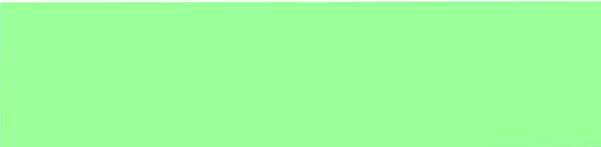




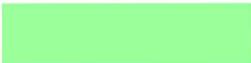
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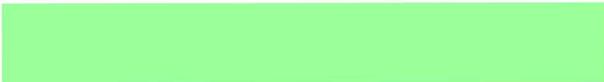


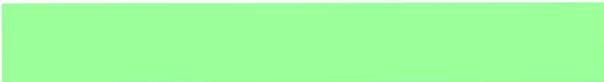
Date: **MAY 16 2013**

Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE:

Petitioner: 

Beneficiary: 

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:

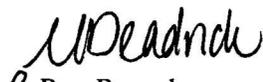


INSTRUCTIONS:

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,


f 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 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 senior pastor. Based on the results of an onsite inspection, the director determined that the petitioner had failed to establish that it is a viable organization in need of the beneficiary's services, failed to establish how it intends to compensate the beneficiary, and failed to satisfactorily complete a compliance review.

On appeal, counsel asserts:

The grounds that a church is not a "vibrant and active organization with ongoing religious activities attended by a large congregation in need of a second Pastor" and its "failure to support claims of growth since inception" are not grounds for denying an I-129 Petition that are authorized by law of the regulations.

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 issues presented are whether the petitioner has established that it is a viable organization in need of the beneficiary's services, whether the petitioner has established how it intends to compensate the beneficiary, and whether the petitioner successfully completed a compliance review.

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 [U.S. Citizenship and Immigration Services] 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.

Additionally, 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 [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 petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, filed on March 9, 2012, that it would compensate the beneficiary at the rate of \$375 per week for a 20-hour work week. The petitioner stated that it was established in 2010, had three volunteer workers, and a gross annual income of \$20,000. The petitioner did not answer the question regarding its net annual income. In Section 1 at question 1 of the Form I-129 Supplement R, the petitioner stated that it had 12 members, 1 paid employee and three volunteers who would work at the same location as the beneficiary. At question 3, the petitioner stated that these employees included a senior pastor and an associate pastor.

In its March 8, 2012 letter submitted in support of the petition, the petitioner, through its pastor Reverend [REDACTED] stated that the beneficiary was a founding member of the petitioning organization, which currently had 11 members. The petitioner further stated:

As Senior Pastor, [the beneficiary] will be receiving a weekly salary of \$375.00. We have the financial capability to pay the salary of [the beneficiary] as evident by our financial statements. In addition, the church van had been previously disposed-of, which trimmed down much of our church expenses, thereby, increasing more of our financial reserve. Moreover, several private individuals have provided letters of support . . . totaling \$10,000 annually.

With the petition, the petitioner submitted copies of its "General Fund Status" reports for the first three quarters of 2011, reflecting ending balances of \$9,132.18, \$9,351.17, and \$3,063.39, respectively. Although the petition was filed on March 9, 2012, the petitioner submitted no similar documentation for the last quarter of 2011 and no comparable documentation for 2012. Furthermore, each of the documents submitted was audited by the "church auditor." However, the record does not establish the qualifications of the auditor and whether the audit was conducted in accordance with generally accepted accounting principles (GAAP). If the documents were simply audited by an appointed member of the church, then they are only the representations of management, with no assurances that they fairly present the financial position of the petitioning organization. In light of this, limited reliance can be placed on the validity of the facts presented in the financial statements that have been submitted.

The petitioner also submitted a document of "Money Received," which shows a total yearly income from tithes and offerings for 2011 of \$6,853. Two other documents appear to reflect the petitioner's obligations to the [REDACTED] in the amount of \$1,067 and \$2,135 for the years 2010 and 2011, neither of which appears to have been paid. The petitioner also submitted copies of its monthly bank statements for the periods March 2010 through March 2011, June 2011 through November 2011, and January 2012. The 2011 statements reflect ending balances ranging from \$3,063.39 in September 2011 to \$9,825.46 in July 2011. The January 2012 statement reflects an ending balance of \$3,398.26. No evidence of the signed pledges was included with the petition.

In an April 10, 2012 request for evidence (RFE), the director advised the petitioner that the record contained no evidence of the pledges that it alleged were to be used for the beneficiary's support. The director instructed the petitioner to submit detailed information about the pledges, including the individuals, amount and date of the pledges, and documentation that the pledges were deposited into the petitioner's account. The director additionally instructed the petitioner to submit verifiable documentation of how it intended to compensate the beneficiary.

In response, the petitioner submitted its General Fund Status reports for the last quarter of 2011 and the first quarter of 2012, reflecting balances of \$4,911.86 and \$3,640.91, respectively. The documents indicate that they were audited by [REDACTED] the signatory of the Form I-129R, as

the acting church auditor. As with the previous statements, the record does not establish the qualifications of [REDACTED] or that his audit of the financial statements was in accordance with GAAP. Accordingly, the record does not reflect that the financial statements are more than the unsupported representations of management. 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)). It is noted that the documents reflect the March 2012 document is the first on which the petitioner does not include repayment of a loan on its church van. However, the petitioner expensed \$2,904.73 related to the van. The petitioner also provided a monthly budget for September 2012 with expected income of \$2,902 of which \$1,705 was to be generated from pledges for the beneficiary.

The petitioner presented a spreadsheet with the names, amounts, start dates, and duration of the pledges made to support the beneficiary. The petitioner also provided letters, e-mails, and other unsigned documents of the pledges. All of the pledges are dated subsequent to the director's RFE with the earliest effective date of the pledges in July 2012. 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).

