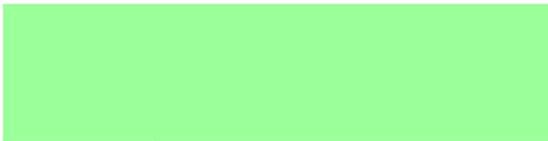


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



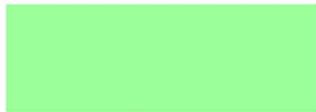
Date: **MAR 26 2013**

Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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:



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

The director also determined that the beneficiary had not maintained the R-1 nonimmigrant religious worker employment status previously approved. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(12) requires that any request for an extension of stay as an R-1 must include initial evidence of the previous R-1 employment (including Internal Revenue Service (IRS) documentation if available). The regulation at 8 C.F.R. § 214.1(e) states that a nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act. Under 8 C.F.R. § 214.2(r)(5), extension of status is available only to aliens who maintain R-1 status.

The issues of the beneficiary's prior employment and maintenance of R-1 status are significant only insofar as they relate to the application to extend that status. An application for extension is concurrent with, but separate from, the nonimmigrant petition. There is no appeal from the denial of an application for extension of stay filed on Form I-129. 8 C.F.R. § 214.1(c)(5). Because the beneficiary's past employment and maintenance of status are extension issues, rather than petition issues, the AAO lacks authority to decide those questions, and they will not be addressed in this decision.¹

On appeal, counsel asserts that the petitioner "has always been able to compensate their pastors and have always budgeted for their salary." 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).

¹ The AAO notes, however, that in a July 23, 2012 letter, [redacted] the petitioner of the beneficiary's approved R-1 petition, stated that the beneficiary's family "is still on our payroll (through a generous donation from [the instant petitioner]." This brings into question whether [redacted] has the ability to pay, and is actually paying, the beneficiary the salary it proffered in its petition.

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 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 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 July 9, 2012, that it would pay the beneficiary a salary of \$25,000 per year and reimburse him for his mileage expenses. The petitioner indicated that it had gross income of \$120,000 per year and three employees. The petitioner did not answer the question regarding its net annual income. At Section 1, question 3 of Form I-129 Supplement R, the petitioner stated that the secretary and pianist were uncompensated positions.

With the petition, the petitioner submitted a document entitled "2010 Income Settlement & 2011 Expenses-Budget." The document reflects only income items; it reflects no expenses incurred or

budgeted for the year. The income budget for 2011 is shown as \$120,244.23. The petitioner also submitted copies of three monthly banking statements for two separate accounts. One of the accounts reflects an ending balance of \$5,763.23 in December 2010 and \$9,951.55 in June 2012. The other account reflects an ending balance of \$15,099.85 in December 2010. The petitioner provided uncertified copies of its unsigned and undated IRS Form 941, Employer's Quarterly Federal Tax Return, for all quarters of 2010. The petitioner reports that it paid compensation for two employees during the first three quarters of the year and for one employee during the last quarter. The returns reflect compensation of \$7,400, \$6,900, \$4,500, and \$7,600 in the respective quarters.

In her July 17, 2012 Notice of Intent to Deny (NOID) the petition, the director stated that the petitioner's "2010 Income Settlement & 2011 Expenses-Budget" did not show any expenses for 2011 and that the income "data cannot be verified without additional corroborative evidence." The director further stated: "The petitioner submitted one current bank statement and two non-current bank statements. Although bank statements may be used as supportive evidence[], it alone is insufficient to show how the petitioner intends to compensate the beneficiary." The director also questioned the entries on the petitioner's IRS Forms 941 that claimed that it paid compensation to two employees when it had indicated in the petition that two of its three employees were not compensated.

In response to the NOID, the petitioner submitted what counsel stated is "[a]n updated and more detailed budget of the petitioner for the year 2012, which has factored in its compensation of the alien." The petitioner submitted a "2010 Expense Budget-Settlement & 2011 Expense [sic]-Budget." This document apparently reflects the budgeted expenses of the petitioner for 2010, 2011 and 2012, and contains a category for "honorarium & wages" that includes a line item for "senior pastor wage" of \$42,973, \$25,512.55, and \$25,000, respective years. The category also includes amounts for a youth pastor and the director of religious activity. The document contains no actual expenses incurred by the petitioner for any of the years indicated.

