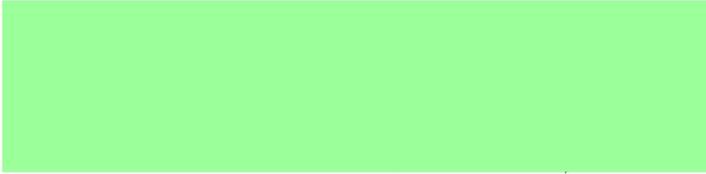


(b)(6)

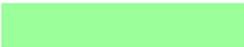
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

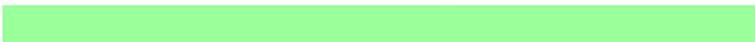


U.S. Citizenship
and Immigration
Services



Date: **MAR 26 2013**

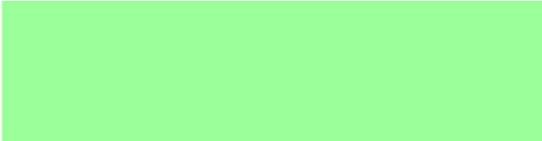
Office: CALIFORNIA SERVICE CENTER FILE: 

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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 withdraw the director's decision and will remand the petition for further action and consideration.

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 its minister of Latino and community outreach. The director determined that the petitioner had not established how it intends to compensate the beneficiary.

Counsel asserts on appeal that the director "failed to follow the applicable regulations and procedures" and erred in her analysis of the petitioner's evidence. 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.

The petitioner stated on the Form I-129, Petition for Nonimmigrant Worker, filed on June 20, 2012, that the beneficiary would receive compensation of \$12,000-\$15,000 per year” with “[a]dditional compensation [that] includes room and board in the home of an approved and agreed upon member for the duration of his employment.” The petitioner did not identify any income in questions 14 and 15 of Part 5, merely indicating that it is a “non-profit.”

With the petition, the petitioner submitted unaudited copies of its financial documents, including a profit and loss statement for the period January through October 2011, which reflects total income for the year of negative \$3,312; a “net worth report as of 9 Nov 2011” of \$27,370, which includes \$20,907 in a building fund certificate of deposit; and a report for the first quarter of 2012, reflecting a net worth of \$34,324, including a building fund of \$20,926. The petitioner also submitted what it describes as its “1st Quarter 2012 Budget Report (Cash Basis),” which contains a comparison of actual income and expenses with the budgeted amounts. The first quarter 2012 budget, showing actual income and expenses for January through March 2012, reflects the petitioner’s income was \$1,204.60 less than the budgeted amount and the actual expenses were \$1,620.77 less than budgeted. The petitioner provided a copy of minutes from its June 13, 2012 board of directors meeting, which indicated the board acted on a:

Motion to approve the recommendation by the Pastor, as Director of Personnel, to offer the position of Minister of Latino and Community Outreach to [the beneficiary]; approving compensation as outlined in the Compensation Agreement and as per the revised 2012 Budget . . . The motion was unanimous and there [were] no abstentions.

The petitioner provided a copy of a “2012 Revised Budget.” The revised budget appears to have been approved by the petitioner’s board on June 13, 2012 to accommodate the beneficiary’s

proposed salary. The first quarter 2012 budget contains a line item of \$18,000 for the pastor's salary. The revised budget reduces that amount to \$6,000 and includes a line item for the "minister of LCO" with an amount of \$12,000.

In a July 2, 2012 request for evidence (RFE), the director instructed the petitioner to submit documentary evidence in accordance with the above-cited regulation to establish how it intends to compensate the beneficiary. The director advised the petitioner: "The submitted budget is insufficient to show how the petitioner intends to compensate the alien. There is no IRS documentation or evidence to for [sic] the non-salaried compensation."

In response, the petitioner submitted uncertified copies of its unsigned and undated IRS Form 941, Employer's Quarterly Federal Tax Return, for the last quarter of 2011 and the first quarter of 2012. On each of the documents, the petitioner answered question 1, for the number of employees who received wages, tips or other compensation, as "0," but indicated in question 2 that it paid \$3,528 and \$8,996.50, respectively, in such compensation. The petitioner's interim pastor, [REDACTED] stated in a September 13, 2012 letter that he will provide the beneficiary with room and board, and submitted a copy of a September 2012 lease that includes the beneficiary as a tenant.

