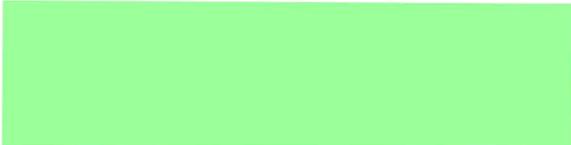
Date: FEB 04 2013

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, 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.

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 AAO will withdraw the director's decision and will remand the petition for further action and consideration.

The petitioner is a Hindu organization. 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 a head priest. The director determined that the petitioner had not established how it intends to compensate the beneficiary and that it has extended a qualifying job offer to the beneficiary.

On appeal, counsel asserts that "the petitioner has accumulated enough money in net assets to pay the beneficiary for the entire three-year period of employment" and that "the petitioner's need for another head priest should not be based solely on current membership." 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 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 March 19, 2012, that the beneficiary would be paid \$20,000 per year and provided with room, board, and meals or a food allowance. The petitioner also stated that it had one employee, annual gross income of \$120,000, and annual net income of \$30,000. In Section 1 of the Form I-129 Supplement R, Employer Attestation, the petitioner stated it had a membership of 300. The petitioner also indicated that its current employee was also a priest. In an undated "Job & All Description," the petitioner stated, "There are 3000 permanent members in the organization however more than 300 people avail [sic] services such as hospital, community service, day care for elders, hospice services and housing services. . . ."

With the petition, the petitioner submitted a partial copy of its February 2012 monthly bank statement which reflects a beginning balance of \$116,837.40 and an ending balance of \$117,789.22. The petitioner provided photographs that included a two-story house. However, the petitioner made no representations about what the photographs depicted.

In a March 23, 2012 request for evidence (RFE), the director sought additional information about the membership of the petitioner's organization, instructing the petitioner to submit a membership list. The director also instructed the petitioner to submit documentation in accordance with the above-cited regulation to establish how it intends to compensate the beneficiary.

In an April 22, 2012 letter submitted in response, the petitioner stated that it had erred in stating it had a membership of 3,000 and that the number should have been 300. The petitioner further

stated that it had 20 “permanent members” and that “more than 300 people are available to provide services such as medical, community service, day care for elders, hospice and housing.” The petitioner submitted a list consisting of over 300 names, some of which contain only one name for the individual. The petitioner stated:

Even though our membership is 300, there are a large number of non-members who attend Church on special occasions (Hindu religious holidays). In addition, the current priest works only 5 days a week and frequently is called upon to perform religious services such as weddings, funerals, hospital chaplaincy and other duties outside of the services held regularly at the Church. As a result we have found it necessary to have a resident priest . . . wherein it will free up the duties of the current priest so that he/she can become available for other religious services. Furthermore, we anticipate that the congregation has grown and will continue to grow, this in turn, has currently forced a demand for a second priest, particularly, we plan on expanding by obtaining a larger building for our place of worship. . . .

The petitioner further stated that it wished “to clarify” that its “congregation does not consist of more than 30-35 people at any given time,” and that on the occasions when attendance exceeds 35, “services are held at [REDACTED] which is another Afghan Temple that permits us to use their facilities as we are of the same denomination.” The petitioner submitted an undated letter from [REDACTED] who identified himself as the petitioner’s president, and stated that he is the owner of the property located at [REDACTED] and that he had given the petitioner permission “to conduct religious services” at the address, and an April 24, 2012 statement from the [REDACTED] in Hicksville, NY, confirming that it has allowed the petitioner to use its banquet hall “to have a place to use for any special occasion, religious services and/or any other functions of their choice. This is offered free of charge.”

The petitioner also submitted a copy of its March 2012 monthly bank statement which shows an ending balance of \$119,846.40 and photographs that the petitioner states are of the “living arrangements of the proposed employee.” The petitioner further submitted unaudited copies of its IRS Form 990-EZ, Return of Organization Exempt From Income Tax, for the years 2008 through 2011. The returns show a net balance at line 21 of \$8,501; \$15,643; \$97,995; and \$113,620, respectively. Total revenue at line 9 is \$20,211; \$25,063; \$85,003; and \$29,135, respectively.

In denying the petition, the director stated that:

[The IRS Forms 990-EZ] show[] a consistent increase in the total revenue, mostly as a result of increased contributions and membership dues and assessments. Since the petition’s [sic] organization appeared to be growing, in December 2010 the petitioner submitted a petition to employ a nonimmigrant religious worker to fill the position of a Head Priest. That beneficiary was admitted to the United

States on September 12, 2011 and commenced employment with the petitioner thereafter.

