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



U.S. Citizenship  
and Immigration  
Services

[Redacted]

Date: **MAY 07 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) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)

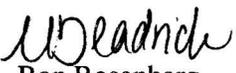
ON BEHALF OF PETITIONER:  
[Redacted]

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 with the field office or service center that originally decided your case by filing a 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 classification of the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R) of the Act to perform services as its assistant pastor. The director determined that the petitioner had not established that it qualifies as a bona fide nonprofit religious organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code (IRC), that the proffered position qualifies as that of a minister, and how it will compensate the beneficiary.

Counsel states on appeal, that the petitioner submitted a valid determination letter from the Internal Revenue Service (IRS), that the duties of the position as outlined by the petitioner “are in fact those that are performed with a rational relationship to the religious calling of minister,” and that the petitioner has submitted sufficient documentation of how it will compensate the beneficiary. Counsel submits a brief and additional documentation on 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 first issue presented is whether the petitioner has established that it is a bona fide nonprofit tax-exempt 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 [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.

With the Form I-129, Petition for a Nonimmigrant worker, filed on July 19, 2012, the petitioner submitted a copy of a March 18, 2009 letter from the IRS addressed to the petitioner at [REDACTED]. The letter informed the petitioner that the

IRS had determined that the petitioner was exempt from income tax under sections 501(c)(3) and 170(b)(1)(A)(i) of the IRC. A California State Form SI-100, Statement of Information, filed with the State of California Secretary of State on January 31, 2010 also reflected the New Hampshire Avenue address as the mailing address of the petitioning organization and as the address of its agent for service of process. The petitioner also submitted copies of pages apparently retrieved from its website. The documents are primarily in Korean and are not accompanied by English translations as required by the regulation at 8 C.F.R. § 103.2(b)(3), which requires that documents submitted in a foreign language “shall be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.” However, one of the documents contains English wording that identifies the petitioner’s address at [REDACTED]

[REDACTED] Both of the addresses are different from that listed on the Form I-129 as the petitioner’s address of record. The address listed on a June 9, 2012 church brochure, also written primarily in Korean and not accompanied by an English translation, identifies in English the petitioner’s address as that of its address of record.

The director sought clarification of the petitioner’s address in her August 7, 2012 request for evidence (RFE). The director instructed the petitioner to submit, among other items, a change of address submitted to the IRS, an amendment to the petitioner’s Articles of Incorporation reflecting the current address of record, and a copy of IRS Form 990, Return of Organization Exempt from Income Tax, or an explanation why it does not exist.

In his October 24, 2012 letter accompanying the petitioner’s response, counsel stated that the [REDACTED] address “is an old address and Petitioner has not changed address completely, which is the reason why Petitioner still used the old check book (with the old address) to pay the rents.” The petitioner submitted information retrieved from the website of the California Secretary of State that identifies the petitioner’s address as that listed with USCIS as its address of record. The same address is listed on the Statement of Information filed with the Secretary of State on September 28, 2012. The petitioner also uses this address for its telephone account and on its bank account, although its checks reflect the [REDACTED] address. Photographs of the church do not include a street address but indicates that the petitioner is in suite 400.

The director found that the petitioner had failed to provide sufficient documentation to establish that it is a bona fide nonprofit religious organization. On appeal, the petitioner submits a listing from the online version of IRS Publication 78, Organizations Eligible to Receive Tax-Deductible Contributions, retrieved on December 11, 2012, which shows the petitioner in [REDACTED]. The petitioner also submitted a copy of a November 26, 2012 IRS Form 8822-B, Change of Address – Business, that it filed with the IRS on December 7, 2012, to change its address from [REDACTED]. Counsel admits on appeal that the petitioner had not previously filed a change of address with the IRS and asserts that failure to report a change of address to the IRS does not make the determination letter invalid. Counsel states that the petitioner submitted phone bills, bank statements, photographs, its Statements of Information, and weekly church bulletins to verify its address. On appeal, the petitioner also

submits a copy of its lease, with an effective date of February 8, 2012 and additional copies of its bank statements and phone bill.

The petitioner submitted a 2009 letter from the IRS recognizing the petitioner as a religious organization exempt from income tax under section 501(c)(3) of the IRC. The letter was addressed to the petitioner at its previous address, and the petitioner submitted sufficient documentation to establish its existence at its current address of record. IRS Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities, advises, at page 33, that an organization that is required to file Form 990, Return of Organization Exempt from Income Tax, must notify the IRS of a change of address and those who are not required to file the return “may” report the change. The March 18, 2009 IRS letter indicates that the petitioner is not required to file the IRS Form 990. Although the director’s concerns regarding the old address on the IRS letter and the multiple addresses used by the petitioner are understandable, the petitioner has submitted sufficient documentation on appeal to establish a connection with the petitioning organization at the address listed on the 501(c)(3) letter and that it is a bona fide nonprofit religious organization. The AAO withdraws the director’s determination to the contrary.

