



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **JAN 25 2013**

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, 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 religious corporation. 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 spiritual leader. Noting derogatory evidence obtained as a result of a site visit, the director determined that the petitioner had not established how it intends to compensate the beneficiary.

The petitioner asserts on appeal that the director "significantly misconstrued the Petitioner's supporting evidence, especially concerning our financial ability to support 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.
- (ii) *Self support.*
 - (A) If the alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.
 - (B) An established program for temporary, uncompensated work is defined to be a missionary program in which:
 - (1) Foreign workers, whether compensated or uncompensated, have previously participated in R-1 status;
 - (2) Missionary workers are traditionally uncompensated;
 - (3) The organization provides formal training for missionaries; and
 - (4) Participation in such missionary work is an established element of religious development in that denomination.
 - (C) The petitioner must submit evidence demonstrating:

- (1) That the organization has an established program for temporary, uncompensated missionary work;
- (2) That the denomination maintains missionary programs both in the United States and abroad;
- (3) The religious worker's acceptance into the missionary program;
- (4) The religious duties and responsibilities associated with the traditionally uncompensated missionary work; and
- (5) Copies of the alien's bank records, budgets documenting the sources of self-support (including personal or family savings, room and board with host families in the United States, donations from the denomination's churches), or other verifiable evidence acceptable to USCIS.

The petitioning organization was founded by the beneficiary in 2003. In Part 5 of the Form I-129, Petition for a Nonimmigrant Worker, filed on June 16, 2011, the petitioner, through its president [REDACTED], stated that the petitioner currently had no employees. The petitioner did not identify any income for the organization, and stated that the proffered position was non-salaried and that the beneficiary "has taken a vow of poverty, and does not draw a salary. See attached affidavits re: housing, food, medical, and other expenses." None of the statements submitted by the petitioner in support of the petition referenced the beneficiary's compensation for the proffered position. The petitioner left blank question 1.a in Section 1 of the Form I-129 Supplement R, Employer Attestation, which requests the number of the petitioner's members. In its June 13, 2011 letter submitted in support of the petition, Mr. [REDACTED] stated, "Our Temple does not have membership *per se*; rather, people participate in our activities when and if they want." Mr. [REDACTED] also stated, "One of our Founding Board Members, [REDACTED], has provided space for the Temple and lodging for our Spiritual Director, Assistant Spiritual Director, and Visiting Teachers before [the organization] incorporated."

In an August 5, 2011 request for evidence (RFE), the director instructed the petitioner, *inter alia*, to provide a member directory to verify the size of its congregation and to submit documentation in accordance with the above-cited regulation to establish how the beneficiary would be compensated. In response, the petitioner submitted a copy of its membership roster and reiterated that the position was non-salaried and that the beneficiary had taken a vow of poverty. The petitioner also stated:

We draw your attention to the Lease Agreement . . . the sections labeled "Property," "Rent," and "Occupants" are most relevant. Additionally, we submitted with our original application, declarations of support from various individuals. To this Response, these individuals have attached documents that establish their ability to financially support the Beneficiary. . . .

As discussed immediately above, despite its assertions to the contrary, the petitioner submitted no affidavits with its petition regarding compensation for the proffered position. In response to the RFE, the petitioner submitted financial information for Mr. [REDACTED]. The petitioner submitted no affidavits or other statements from these individuals regarding their willingness to support the beneficiary in the proffered position or the nature of the support they offered.

The lease agreement, executed on September 1, 2011, after the director's RFE, identifies Mr. [REDACTED] as the landlord and the petitioner as the tenant, and provides for the lease of two bedrooms, "access to all other facilities (kitchen, bathroom common areas), and a Shrine Room and/or teaching area." The lease also provides that the "premises are leased on a month-to-month basis" and are donated "rent-free." The lease states that the two bedrooms are to be used only by the beneficiary and his assistant and no other "occupants" "without the express permission of the Landlord." The lease provides that the landlord reserved use of the bedrooms for personal use "when the occupants are absent."

On December 14, 2011 and December 21, 2011, an immigration officer (IO) visited the petitioner's premises for the purpose of verifying the claims in the petition. During his first visit, the IO found the stated premises to be "a single story single-family house within a neighborhood." The IO noted "multi-color flags" but found no other signs of the organization's existence at the location. On his second visit, accompanied by another IO, the IO reported that no one responded to the doorbell or to their knocks, although there were some indicia of occupancy. The IO then telephoned Mr. [REDACTED] who had signed the petition on behalf of the petitioner. Mr. [REDACTED] informed him that the organization had "approximately 24, active, local members" but had more members "[t]hroughout the United States . . . but due to distance cannot attend religious ceremonies at the organizations [sic] site." The IO reported that Mr. [REDACTED] informed him that all of the petitioner's "activities occur in a home owned by one of the members" and that "the house would also be the location where the beneficiary will be residing."

