



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

JAN 09 2013

Date:

Office: CALIFORNIA SERVICE CENTER FILE: [Redacted]

IN RE:

Petitioner:
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:

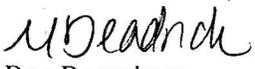
SELF-REPRESENTED

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,


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 extend the beneficiary's status 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 of Hispanic ministries. The director determined that the petitioner had not established how it intends to compensate the beneficiary.

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 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 its November 1, 2011 letter submitted in support of the petition, the petitioner, through its senior pastor, [REDACTED], stated that the beneficiary would receive a compensation package of \$25,000 per year, consisting of “a base salary of \$13,000 annually for expenses. Housing and transportation is to be provided by the church with an associated value of \$12,000 per year.” In Part 5 of the Form I-129, Petition for a Nonimmigrant Worker, filed on November 8, 2011, the petitioner stated that it had an annual gross income of \$200,000 and an annual net income also of \$200,000.

With the petition, the petitioner submitted a copy of its unaudited “balance of funds” statement as of September 30, 2011. The document reflects total current assets of \$8,924.68 and total current liabilities of \$17,800.44. The document contains the line item “Equity of all Funds” in the amount of \$503,026.77. However, the petitioner provides no other explanation or other documentation regarding this entry. The petitioner submitted no other documentation to establish how it intends to compensate the beneficiary.

In a February 21, 2012 request for evidence (RFE), the director instructed the petitioner to submit evidence in accordance with the above-cited regulation to establish how it intends to compensate the beneficiary. In an April 10, 2012 letter submitted in response, the petitioner’s treasurer, [REDACTED] stated that the beneficiary had been previously approved for R-1 status but “was not able to use his R-1 status” and had “never [been] an employee of” the petitioning organization. Therefore, the petitioner “does not have any tax returns for him.” Ms. [REDACTED] stated that [REDACTED] occupied a position similar to that offered to the beneficiary and that she earned taxable compensation of \$31,255.66, consisting of wages of \$12,175, a housing allowance of \$12,000 and health insurance of \$7,080.66. Although Ms. [REDACTED] stated that a copy of Mrs. [REDACTED] tax return for 2011 was attached, the return was not included with the petitioner’s response to the RFE. Furthermore, there is nothing in the record to indicate that the beneficiary would replace Mrs. [REDACTED] who is identified in the record as the petitioner’s music/media

minister; therefore, evidence of the petitioner's payment of her salary is not verifiable documentation of how it would compensate the beneficiary.

The petitioner also submitted a March 30, 2012 letter from [REDACTED] who stated he was the beneficiary's son-in-law and that he and his wife would provide the beneficiary with room and board. In a March 28, 2012 letter, another of the beneficiary's sons-in-law, [REDACTED] stated that he would be "personally backing [the beneficiary's] ministry through prayers, assistance and finance." The director denied the petition, finding that the petitioner's "balance of funds" statement does not reflect that it had sufficient funds to compensate the beneficiary, and that the petitioner submitted no corroborating or supporting documentation to establish that the beneficiary's sons-in-law had sufficient financial resources to provide the financial support they indicated in their letters.

On appeal, the petitioner submits copies of the Schedule C from IRS Form 1040, U.S. Individual Income Tax Return, for 2011 for its pastor, [REDACTED], and Mrs. [REDACTED]. The petitioner also provides financial documentation for Mr. [REDACTED] and Mr. [REDACTED]. As previously discussed, the petitioner's payment of salaries to its pastor and music minister is not evidence of its ability to also pay the beneficiary. The petitioner does not allege, and the record does not establish, that the beneficiary will replace either of these individuals. While the petitioner may have sufficient funds to pay its two current employees, evidence of its ability to make this commitment is not evidence of its ability to meet additional financial obligations.

In an unsigned June 15, 2012 letter, Ms. [REDACTED] who also identifies herself as the petitioner's accountant, states:

General giving for the five months ending May 31, 2012 has increased in excess of \$10,000 over the same time period in 2011. Giving for the first two weeks of June, 2012 is up \$3,600 over the same two weeks for last year. Expenses have only increased slightly due to the fact that most expenses are fixed costs and do not increase with number of attendees. Due to this growth both financially and in attendance, there are more than adequate funds to support another minister and his wife.

To address the discrepancy mentioned in your denial regarding the \$17,800.44 of the current portion of the mortgage payable. I attest that this is simply the amount of the mortgage that would be payable over the span of the next twelve months as part of the monthly mortgage payment. There is not an additional loan. The mortgage provided is current and has been current since its inception and is funded by the General Giving each month.