The director denied the petition, finding that the document submitted in response to the NOID "is unclear." The director stated:

The newly submitted document now shows three columns listed as: 2010 budget; 2011 budget; and 2012 budget. USCIS cannot determine if these figures are budgeted items or actual expenses. The total amount shown in the 2012 budget column is the exact amount that was shown in the 2011 income column initially submitted with the petition.

Further, the petitioner has not submitted current IRS documentation or sufficient corroborative evidence to support the newly submitted budget, and there appears to be inconsistencies within all the documentation submitted.

As an example, the Form 941 for the year 2011 indicates the petitioner has two employees and total taxable social security wages of \$33,400.00. The budget indicates three employees for the years 2010 through 2012, and shows \$52,324.55 of wages for 2011. The inconsistencies indicate the budget is not accurate.

In addition, the one submitted bank statement showing the organization has \$9,951.55 as of June 20, 2012, does not show how the petitioner intends to compensate the alien. Rather, it merely shows deposits and debits the organization had on that date. The regulation enumerates the means by which the petitioner can provide variable documentation of how it intends to compensate the beneficiary; however they do not mention bank statements.

On appeal, counsel excuses the lack of clarity in the petitioner's budgets because "the Church elders who prepare these are not accountants, just businessmen and family men." Counsel additionally states: "The discrepancy between its Form 941's filed and its budget is because the latter is its projected expenses, not its actual expenses," and: "Because the Church did not have a pastor in 2011, the budgeted amount for the pastor's salary that year was never spent; hence, the 2011 Form 941 would only reflect what was actually paid out, not what was budgeted to be paid out."

In a November 14, 2012 affidavit, [REDACTED] an elder for the church, stated: "The similarity between our 2012 expense-budget and our 2011 income-budget is quite simple – we try not to spend more money than we take in the previous year." He also stated that they "try to live within our means and budget our expenditures in the following year based on our income in the prior year." [REDACTED] further stated that "the discrepancy between our 2011 budgeted wages of \$52,324.55 and our actual 2011 Form 941 FICA wages of \$33,400.00" is because the church did not have a pastor in 2011. He states that while the petitioner budgeted for the position, it did not pay any wages. The petitioner submits monthly bank statements for one of its accounts for the months of June through October 2012, showing ending balances of \$9,951.55, \$6,637.22, \$4,617.98, \$13,523.83, and \$17,574.70, respectively.

The petitioner's explanations are not persuasive. While it is understandable to budget the current year's expenses based on the prior year's income, the petitioner has provided no evidence of its actual income for 2011 and 2012, the most relevant years of its submitted financial documentation. The petitioner has also submitted no documentation of its actual expenses in any year, and it is impossible from the documentation submitted to determine if the petitioner has sufficient net income to meet its budget. While the petitioner has budgeted for the beneficiary's salary, the submitted documentation fails to support the ability to pay the salary.

Additionally, while the petitioner claims to budget its expenditures based on the previous year's income, a review of the budgets is instructive. The petitioner claims to have budgeted for income of \$120,461.40 in 2010 but fell short of its goal by \$3,680.95, receiving \$116,780.45. Yet it budgeted for an income of \$120,244.23 in 2011 and expenses of \$99,071.78. As stated, the petitioner provided no evidence of its actual income for 2011 but budgeted expenses for 2012 of \$120,244.23. The petitioner budgeted \$25,512.55 for the senior pastor's salary in 2011; however, there is no indication that this unused budgeted amount is fully accounted for in the 2012 budgeted expenses. The budget provides for a "reserve fund" in each budget year. There is no evidence presented as to whether the reserves actually materialized or how they were used.

On appeal, the petitioner submits copies of its bank statements for July through October 2012. These statements are after the filing date of the petition and therefore are not verifiable evidence of how the petitioner intended to compensate the beneficiary as of the date of filing 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).

Without a balance sheet or statement of income and expenses, the balances in the checking account do not provide corroboration of the petitioner's financial position and its ability to compensate the beneficiary. The petitioner has failed to provide verifiable documentation to establish 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.