In a February 28, 2012 Notice of Intent to Deny the Petition, (NOID), the director informed the petitioner of the IO's findings and instructed the petitioner to submit documentation to establish how it intended to compensate the beneficiary. In response, the petitioner stated that it had submitted a membership roster in its response to the RFE that identified 86 members, a lease agreement showing it had access to bedrooms and a "Shrine Room," and "signed Declarations from Board Members committing to provide Petitioner with the resources necessary to meet Beneficiary's needs." With its response, the petitioner provided for the first time the declarations of three individuals who "accept[ed] full financial responsibility" for the beneficiary and his assistant "if they are given Religious Workers visas and are allowed to enter this country." Each declaration is accompanied by a current (2012) declaration affirming the declarant's commitment.

The petitioner also submitted partial copies of its monthly bank statements for January 2011 through February 2012 reflecting ending balances in excess of \$8,000.

In denying the petition, the director stated that the petitioner's 86-name membership roster shows only 16 individuals who live within the State of Maryland. The director further stated:

Although the other individuals may have contributed to the organization, it is unlikely an individual who resides in Texas or California is an ongoing active member of the petitioning organization.

The second issue is if the petitioner's membership is the 86 individuals from all over the United States, the petitioner did not provide any verifiable evidence to support their ongoing contributions or membership to the organization. The petitioner did not validate what is the method in which the petitioner provides religious services to the individuals who live outside the Maryland area.

On appeal, the petitioner asserts:

USCIS has seriously mischaracterized our statements in the I-129R application. We did not say that we have "no members." Rather, we forthrightly noted that we do not maintain traditional "membership" within the organization in the same sense as American Judeo-Christian organizations. Rather, we stated "people participate in our activities when and if they want" and we keep a list of these participants. . . .

Further, USCIS's rejection of our participants list is inaccurate and improper for numerous reasons. First, without any basis whatsoever, the Service only counted Maryland residents as being likely regular participants and supporters. Our Center is located in the Washington, DC suburbs; hence participants from Washington, DC and suburban Virginia are just as likely to participate in our activities (and they do), as people from Maryland. When one accurately counts the number of local participants, the number grows to 32, twice what USCIS stated (16). . . .

Moreover, USCIS's denial revealed a total misunderstanding of the distinction between traditional "membership" in Judeo-Christian organizations and participants in small Tibetan Buddhist Centers in the United States. As part of our I-129R application, we included letters from [redacted], [redacted], and the [redacted] which are located in Maryland, Arizona, and California, stating that [the beneficiary] has given religious teachings at these Tibetan Buddhist Centers. . . . [The beneficiary] has also given religious teachings at Tibetan Buddhist Centers in Vermont, New York, New Mexico and Colorado.

The petitioner's argument is not persuasive. In the employer attestation on the Form I-129 Supplement R, the petitioner omitted answering the first question of the employer attestation regarding the number of its members, leaving it blank, while answering each of the other questions. In its June 13, 2011 letter, the petitioner stated that it had no "membership *per se*; rather, people participate in our activities when and if they want." It is not clear how these statements have been misconstrued to imply the petitioner has no members when the petitioner clearly said it did not. Furthermore, the director did not "reject" the membership list, as alleged by the petitioner. Rather, the director questioned the participation of out-of-state members, both in terms of attendance and financial contributions, both of which are important in terms of determining whether the petitioner is operating as claimed in its petition and whether it has the financial resources to compensate the beneficiary.

Furthermore, the petitioner states that, as it is located in the suburbs of Washington, DC, its local participating attendees live not only Maryland, but in Washington DC and northern Virginia. Nonetheless, the petitioner submitted no documentation to support this assertion. 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)). Additionally, the petitioner states that the beneficiary has taught at locations in Arizona, California, Vermont, New York, New Mexico, and Colorado. However, the petitioner does not explain how the beneficiary's past activities are relevant to the current job offer.

The petitioner stated that the position is non-salaried and that the beneficiary would be provided with "free housing, food, and clothing, and cover his medical and other expenses." According to each of the declarations presented in response to the NOID, the members of the petitioner's board agreed to "accept full financial responsibility" for the beneficiary. The record reveals that the beneficiary will live expense-free in the home of one of the petitioner's members.

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

The regulation at 8 C.F.R. § 214.2(r)(1)(ii) provides that to be eligible for R-1 nonimmigrant visa classification, the alien must be coming to the United States to work at least in a part time position (average of at least 20 hours per week). The petitioner alleged in its June 13, 2011 letter

that the beneficiary will work for at least 40 hours per week. However, on appeal, the petitioner states:

The leased space is in fact in a house. [The beneficiary] has not and will not be in that house for extended periods of time. He will be in Tibet, teaching elsewhere in the USA, and indeed in other parts of the world. So, the lease permits Mr. [REDACTED] to use the vacant bedrooms if he has visitors. That fact does not diminish our property interest. We are leasing space from a member of our religious community, and we all want to have a friendly, cooperative relationship.

The purpose of the R-1 nonimmigrant religious worker visa is to permit the beneficiary to work for the petitioner in the United States. The petitioner indicated on the Form I-129 that the location at which the beneficiary will work is the address it identifies as its address of record. With the petitioner's statement on appeal, however, it is not clear, and the petitioner has not satisfactorily established, that the beneficiary seeks to enter the United States to work for the petitioner for at least 20 hours per week.

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.