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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: **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, 8 U.S.C. § 1101(a)(15)(R)

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,

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 appeal will be dismissed.

The petitioner is a Sikh temple. It seeks to classify the beneficiary as a nonimmigrant religious worker under section 101(a)(15)(R) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R), to perform services as a priest. The director determined that the petitioner had not established how it intends to compensate the beneficiary.

The petitioner submits a letter 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 a Nonimmigrant Worker, filed on September 4, 2012, that it would compensate the beneficiary with a \$200 weekly salary, “free lodging, free food & other amenities.” The petitioner stated that it employed seven people and had a gross annual income of \$464,520. Rather than answering the question regarding its net annual income, the petitioner indicated that it is a “non-profit org.” In its August 10, 2012 letter submitted in support of the petition, the petitioner stated that the petitioner “will also pay all utilities & phone costs required for the resident priest’s apartment.”

With the petition, the petitioner submitted copies of its monthly bank statements for July 2010 and March through July of 2012. The 2012 statements reflect ending balances of \$8,050.28, \$33,517.04, \$31,182.13, \$26,587.30, and \$42,601.30 for March, April, May, June and July, respectively. The petitioner also submitted a copy of an unaudited income statement for the ten-month period ending October 31, 2011 reflecting a net profit of \$274,937.93, and an unaudited balance sheet dated October 31, 2011 reflecting total current assets of \$368,796.53, consisting of \$48,114.45 cash on hand, \$143,560.70 in operating funds, and \$177,121.38 in the building fund. The balance sheet also reflected \$1,624,825.48 in retained earnings. The petitioner submitted similar documentation for the year 2010; however, as those documents precede the filing date by almost 18 months, they are not relevant in providing verifiable evidence of the petitioner’s current ability to compensate the beneficiary.

The petitioner submitted a copy of a loan statement, indicating that it is purchasing the property that houses the temple. The petitioner also provided photographs of the building but did not include any photographs or other documentation depicting living quarters.

In a September 8, 2012 Notice of Intent to Deny (NOID) the petition, the director advised the petitioner that the 2012 bank statements do not provide supporting evidence for the financial statements dated in 2011 and therefore do not provide sufficient evidence of the petitioner’s financial standing. The director noted that the balance sheet reflected cash in excess of \$360,000 that is not supported or corroborated by other documentation in the record. In its October 1, 2012 response, the petitioner stated that its income statement “clearly states” it has net profit in excess

of \$570,000 and assets of over \$2 million. The petitioner stated that the beneficiary “will be residing in our building and as per the necessity, his other accommodations will be fulfilled through Building funds and other such assets.” In addition to resubmitting copies of the previously submitted bank statements, the petitioner submitted a bank statement for August 2012, which reflects an ending balance of \$37,170.70 and provided a copy of an unaudited income statement as of December 31, 2011, which reflects a net profit of \$570,060.15, with current cash assets of \$669,839.49. Total assets are shown as \$2,443,051.85 with \$1,773,212 in noncurrent assets consisting of the building and land. The petitioner stated that it was attaching evidence of compensation for similar positions but no such documentation was included with the petitioner’s reply.

The director found that the petitioner’s documentation did not satisfactorily resolve the issue of its ability to pay the proffered compensation, as the unaudited income statement and balance sheets reflect income and assets unaccounted for in the petitioner’s other documentation.

On appeal, the petitioner submits a copy of an IRS Form 1099-MISC, Miscellaneous Income, that it stated it issued to one of its former priests in 2010. The document indicates nonemployee compensation of \$15,000. While the petitioner states that it is not required to file a tax return, it submits a copy of an unsigned and undated IRS Form 990, Return of Organization Exempt from Income Tax, for the year 2010.¹ The IRS Form 990 does not include the \$15,000 allegedly paid to the former priest, and there is no other evidence in the record to indicate that the IRS Form 1099-MISC was ever filed with the IRS.

The petitioner also states:

The third and most important issue was regarding the cash balance shown on our balance sheet. The amount showing for December 2011 may have been incorrectly classified since much of the construction of the building was taking place at the time and the Building amount should have reflected this fact and also per our check register you can see that much of the money shown was spent on the construction. The [REDACTED] has been in contact with our accounting department and send you revised balance sheets which reflect the correct use of the funds.

The petitioner submits a revised balance sheet for December 31, 2011, which now reflects operating cash of \$280,550.74. The petitioner does not explain this \$30,000 increase in income.

While the petitioner’s bank statements would seem to indicate that it has the financial resources to compensate the beneficiary, the AAO shares the director’s concerns that the petitioner has not provided a full and complete picture of its financial status. First, the petitioner submits unaudited financial statements with no supporting documentation to verify the underlying claims within the documents. On appeal, the petitioner claims current assets of cash of almost \$700,000 and

¹ The date in the paid preparer’s box is November 9, 2012.

retained earnings of over \$1.5 million as of December 31, 2011. However, this cash is not reflected in any of the bank statements provided by the petitioner. 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)). The bank statements do not reflect any obligations that may be outstanding against the funds nor do they indicate whether funds are designated for specific purposes.

The petitioner submits an IRS Form 1099-MISC as evidence that it has paid another priest in the past for work similar to that to be performed by the beneficiary. However, there is no evidence that this compensation was ever reported to taxing authorities. Therefore, the IRS Form 1099-MISC is insufficient evidence to establish that the petitioner has compensated a similar position in the past.

The petitioner alleges that the beneficiary will live in the temple; however, it provided no documentation to establish that the building contains living quarters capable of housing the beneficiary.

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 intends to compensate the beneficiary.

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary is qualified for the proffered position. The regulation at 8 C.F.R. § 214.2(r)(3) 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 s 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 stated that the "most important educational qualification [for the position] relates to classical music-with a specialization in vocals, Ragas (musical scores) and Tabla Taals (musical rhythms)." The petitioner also stated:

A Granthi [religious minister] must spend a few years as an Assistant to a reputable Granthi both to hone his education skills as well as to learn the ceremonial aspect of his duties. An Assistant Granthi must have Tabla (Percussion Drum used in Classical Spiritual Music) skills so that he/she may accompany the Head Granthi during Gurnat Kirten- the rendering of verses from the Holy Book in the original Ragas, Taalas and Musical Scores in which the Scripture is composed- the most important aspect of Prayer Meetings.

An Assistant Granthi usually picks up the ceremonial aspect of the Granthi's job in the few years of tutorship under a Head Granthi at a [REDACTED] with a medium to large size congregation.

The petitioner submitted a copy of a June 30, 2011 "service certificate" indicating that the beneficiary "was an employee of [REDACTED] from December 21, 2000 to September 1, 2009. The certificate does not specify any duties or training to become a granthi that the beneficiary had during that period. The petitioner also submitted what is described as a training certificate and purports to certify that the beneficiary completed a course in the tabla. The translation accompanying this document, however, does not comply with the terms of the regulation at 8 C.F.R. § 103.2(b)(3), which provides:

Translations. Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language 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.

Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

Furthermore, even if the education certificate met the requirements of the regulation, the petitioner has provided no documentation to indicate that a single course in tabla is sufficient to

qualify as a granthi in its denomination. The petitioner submitted none of the documentation outlined in the regulation at 8 C.F.R. § 214.2(r)(10).

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.