The director denied the petition, finding that the petitioner had not submitted verifiable documentation of how it would compensate the beneficiary. The director noted that the petitioner's profit and loss statement for 2011 showed a net loss of \$3,312, that the majority of the funds included in the petitioner's statements of net worth is designated for the building fund, that the revised budget indicates that the petitioner's current pastor would have to take a significant decrease in pay in order for the petitioner to fund the beneficiary's salary, and that the figures on the IRS Forms 941 and budgets do not match. Furthermore, the record contained no other documentation to verify the data used to generate the financial reports and statements.

On appeal, counsel asserts:

An RFE was issued on or about July 2, 2012. As to the issue of compensation, the RFE contained template language and did not specifically indicate how the submitted evidence was insufficient. No additional RFE or a NOID [Notice of Intent to Deny] was issued. At no time was the petitioner informed as to the insufficiencies of the evidence provided or of the Service's interpretation of the evidence. The Service's own memoranda provide that when a determination is made that the evidence is not sufficient, an explanation of the deficiency will be provided and additional evidence will be requested from the petitioner.

Counsel then cites a February 16, 2005 memorandum from the Associate Director of Operation for USCIS,¹ and asserts that the director "failed to follow the applicable regulations and guidance.

¹ William R. Yates, Associate Director of Operation for USCIS, *Requests for Evidence (RFE) and Notices of Intent to Deny (NOID)* (February 16, 2005).

Thus, the petitioner and beneficiary have been severely prejudiced in their ability to obtain a meaningful review of this matter.”

Counsel’s argument is without merit. First, the regulation at 8 C.F.R. § 103.2(b)(8)(ii) and (iii) does not require the director to issue an RFE or a NOID. Rather, the decision as to whether to do so is within the director’s discretion. Secondly, the memorandum referenced by counsel was superseded by a 2007 memorandum from Donald Neufeld, Acting Associate Director of Operations for USCIS, *Removal of the Standardized Request for Evidence Processing Time Frame Final Rule, 8 CFR 103.2(b)*(June 1, 2007), which notes that: “In a significant change, the final rule clearly requires applicants and petitioners to file complete applications with all supporting initial evidence. In addition, USCIS will have the option to deny incomplete applications, though it will exercise this option judiciously.” The memorandum indicates that Chapter 10.5 of the Adjudicator’s Field Manual is revised at Chapter 10.5(a)(2) as follows:

Considerations Prior to Issuing RFEs. RFEs should, if possible, be avoided. Requesting additional evidence or returning a case for additional information may unnecessarily burden USCIS resources, duplicate other adjudication officers’ efforts, and delay case completion.

Thus, there is no regulatory or policy guidance that requires the director to issue an RFE, much less to issue a second request for supporting documentation.

Second, counsel’s assertion that the director “did not specifically indicate how the submitted evidence was insufficient” is without basis. In her RFE, the director cited the regulation that requires the petitioner to submit “verifiable evidence explaining how the petitioner will compensate the alien.” The director further advised the petitioner that the submitted budget was insufficient and that it had submitted no IRS documentation as required by the regulation. As discussed above, the director was not obligated to follow up on additional inconsistencies generated by the petitioner’s response to the RFE.

Counsel also asserts that the director’s “analysis [of the petitioner’s evidence] contained a number of misconceptions.” The petitioner submits what counsel claims is a “detailed point by point clarification of these issues.” In a November 26, 2012 statement, [REDACTED] and [REDACTED] a member of the petitioner’s board, stated the 2011 profit and loss report contained errors that “necessitated a corrected report and led to the subsequent hiring of” a certified public accountant (CPA) “to help with, and ensure, that employer/employment tax filings/payments were adequately resolved and to ensure all future filings would be done correctly and in a timely manner. Thus, the complete and corrected [] Profit and Loss for 2011 shows a net income of \$152,934.00.”

The petitioner submits a November 16, 2012 letter from [REDACTED] of the CPA firm of [REDACTED] states that the petitioner “engaged our firm to provide tax filing services related to employer taxes for employees and employee withholdings.” The petitioner submits a new profit and loss statement for the full year of 2011. The document contains

significant changes over the previously submitted profit and loss statement. For example, on the new statement, the petitioner omits the income item 4200, DUO (which the petitioner's documentation indicates is for Do Unto Others), and includes that income under item 4150. The petitioner, however, does not include all of the income in item 4150 that it had previously reported. Additionally, the new profit and loss statement shows significant and unexplained increases in income item 4150 in August and October.