However, the most recent year of 2011 reflects a substantial decline in the revenue, a result of less contributions and membership dues. Line "L" of Form 990-EZ for this year indicates the petitioner had \$31,585.00 of gross receipts. This figure is far less than the total revenue of \$85,003 shown on the 2010 return. Furthermore, this data conflicts with the gross income that was stated by the petitioner as being \$120,000.00

In addition, evidence of record indicates the membership of the organization has declined, and thus there would not be the need for an additional Head Priest and a bona fide job offer.

On appeal, counsel states:

While the petitioner's total revenue did decline from the amount received in 2010, the petitioner's total revenue for 2011 was still higher than the amounts received in 2008 and 2009. In addition, the petitioner's net assets have consistently increased each year. . . . Regardless of total revenue, the petitioner has accumulated enough money in net assets to pay the beneficiary for the entire three-year period of employment.

Counsel asserts that "the petitioner received a large donation from a single individual in 2010, which accounted for a significant portion of the total revenue." The petitioner submits a copy of its April 2012 monthly bank statement, which reflects an ending balance of \$123,172.66.

There is nothing in the record to support counsel's assertion regarding the "large donation" allegedly received by the petitioner in 2010. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Nonetheless, the revenue on the 2010 tax return is an anomaly; but for that one year, the tax returns reflect a generally consistent income. Furthermore, the petitioner's net assets in 2010 and 2011, consistent with its bank statements, are sufficient to establish that the petitioner has ample funds to compensate the beneficiary in the amount stated on the Form I-129. The AAO withdraws the director's determination to the contrary.

The director also questioned the size of the petitioner's congregation and the need for an additional priest, stating:

The instant petition indicated the petitioner has 300 members, and in the petitioner's letter of support they stated they had 3000 permanent members. When

USCIS requested information concerning the membership of the congregation, the petitioner's response was unclear. The petition stated they made an error in their original stated membership figures, and that there are 20 permanent members in the organization and more that [sic] 300 people are available to provide services such as medical, community service, day care for elders, hospice and housing. As evidence, the petitioner attached a list of 350 names. However, this information is not consistent with the tax documents submitted that shows a decline in the contributions and membership dues. That data appears to indicate the petitioner currently has far fewer members than when they made application for the current Head Priest in 2010 when they had 50 members.

Counsel states:

The Service determined that the petitioner's membership had declined because the amount of contributions and membership dues received by the petitioner declined from 2010 to 2011. However, contributions and membership dues do not serve as an accurate indication of the petitioner's overall membership. Members are not required to donate money on an annual basis. Many of the petitioner's members are indigent and do not have money available to donate. . . .

Overall, the petitioner's congregation currently consists of approximately 350 members. Twenty of these members participate on a daily basis, while the rest of the members attend weekly services. The size of the petitioner's congregations has steadily increased each year that the petitioner's organization has been in existence. [Footnote omitted.]

Counsel statements regarding the petitioner's congregational membership are not supported by documentation in the record. Accordingly, these statements are of no evidentiary value. *Id.* However, the director's conclusions are also not supported by the evidence of record. While it is true that membership dues and contributions may be indicative of reduced membership, there is no evidence in the record to conclusively determine that the reduction in these income items is the result of diminished membership. The director also refers to the petitioner's prior petition on behalf of another individual. However, as the petitioner's claims in that petition have not been made a part of the record there is nothing in the record that can be evaluated in terms of their consistency and veracity. There is nothing in the record to suggest that the petitioner's total membership has declined.

The AAO concurs with the director's statement that the petitioner has not provided a clear picture of its membership. The AAO accepts that there is a core group of members who will actively participate in all church activities and another group that may only attend on certain days or certain occasions. While the petitioner submitted a membership roster, it is not clear how many of these individuals attend services on a regular basis, why the petitioner identifies them separately from its "permanent members," or why they are classified as members at all.

The director concludes that, because the beneficiary and the petitioner's current head priest are related, the petition is an attempt to circumvent U.S. immigration laws in order to gain entrance for a family member. Counsel states on appeal that "in the Hindu religion, a person often becomes a priest through lineage priesthood."

The petitioner has stated that the purpose of a second head priest is to cover for the first priest when he is occupied with other duties. This explanation presents a reasonable argument for the beneficiary's services. However, as the record does not clearly establish the petitioner's membership or the duties that will be assigned to each priest, the AAO will remand the record for additional fact finding by the director.

On remand, the director shall also address whether the petitioner still qualifies as a bona fide nonprofit religious organization. The determination letter that the petitioner submitted from the IRS indicates that it is an advance ruling that expired on December 31, 2012. While the petitioner met the requirements of regulation at 8 C.F.R. § 214.2(r)(9) at the time the petition was filed, the petitioner must remain eligible for the visa classification until the petition is approved.

The matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.