



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[REDACTED]  
Date: **JAN 09 2013**

Date:

Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE:

Petitioner:

Beneficiary:

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,

*M Deardorff*

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 Act, 8 U.S.C. § 1101(a)(15)(R)(1), to perform services as a resident pastor. 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 finding the petitioner did not establish its ability to compensate the Alien under 8 C.F.R. § 214.2(r)(2) [sic] because the petitioner submitted sufficient proof of income demonstrating its ability to compensate the Alien in accordance with 8 C.F.R. § 214.2(r)(2) [sic].” 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.

In its undated letter submitted in support of the appeal, the petitioner, through its pastor [REDACTED] stated that the beneficiary would serve as pastor in its "new location in Englewood, Colorado." On the Form I-129, Petition for a Nonimmigrant Worker, filed on March 27, 2012, the petitioner stated that the beneficiary would receive a salary of \$24,000 per year and \$12,000 per year for housing expenses and meals. In Part 5 of the Form I-129, the petitioner stated that it currently had one employee, an annual gross income of \$300,000, and an annual net income of \$0.

With the petition, the petitioner submitted a copy of its unaudited profit and loss statement for the period January through December 2010, which reflects net income of \$118,090.97. The petitioner also submitted an uncertified and unsigned copy of its IRS Form 941, Employer's Quarterly Federal Tax Return, for the quarter ending December 2010 on which it reported it paid \$9,061.08 in compensation to two employees.

In an April 20, 2012 request for evidence (RFE), the director requested additional documentation to establish how the petitioner intends to compensate the beneficiary. In response, the petitioner identified eight employees (with one listed as an independent contractor) but provided no other documentation to establish how it would compensate the beneficiary. Counsel asserts on appeal that the RFE "failed to provide specific faults with the provided financial documentation." Nonetheless, the director quoted the regulation cited above, which outlines the acceptable documentation to establish how the petitioner would provide compensation to the beneficiary. The petitioner submitted none of the documentation outlined, and the director advised the petitioner that the documentation submitted was insufficient. The 2010 profit and loss statement is for a period that precedes the filing date of the petition by more than a year and the record contains no documentation to validate any of the figures contained within the statement. Additionally, the petitioner's uncertified federal tax return reports wages paid for current

employees only and provides no evidence of the petitioner's ability to compensate any additional employee.

On appeal, the petitioner submits copies of its unaudited profit and loss statements for 2011 and the first seven months of 2012, and copies of its unaudited balance sheets as of December 31, 2011 and July 31, 2012. The petitioner again submitted no supporting documentary evidence to reflect that the assertions made by the petitioner in the financial documentation are valid. Without such documentation, the unaudited financial statements do not provide the verifiable evidence of how the petitioner will compensate the beneficiary that is required by the regulation. The petitioner also submits unsigned and uncertified copies of its IRS Form 941 for all quarters of 2011 and the first two quarters of 2012. The tax documents indicate that the petitioner paid up to two employees in 2011 and up to six employees in 2012. The petitioner additionally submits payroll summaries for two individuals for January through December 2011 and January through July 2012. However, the petitioner does not indicate that the beneficiary was included in those who were compensated in 2011 or 2012 or that the beneficiary was replacing any of those employees that were compensated. Therefore, the IRS Forms 941 and the payroll summaries do not provide any evidence of the petitioner's ability to compensate the beneficiary or any additional employee.

The petitioner has failed to provide verifiable documentation of how it intends to compensate the beneficiary.

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.