The petitioner provides no documentary evidence to support Ms. [REDACTED] assertions about the church's income. 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'l

Comm'r 1972)). The petitioner submits a copy of its unaudited "Balances of Funds" statement for May 31, 2012 which reflects total cash of \$25,359.54. The statement indicates accounts payable of \$2,115.67 but does not distinguish its current assets and current liabilities as it did on its previous "Balances of Funds" statement. The statement also indicates \$552,015.54 in "Equity of all Funds." Again, however, the petitioner does not provide any other explanation of this entry. Additionally, the information for 2012 is 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). Accordingly, the evidence of the petitioner's financial standing as of May 2012 does not establish its ability to compensate the beneficiary as of the filing date of the petition.

Regarding the pledge of support from the beneficiary's family members, as previously cited, the USCIS regulation at 8 C.F.R. § 214.2(r)(11), requires the petitioner to "state how the petitioner intends to compensate the alien" and to "submit verifiable evidence explaining how the petitioner will compensate the alien." When filing the petition, the petitioner stated that it would provide the beneficiary with a housing and transportation allowance of \$12,000 annually. The petitioner is not permitted to change material terms of employment after filing. *Id.* Regardless, the cited regulation twice specifies the petitioner, *i.e.*, the employer, as the entity that will "compensate the alien." The regulation does not state that the petitioner can discharge this responsibility by arranging for third parties to compensate the alien. Evidence of the financial ability of family members to provide for the beneficiary is not evidence of the petitioner's ability to provide the proffered allowance.

The petitioner has failed to provide verifiable documentation in accordance with the regulation at 8 C.F.R. § 214.2(r)(11) to establish how it intends to compensate the beneficiary.

Beyond the decision of the director, the petitioner has failed to establish that it is a bona fide nonprofit religious organization.

The 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 establishing that it, or a group it belongs to, is exempt from taxation in accordance with section[] 501(c)(3) of the Internal Revenue Code [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.

With the petition, the petitioner submitted a copy of an October 9, 2008 letter from the IRS, confirming the petitioner's Employer Identification Number (EIN) and a copy of its articles of incorporation. In her RFE, the director instructed the petitioner to submit a letter from the IRS "showing that the organization is exempt from taxation in accordance with section 501(c)(3) of the [IRC] as it relates to religious organizations." In response, the petitioner submitted a copy of a June 8, 2002 letter from the IRS advising the petitioner:

For federal income tax purposes only, churches, their integrated auxiliaries, and conventions or associations of churches are treated as organizations described in section 501(c)(3) of the Internal Revenue Code of 1986, without applying for formal recognition of such status. To qualify for this treatment, an organization must meet all the organizational and operational requirements of section 501(c)(3) of the Code. . . . Please note, however, that no determination letters are issued on these cases.

In order to be formally recognized by the Internal Revenue Service as being tax exempt, an organization must apply for exemption. We have no record of your organization being recognized as exempt from federal income tax under section 501(c)(3) of the Code as a church. . . .

The above-cited regulation requires the petitioner to submit a "currently valid determination letter from the IRS showing that the organization is a tax-exempt organization." As the petitioner has not provided a determination letter from the IRS, and the 2002 IRS letter indicates the petitioner has never applied for such a letter, the petitioner has failed to establish that it is a bona fide nonprofit religious organization as defined by the regulation.

Additionally, the petitioner has not established that the beneficiary has been a member of its denomination for two full years immediately preceding the filing of the visa petition. The regulation at 8 C.F.R. § 214.2(r)(1) states that, 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:

- (i) Be a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least two years immediately preceding the time of application for admission.

The petition was filed on November 8, 2011. Therefore, the petitioner must establish that the beneficiary was a member of its denomination for at least the two years immediately preceding that date.

In Part 9 of the Form I-129, the petitioner stated:

In 2009, we petitioned for R-1 status for [the beneficiary]. Due to unexpected circumstances in Nicaragua, [he] was unable to use he R-1 status until recently. His R-1 status though unused expires in November, 2011. Now that issues are resolved in Nicaragua, we are requesting a renewal of his R-1 status.

In its November 1, 2011 letter, the petitioner stated that the beneficiary "has operated with the . . . both establishing and mentoring churches." In section 1 of the Form I-129 Supplement R, the beneficiary also stated, "Prior to being affiliated to [the petitioning organization, the beneficiary] was affiliated with the ; [The petitioner] has no professional affiliation with this particular denomination."

The petitioner submitted no documentation to establish when the beneficiary became affiliated with the petitioning organization. The record does not establish that the beneficiary was a member of the petitioner's denomination for the two years immediately preceding the filing of the visa petition.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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.