The second issue presented is whether the petitioner has established that the proffered position is that of a minister.

Although the proffered position is that of a minister, the petitioner also states on the Form I-129 that the position is a religious vocation. The regulation at 8 C.F.R. § 214.2(r)(3) states:

*Religious vocation* means a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life. The religious denomination must have a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. Examples of vocations include nuns, monks, and religious brothers and sisters.” The petitioner submitted no documentation to establish that a minister of its denomination involves a formal lifetime commitment to a religious way of life as evidenced through the taking of vows, investitures, ceremonies or similar indicia.

The regulation at 8 C.F.R. § 214.2(r)(3) defines minister as an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and

- (D) Works solely as a minister in the United States which may include administrative duties incidental to the duties of a minister.

The regulation also defines religious worker as “an individual engaged in and, according to the denomination’s standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister.” The regulation at 8 C.F.R. § 214.2(r)(10) requires that, if the alien is a minister, the petitioner must submit:

- (i) A copy of the alien’s certificate of ordination or similar documents reflecting acceptance of the alien’s qualifications as a minister in the religious denomination; and
- (ii) Documents reflecting acceptance of the alien’s qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological education is accredited by the denomination, or
- (iii) For denominations that do not require a prescribed theological education, evidence of
  - (A) The denomination’s requirements for ordination to minister;
  - (B) The duties allowed to be performed by virtue of ordination;
  - (C) The denomination’s levels of ordination, if any, and
  - (D) The alien’s completion of the denomination’s requirements for ordination.

The petitioner outlined the primary duties and responsibilities of the proffered position in its July 12, 2012 letter submitted in support of the petition:

1. Support the senior pastor in most of the responsibilities the senior pastor fulfills on a daily basis;
2. Lead Friday worship service and preach (Every Friday, 7:30 to 8:40 pm);
3. Assist coordinating and monitoring Tuesday Discipleship program;
4. Lead and teach Saturday Bible study program;

5. Lead early morning worship service and preach once a month (6:00 am to 6:30 am);
6. Assist coordinating and monitoring world mission activities, such as short-term/long-term medical mission, healing mission, nursing home mission, helping Haiti, etc.
7. Assist planning and developing healing ministry every Tuesday, 7:00 pm to 8:30 pm.
8. Develop, organize, and teach new member training classes/courses focusing on bible doctrines, Christian lifestyles, discipleship and church involvement.
9. Organize and develop the small group ministry of the church, training members, providing materials and resourcing groups;
10. Develop and coordinate a ministry for marriage and family growth, including classes and retreats for marriage preparation, enrichment and counseling for youth members;
11. Conduct personal communication with the congregation, including birthday cards, newsletters, and follow-up calls on anniversaries of the death of loved ones and home visits to recovering hospital patients.
12. Schedule and coordinate staff meetings, retreats, conferences, and camps;
13. Confer with church members to encourage support of and participate in Christian education activities.

In denying the petition, the director stated:

This list [of duties] does not show that the Assistant Pastor will conduct religious worship and perform other duties usually performed by authorized members of the clergy of that denomination . . . The duties are not those that are performed with a rational relationship to the religious calling of the minister. The list does not suggest that the proffered position calls for work solely as a minister which may include administrative duties incidental to the duties of a minister.

Counsel states on appeal that the duties outlined in the petitioner's letter are consistent with the duties of minister as provided in the O\*Net Online Summary Report for Clergy, and the Occupational Outlook Handbook, which lists the duties of clergy as praying and promoting spirituality, reading from sacred texts, preparing and delivering sermons, organizing and leading regular religious services, sharing information about religious issues, instructing people who seek conversion to a particular faith, counsel individuals or groups concerning their spiritual, emotional

or personal needs, visiting people in homes, hospitals or prisons to provide comfort and support, training leaders of church, community, or youth groups, and administering religious rites or ordinances.

While the duties of the proffered position are generally consistent with those of a minister or other member of the clergy and with those outlined in the O\*Net Online Summary Report for Clergy, the petitioner does not indicate that the beneficiary will be administering religious rites and ordinances, the sacerdotal duties that distinguish an ordained minister from a lay preacher. The regulation at 8 C.F.R. § 214.2(r)(3) clearly excludes lay preachers from the definition of minister for the purpose of this nonimmigrant visa classification.

