



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

Date: **JAN 09 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, 8 U.S.C. § 1101(a)(15)(R)(1)

ON BEHALF OF PETITIONER:

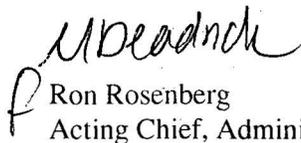
SELF-REPRESENTED

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 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 minister. The director determined that the petitioner had not established how it intends to compensate the beneficiary.

The petitioner asserts on appeal that “[b]asing the ability to pay a current liability based solely on a previous years [sic] ‘net income’ ignores the basic principle that budgets are dynamic, and ignores the entities [sic] credit worthiness and history of meeting its obligations.” 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 Service (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 27, 2012, that the beneficiary would “be paid an annual salary of \$18,720 plus benefits including housing, utilities, and mileage.” The petitioner stated that it is “able to provide for the needs of its members and employees (including this Alien) through the generous contributions of its friends and benefactors.” The petitioner submitted a copy of its “2010 Cooperating Church Annual Report” that it submitted to its regional leadership on which it reported that it had annual income of \$102,982.74 with expenditures of \$95,153.25. The petitioner submitted no other documentation to establish how it intended to compensate the beneficiary.

In an April 27, 2012 request for evidence (RFE), the director instructed the petitioner to submit documentation in accordance with the above-cited regulation to establish its ability to compensate the beneficiary. In response, the petitioner submitted an affidavit from its pastor, [REDACTED], in which he stated:

No similar position has previous existed at our particular church, and so Petitioner has no compensation records to submit at this time. [The petitioner] has sufficient resources to ensure that [the beneficiary] will be sufficiently compensated for her service and will not become a public charge.

The petitioner, however, submitted no documentation of its financial resources or its ability to compensate the beneficiary. 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 director denied the petition, stating that the total income reported by the petitioner in its 2010 Cooperating Annual Report to the [REDACTED]

reflected a net income of \$7,829.49, which was insufficient to compensate the beneficiary in the proffered amount.

On appeal, the petitioner states:

[The petitioner] has an established history of compensating its employees as evidenced by the enclosed W-2 forms covering 2008 – 2011 (verifiable with the IRS). Additionally, we have enclosed a copy of our 2012 budget which shows the line item for anticipated wages payable to [the beneficiary] pending her immigration status. Also enclosed is a letter from the family who is providing [the beneficiary] her room and board (valued at ~ \$700.00 per month) which includes a statement of their commitment to continue doing so pending the outcome of this appeal.

The petitioner submits copies of IRS Forms W-2 that it issued to in the amount of \$9,822.02 in 2008, \$9,212.50 in 2009, \$5,979 in 2010, and \$3,636.50 in 2011. The petitioner also provides IRS Forms W-2 that it issued to in the same years reflecting wages of \$20,119.20, \$20,043.65, \$10,730, and \$8,464, respectively. Nonetheless, the petitioner stated that the position to be occupied by the beneficiary is new, and it does not suggest that the beneficiary will be replacing any of these individuals. Thus, the IRS Forms W-2 provide evidence only of the petitioner's past compensation of the named individuals and provide no verifiable documentation of its ability to compensate the beneficiary.

The petitioner also submits copies of its annual report to the for the years 2006 through 2010. The AAO finds these documents of little evidentiary value as they precede the filing of the petition by as much as six years and thus do not provide a current assessment of the petitioner's financial status. Furthermore, the documents reveal that in three of the years, the petitioner's expenditures exceeded its income.

The petitioner submits a copy of its 2012 budget which contains a line item for the beneficiary's salary in the amount of \$16,830, which is less than the proffered salary. The budget indicates an increase in tithes and offerings of approximately 30%. The petitioner does not reflect such a significant increase in expected income from any other source. The petitioner asserts:

Like any business entity the Church operates off of a budget highlighting anticipated income and expenses. All budgets being dynamic are adjusted throughout the year based on changing conditions. The argument that "net income" over a single year is the only factor to determine the ability of a Church or Business to meet its obligations can only be made by assuming[] budgets remain static throughout the fiscal year, credit such as short term loans commonly used by entities during lean times is not available, and the ability to use retained earnings from previous cycles is not available.

However, the petitioner provides no documentation to support its budget projections. The petitioner submits no bank statements or other documentary evidence to establish the amounts reported on its budget are realistic. As discussed above, the petitioner's prior reports to its regional office reflects that its yearly expenditures often exceeded its yearly income.

The petitioner also submits a July 12, 2012 letter from [REDACTED] who states that he will provide the beneficiary with room and board during the period of her employment with the petitioner. 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." The petitioner asserted in its petition that it would provide the beneficiary with "housing, utilities, and mileage." The petitioner is not permitted to change material terms of employment after filing. 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). 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. The provision of housing by another individual or entity is not evidence of the petitioner's ability to provide the proffered compensation.

The petitioner has failed to submit competent and verifiable documentation of 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.

The petitioner submitted a May 7, 2011 letter from [REDACTED] addressed to the IRS, in which it asked that the petitioner be added to its group exemption as a new subordinate. The petitioner, however, failed to submit a currently valid determination letter from the IRS establishing the group exemption granted to [REDACTED]. Additionally, the petitioner failed to submit a currently valid determination from the IRS issued to the petitioner.

Accordingly, the petitioner has failed to establish that it is a bona fide nonprofit religious organization as defined by the regulation.

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.

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ORDER: The appeal is dismissed.