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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]

Date: **FEB 21 2013**

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 (the 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 its choir mistress. The director determined that the petitioner had not established how it intends to compensate the beneficiary, that the proffered position qualifies as that of a religious occupation, and that the beneficiary will be employed at least 20 hours per week.

On appeal, counsel asserts that, contrary to the director's findings, the petitioner submitted documentation to establish the beneficiary's eligibility for the visa classification. Counsel provides a letter 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.

In Part 5, question 7 of the Form I-129, Petition for a Nonimmigrant Worker, filed on October 27, 2011, the petitioner stated that it would pay the beneficiary \$21,000 per year. However, in questions 14 and 15, the petitioner answered "N/A 501(c)" in responding to inquiries regarding its gross and net annual income. The petitioner appears to be under the assumption that a nonprofit organization does not have income; however, in order to operate, the organization must have a source of income which would then be reported at questions 14 and 15. With the petition, the petitioner submitted copies of its September 30, 2011 bank statements for two separate accounts. One statement reflects an ending balance of \$38,529.86 and the other an ending balance of \$9,984.07.

In a March 1, 2012 request for evidence (RFE), the director instructed the petitioner to submit verifiable documentation in accordance with the above-cited regulation to establish how the petitioner intended to compensate the beneficiary. In response, the petitioner resubmitted the September 30, 2011 bank statements. In denying the petition, the director stated:

The petitioner has only submitted one month of bank statements which is not sufficient to show a true account of the organization's financial status and their ability to compensate the beneficiary as stated on the petition for the period of employment.

On appeal, the petitioner submits copies of its bank statements for March through April 2012, which reflect ending balances in each month of \$39,529.86 in one account, which remained unchanged from the September 2011 statement, and ending balances ranging from \$14,667.30 to \$19,335.40 in the second account. The petitioner also submitted unaudited copies of its income statements for 2010 and 2011 and copies of its budgets for 2010 and 2011.

The petitioner failed to submit this documentation in response to the director's RFE. 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 Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

The record before the director did not contain sufficient verifiable documentation to establish how the petitioner intends to compensate the beneficiary. Even if the AAO were to consider the documentation submitted on appeal, the AAO notes that the bank statements submitted on appeal are dated after the filing date of the petition. 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). Furthermore, it is not clear that the 2010 and 2011 budgets reflect any expense categories and neither contains a line item for salaries. Additionally, the income statements do not reflect any expenses or obligations against the income.

The petitioner has failed to submit competent and verifiable documentation of how it intends to compensate the beneficiary.

The second issue is whether the petitioner has established that the proffered position qualifies as that of a religious occupation.

The regulation at 8 C.F.R. § 214.2(r)(3) provides:

*Religious occupation* means an occupation that meets all of the following requirements:

- (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination;
- (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination;
- (C) The duties do not include positions which are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible; and

(D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

The proffered position is that of choir mistress. In his October 25, 2011 letter accompanying the petition, counsel stated that the beneficiary "will supervise all musical services at the church and the choral groups. She will also arrange musical performances and play the musical instruments for the church services." In a September 12, 2011 letter to the beneficiary, the petitioner's president stated:

Since we have a bilingual worship services . . . we need a director like you, who can manage music both in English, Malayalam and other regional languages of India with equal dexterity.

It is hoped that as choir Director, you will be able to assemble a group and train them to sing regularly for the church, and to actively participate in other community outreach activities.

The petitioner submitted no other documentation with the petition regarding the proffered position.

The director sought additional documentation regarding the position, instructing the petitioner in her RFE to:

**Requirements for the Position:** Provide a detailed explanation as to the requirements for the position offered, and how the beneficiary meets those requirements. Submit the religious denominations or organization's by-laws, manuals, brochures, or guidebooks establishing the requirements for the position.

**Proffered Position:** Provide a detailed description of the work to be done, including specific job duties, level of responsibility/supervision, and the number of hours per week to be spent performing each duty. Include a daily and weekly schedule for the proffered position. List the minimum education, training and experience necessary to do the job and submit documentary evidence to show that the beneficiary has met such requirements. Further, explain how the duties of the position relate to a traditional religious function. [Emphasis in the original.]

**Beneficiary's Position:** Submit documentary evidence that the governing body, recognizes the position of Choir Mistress as directly related to the religious creed of the denomination. Also submit documents showing how the governing body, defines the position of choir mistress.

In response, the petitioner resubmitted the September 12, 2011 letter from [REDACTED] and certificates indicating the beneficiary had completed music courses at [REDACTED] in Poona, India. In denying the petition, the director stated that while “USCIS does not challenge the role music plays in many religious organizations; [] in this case, the petitioner has not established that the position of ‘Choir Mistress’ is a qualified religious occupation in its denomination.” The director found the petitioner had submitted none of the documentation requested in the RFE.

On appeal, the petitioner submits a June 26, 2012 letter from [REDACTED] senior pastor of the [REDACTED] in which he states that “music is an integral part of the worship services in the [REDACTED]. The Choir Director is a salaried position in some of our churches.” The petitioner also submits a July 11, 2012 letter from [REDACTED] on the letterhead of the [REDACTED]. [REDACTED] does not identify his position but states that “music is an integral part of Worship Services of the [REDACTED].” In a July 26, 2012 letter, [REDACTED] coordinator of prayer ministries for the [REDACTED] states:

The order of worship for the [REDACTED] does not provide for any non-musical forms of liturgy. All public worship services contain music and such musical worship is an integral part of the services. The lyrics of the music used contain specific references to our theological beliefs.

As with other evidence, the petitioner did not submit any of this documentation with the petition or in response to the RFE. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764; *Matter of Obaigbena*, 19 I&N Dec. 533. If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not consider the sufficiency of the evidence submitted on appeal.

Regardless, the evidence does not establish that the proffered position qualifies as that of a religious occupation as that term is defined by the regulation at 8 C.F.R. § 214.2(r)(3). The AAO notes that the director acknowledged the role music plays in many religious organizations but found no evidence that the position is recognized as a religious occupation in the petitioner's denomination. Letters are not primary evidence. The regulation at 8 C.F.R. § 103.2(b)(2)(i) provides for secondary evidence if required primary evidence does not exist or cannot be

obtained. The petitioner has provided no primary evidence that the duties of the beneficiary's position are primarily related to and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination and of the denomination's recognition of the position as a religious occupation and has provided no explanation for its absence.

The third issue is whether the petitioner has established that the beneficiary seeks to enter the United States to work in at least a part-time position of 20 hours per week.

The regulation at provides:

(1) To be approved for temporary admission to the United States, or extension and maintenance of status, for the purpose of conducting the activities of a religious worker for a period not to exceed five years, an alien must:

(ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week).

In his September 12, 2011 letter, [REDACTED] stated that the position "will be a full time employment." In her RFE, the director instructed the petitioner to submit a detailed description of the work to be done and a daily and weekly schedule of the duties. The petitioner did not address this issue in its response; however, it provided documentation from its website indicating that on Saturday, it held Sabbath School at 10:00 and worship service at 11:45 am.

On appeal, the petitioner submits a work schedule for the beneficiary and a "graphic representation of the work to be done." As discussed previously in this decision, the petitioner failed to provide this documentation in response to the RFE. Failure to submit requested evidence constitutes ground to deny the petition. 8 C.F.R. § 103.2(b)(14).

The petitioner failed to establish that work in the proffered position would encompass at least 20 hours per week. Accordingly, the petitioner failed to establish that the beneficiary seeks to enter the United States to work in at least a part-time position of at least 20 hours per week.

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.