Additionally, while the petitioner states that the beneficiary is ordained as a minister, it provides none of the documentation outlined in the regulation at 8 C.F.R. § 214.2(r)(10). With the petition, the petitioner submits an unsigned letter dated May 30, 2012 from the [REDACTED] certifying that the beneficiary was ordained on September 2, 2000. In response to the RFE, the petitioner submitted a September 9, 2012 letter from the [REDACTED] confirming that the beneficiary “was ordained as a pastor at [REDACTED] n [sic] Feb. 12 2000.” The petitioner submitted no documentation explaining this inconsistency. 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).

The petitioner failed to submit primary evidence of the beneficiary’s ordination certificate or similar documentation as required by the regulation and which was issued contemporaneously with the beneficiary’s ordination. The only evidence submitted by the petitioner to establish the beneficiary’s qualifications as a minister are dated several years after the event and do not indicate the source of the information provided.

Additionally, the petitioner submitted no documentation of the requirements of the [REDACTED] as required by the regulation at 8 C.F.R. § 214.2(r)(10)(ii) or (iii). The petitioner’s claim that the beneficiary meets the denominational requirements, without supporting documentary evidence such as manuals, bylaws, or handbooks, is insufficient. 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)).

Accordingly, the petitioner has failed to establish that the proffered position is that of a minister as that term is defined by the regulation and that the beneficiary is qualified as a minister within the petitioner’s denomination.

The third issue presented is whether the petitioner has established how it will compensate the beneficiary.

The 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 stated on the Form I-129 that it would pay the beneficiary a salary of \$800 per week. The petitioner also stated that it had five unpaid employees. However, rather than providing its gross and annual income as required, the petitioner entered “non-profit” for the respective questions on the Form I-129. With the petition, the petitioner submitted online banking information showing available balances in three accounts as of June 8, 2012. The “church” account showed a balance summary of \$5,475.38, the “mission” account showed a balance summary of \$57,045.64, and the “special” account showed a summary balance of \$41,656.31. The petitioner submitted no other documentation to establish how it intends to compensate the beneficiary.

In her RFE, the director instructed the petitioner to submit evidence as outlined in the above-cited regulation to establish how it will compensate the beneficiary. In response, the petitioner resubmitted its July 12, 2012 letter submitted in support of the petition and a web printout from its bank outlining its various accounts and indicating that as of September 11, 2012, the petitioner had total deposits of \$121,471.42. Contrary to what the petitioner indicated on the Form I-129, counsel stated in his October 24, 2012 cover letter that the petitioner’s only paid employee was its senior pastor. The burden is on the petitioner to provide competent objective evidence to resolve any inconsistencies in the record. *Matter of Ho*, 19 I&N Dec. at 591-92. The petitioner provided no documentation regarding the pastor’s compensation and provided none of the documentation set forth in the regulation.

The director determined that the petitioner had submitted insufficient documentation to establish how it will compensate the beneficiary. On appeal, the petitioner submits partial copies of its monthly bank statements for its special account for October 2012, which reflects an ending

balance of \$41,656.31, and its mission account for September and October 2012, with ending balances of \$58,147.25 and \$48,293.05, respectively. Counsel asserts:

Petitioner Church explained that there have never been similar positions at Petitioner Church in the past, so there was no IRS documentation responsive to the [RFE]. And Petitioner Church had to show sufficient budget by way of online bank statements, showing that it had sufficient cash reserve to prove the offered salary for [the beneficiary].

It is to be noted that Service cited no case or statutes to support its conclusion that a printout of online bank statement is not admissible evidence for the purpose of satisfying the statutory requirements. In fact, print-outs of computer information are presumed to be accurate depictions of the electronic information they purport to represent. California Evidence Code Section 1552. For purposes of proving the content of a writing pursuant to the Secondary Evidence Rule, computer print-outs of electronically stored data are considered original writings.

Counsel's cite to the California Rules of Evidence in the instant proceeding are not persuasive as this is not a case in a California judicial forum or involving a state issue. Furthermore, the director did not find that the online bank statements were inadmissible but rather that the documentation was insufficient to meet the petitioner's burden of proof. The regulation at 8 C.F.R. § 214.2(r)(11) outlines acceptable forms of evidence for the petitioner to establish that it has the financial ability to compensate a beneficiary in the amount claimed in the petition. As the petitioner did not provide any of the forms of enumerated evidence, the regulation states that the petitioner may submit other verifiable documentation that is acceptable to USCIS.

The bank statements submitted by the petitioner indicate only that the petitioner has a specific balance in its accounts on a given day. They do not reflect any commitments against those accounts such as outstanding checks, purpose, or specific obligations. This missing information could be obtained from a budget, cash flow statements, balance sheet or similar documents that reflect both income and assets and liabilities. Consistent with the regulation, the director in her RFE instructed the petitioner to submit budgets showing money set aside for liabilities, including salaries. The petitioner failed to provide the requested documentation.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The petitioner failed 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.