Neither the petitioner nor the CPA firm alleges that the financial documentation submitted on appeal was prepared by the CPA in accordance with generally accepted accounting principles. Although counsel alleges that the CPA was hired to ensure the accuracy of the profit and loss statements, the record does not establish that the CPA was engaged in any way in assisting the petitioner in preparing its profit and loss statement for 2011. While on appeal the petitioner submits copies of its bank statements for the period January 2011 to August 2012, these documents are insufficient to explain the inconsistencies between the two profit and loss statements. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Without additional documentation only limited reliance can be placed on the validity of the facts presented in the profit and loss statements that have been submitted.

In its June 14, 2012 letter, the petitioner stated, "The Board of Directors has the authority to restructure and/or reallocate funds within the approved annual budget as needed and at the discretion of the Board." The petitioner provided a copy of its September 2011 bylaws. Section 2 of Article X provides:

Limit on Expenditures. The Pastor shall have the authority to commit Church funds within the approved budget in any amount not to exceed five percent (5%) of the annual budget; any expenditure that is greater than five percent (5%) requires the approval of the Board of Directors. The Board of Directors shall have the authority to commit Church funds within the approved budget in any amount not to exceed ten percent (10%) of the annual budget; any expenditure greater than ten percent (10%) requires approval of the Members.

On appeal, the petitioner submits a copy of a June 13, 2012 "letter of agreement" from [redacted] requesting and agreeing to a \$12,000 annual salary reduction in order to hire a minister of Latino and community outreach. The petitioner states that the "[s]alary and compensation for the Pastor's position is [sic] allocated by the [] annual General Operating Budget and is paid accordingly from the [] General Operating Fund." The petitioner reiterates that the "Board of Directors has authority to Article X [sic] . . . to change and/or reallocate and appropriate [] General Budget Operating Funds." The petitioner also states that its policies and procedures specifically permit use of the building fund "for a purpose other than that for which it was intended" if approved by the congregation. Although the petitioner submitted an excerpt from its policies and procedures manual, the documentation provided does not include the section

referenced by the petitioner. Furthermore, the petitioner submitted no evidence of the congregation's approval of use of the building fund to pay the beneficiary a salary.

The petitioner submits a copy of IRS Form W-3, Transmittal of Wage and Tax Statements, with the corresponding IRS Forms W-2 for 2011. The Form W-2 for [REDACTED] indicates the petitioner paid him \$13,810.25 in wages and housing of \$17,000. The petitioner's 2012 budget indicates that the pastor receives \$18,000 per year which would be reduced to \$6,000 per year, per his request, in order to hire another minister. The petitioner submits IRS Forms 941 for the first three quarters of 2012, on which it reports that it employed two people and paid compensation of \$8,996.50, \$9,093, and \$7,696.50 in the consecutive quarters. The petitioner states that this compensation reported included \$1,500 per month for the pastor's salary, and submitted copies of processed checks reflecting that it paid the IRS the taxes due for these periods.

On appeal, the petitioner submits copies of its monthly bank statements for four different accounts covering a period from January through December 2011 and January through August of 2012. The checking account statements for 2012 reflect closing balances ranging from \$9,069.98 in May 2012 to \$73.61 in August 2012. The checking account statements also reflect payment of a \$1,500 check in each of the months, consistent with the amount the petitioner stated it paid to its pastor. The petitioner appears to have opened a "designated fund" account in November of 2011, with ending balances in 2012 ranging from \$8,832.02 in June 2012 to \$6,247.28 in August 2012. The "designated fund" statements reflect irregular transfers to the petitioner's checking account. A "contingency fund" account reflects closing balances ranging from \$4,686.85 in July 2012 to \$2,400.76 in January 2012. The "contingency fund" statements also reflect periodic transfers to the petitioner's checking account. The "building fund" ending balances range from \$20,922.42 in January 2012 to \$20,934.12 in August 2012.

Although the petitioner's profit and loss statements contain unresolved inconsistencies, and the IRS Forms 941 for 2011 initially submitted also contained errors, the petitioner has stated, and submitted documentation consistent with its position, that the current interim pastor requested a reduction in his own salary to pay for the additional position that would be occupied by the beneficiary. The petitioner has submitted sufficient documentation to establish that the pastor was paid a salary of \$18,000 in 2012, and that the beneficiary's salary of \$12,000 can be paid from a reduction in that amount. Accordingly, the petitioner has provided sufficient verifiable documentation to establish how it will compensate the beneficiary.

Nonetheless, as the record does not establish that the petitioner has successfully completed a compliance review or other inspection. Therefore, the petition cannot be approved as the record now stands. The regulation at 8 C.F.R. § 214.2(r)(16) provides:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning

organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals, or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The record is remanded to the director to determine if an onsite inspection or other verification inspection is appropriate in the instant proceeding. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.