



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **JAN 24 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)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(i)

ON BEHALF OF PETITIONER:

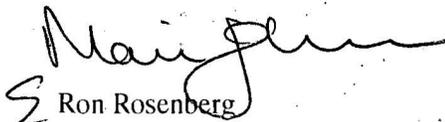
SELF-REPRESENTED

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 AAO will dismiss the appeal.

The petitioner is a Lao Buddhist temple. 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 "Buddhist monk resident." The director determined that the petitioner had not submitted required evidence to show how it intends to compensate the beneficiary.

On appeal, the petitioner submits a statement from the president of the petitioning entity.

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 U.S. Citizenship and Immigration Services (USCIS) 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;

- (ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);
- (iii) Be coming solely as a minister or to perform a religious vocation or occupation as defined in paragraph (r)(3) of this section (in either a professional or nonprofessional capacity);
- (iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and
- (v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

The issue under consideration in this proceeding relates to the beneficiary's intended compensation. The USCIS regulation at 8 C.F.R. § 214.2(r)(11) reads, in pertinent part:

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 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 filed the Form I-129 petition on May 17, 2011. Part 5 of the petition form, "Basic Information About the Proposed Employment and Employer," instructed the petitioner to describe the nature and amount of the beneficiary's intended compensation, as well as the petitioner's gross and net annual income that would permit it to provide that compensation. The petitioner left the lines relating to compensation blank.

On Section 1, line 5d of the accompanying employer attestation, the petitioner stated:

The beneficiary will receive non-salaried compensation because at the [petitioning temple], all the necessit[ies] will be provided and donated to the temple by the Buddhist community in the area free of charge. As Buddhist monk resident, the

beneficiary, is not required to be compensated. In [exchange] for his religious service to the community, all the donated goods, monies and properties are for the beneficiary and other Buddhist monk residents who remain as monk residents at the [petitioning temple] free [of] charge.

In a request for evidence issued July 11, 2011, the director instructed the petitioner to submit the documentation listed in the regulation at 8 C.F.R. § 214.2(r)(11).

In response, the petitioner submitted copies of five translated "Letters of Financial Receipt" from the beneficiary. The translation of one letter reads, in part:

I herby [sic] certify that I had received financial assistance from [the petitioner] in the state of Texas United States of America, to add to an existing funds [sic] in reconstructing the Buddhist temple for the amount of \$100.

Period No 1 on the date of 05/18/2009

Therefore I assure on this letter to be an evidence [sic] that I did receive the financial assistance from [the petitioner] in the state of Texas

The other four letters, as translated, are identical to the letter quoted above except for the dates. The letter list additional \$100 donations as follows:

Period No 2 on the date of 11/24/2009

Period No 3 on the date of 05/04/2010

Period No 4 on the date of 04/30/2011

Period No 5 on the date of 07/17/2011

The director denied the petition on November 21, 2011, stating that the petitioner had not submitted the evidence required under the above-quoted regulation. The director concluded that the petitioner had not established its ability or intention to compensate the beneficiary.

On appeal, [redacted], president of the petitioning temple, states:

Unlike many other religions, Lao Buddhist monk[s] have no compensation in terms of Salaried/No-Salaried compensation, Payroll Summary, and/or Quarterly report. . . .

The four requisites: food, clothing, shelter, and medicines, are what lay people and/or temple members can offer as [a] practical way of expressing generosity and appreciation of their faith in belonging to the Buddhist Community. A monk is able to live as a mendicant because lay people respect the monastic conventions and are prepared to help to support him. . . .

We are having the capabilities to support as we have been done for years [*sic*].

USCIS understands that many religious institutions do not compensate their workers through regular salary payments. The petitioner stated that the beneficiary will receive “food, clothing, shelter, and medicines” from temple members in exchange for his performance of monastic religious duties. USCIS regulations acknowledge “non-salaried compensation” of this kind.

Nevertheless, the regulation at 8 C.F.R. § 214.2(r)(11)(i) requires “verifiable documentation” that the employer will provide non-salaried compensation of the type described. The petitioner’s assurance that the petitioner will receive some unspecified quantity of in-kind assistance cannot meet that requirement. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the benefit request. 8 C.F.R. § 103.2(b)(14). The letters submitted in response to the request for evidence are unsupported claims, rather than verifiable documentation, and even then they indicate that the petitioner has provided \$500 to the beneficiary over a span of more than two years – a sum that is far from sufficient to ensure the beneficiary’s material support over that period. The petitioner has submitted no verifiable evidence of its ability or intention to compensate the beneficiary.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will dismiss the appeal.

ORDER: The appeal is dismissed.