The petitioner submitted copies of its monthly bank statements for the period October 2011 to May 2012 which reflect ending balances ranging from \$2,072.65 in April 2012 to \$4,911.86 in December 2011. The petitioner provided a June 2012 membership directory reflecting a membership of 11, including the beneficiary and three members from his family.

On July 18, 2012 and again on August 11, 2012, an immigration officer (IO) visited the petitioner's premises at its address of record for the purpose of verifying the claims in the petition. On the initial visit, an IO confirmed the petitioner's address but did not speak with [REDACTED] or the beneficiary. During the August visit, an IO observed a service "with approximately six people in attendance." The IO reported that during a subsequent interview conducted with the beneficiary at his home, the beneficiary revealed that he volunteered his services to the petitioner and had last worked for pay in the United States in an L-1 status in September 2011. The IO determined that the petitioner's claims could not be verified and the record reflects that the petitioner has not completed a satisfactory compliance review as required by the regulation at 8 C.F.R. § 214.2(r)(16).

In a September 17, 2012 Notice of Intent to Deny (NOID) the petition, the director advised the petitioner of the results of the IOs visits and, based on the size of the congregation and its lack of growth during the two years that it had been in existence, questioned the petitioner's needs for the beneficiary's services and its ability to compensate the beneficiary.

In response, the petitioner, through [REDACTED] confirmed in an October 12, 2012 letter that the beneficiary worked in a volunteer capacity with the church, and that money received from the

pledges were placed in the bank to be used for the beneficiary's compensation upon approval of the visa petition. The petitioner stated that it began with a membership of 30 but that some left because of relocations or, in one instance, death. [REDACTED] further stated that the church ministered primarily to a "unique ethnic people" and that "targeting a specific ethnic group around [REDACTED] area will take more time to grow than a conventional church." He stated that the church has "occasional attendees" and that "attendance had peaked to about 80 to 100 attendees on special occasions like Easter, Christmas, Thanksgiving day, Funeral memorials, Retreats, Outdoor activities, etc." [REDACTED] stated that the beneficiary "is also called upon to minister to the spiritual needs of these ethnic people group, at-large in their gatherings around the [REDACTED] area." He additionally stated:

Originally, three Pastors were ordained and appointed, of which me and [the beneficiary] were included, to start [the petitioning organization]. Our vision was to start new churches afterwards using [the petitioner] as the launching base at the proper time. Consequently, one Pastor with his family and relatives had already left to pursue their own ministry. Only two remained of which [the beneficiary] took over as the Senior Pastor position . . . and myself remained as the Associate Pastor. The next plan was to make ready my Missionary assignment to the Philippines and to subsequently join my wife who presently resides in the Philippines at the proper time, leaving [the beneficiary] himself to lead the church and to disciple more ministers in the future.

Regarding the petitioner's ability to compensate the beneficiary, [REDACTED] stated that, as with other Baptist churches, it derives its income "from the giving of tithes, love offerings, and outside donations." He stated that based on the increase in its monthly income from June 2012 to September 2012, "it is evident that the church income is progressively increasing." He attributed the "considerable increase" to receipt of the pledges to support the beneficiary. The petitioner submitted copies of its monthly bank statements for June through September 2012, reflecting ending balances ranging from \$2,201.89 to \$3,199.51 and a General Fund Status report for the third quarter of 2012, that reflects funds received and "earmarked" for the beneficiary in the amount of \$1,795 and an ending balance of \$3,199.51.

In denying the petition, the director stated:

The evidence submitted by the petitioner in rebuttal to USCIS's [NOID] does not satisfactorily prove all of the petitioner's claims. The petitioner's initial submission stated that the Organization's congregation was growing when in fact the record indicates that the numbers have steadily declined since its inception in 2010. The Organization's worship services are not well attended and its prayer meetings . . . have been suspended. The petitioner points out activities engaged in by the beneficiary for other groups of people who are not members of the Organization, as a claim for the need of the beneficiary's services. Additionally, the claim of "field evangelism" is vague and not documented. The trust deposited for the beneficiary emanates from sources outside of the revenues earned by the petitioner.

The evidence submitted by the petitioner in response to USCIS's [RFE] of Compensation does not establish the petitioner's financial viability to ascertain the beneficiary's support. The regulations require the petitioner to establish that the Organization is in a position to support the beneficiary while the beneficiary is in the United States on an employment based visa. There is nothing in the record that establishes the petitioner's financial capability to support the beneficiary's living expenses while the beneficiary is in the United States. In fact, the petitioner intends to support the beneficiary by outside pledges made by individuals who write checks to support the beneficiary's ministry.

On appeal, the petitioner, through [REDACTED] states that the church began with "8 pioneering attendees" and that membership "peaked to 30 regular and 10 irregular attendees" before decreasing again to 11. The petitioner states that this is not uncommon and that it still expected the membership to grow. The petitioner also states that the beneficiary's activities within the community is part of the church's outreach and assists in growing the church's membership.

Counsel asserts that the director's denial of the petition on the grounds that the petitioner "is not a 'vibrant and active organization with ongoing religious activities attended by a large congregation in need of a second Pastor' and its 'failure to support claims of growth since inception'" is "arbitrary, baseless and beyond [her] authority to do so." Counsel, however, misreads the director's decision, which, while repeating the language of the NOID, reveals that the director denied the petition because of inconsistencies in the petitioner's claims that it was a growing organization, when, in fact, the evidence submitted indicated that its membership was, at best, static. The petitioner asserts that it started with 8 members and at its peak had 30 members. At the time of filing the Form I-129, the petitioner stated that it had only 11 members and was petitioning for the beneficiary as its third pastor for this extremely small congregation. In subsequent submissions, the petitioner alleged that the beneficiary would become the only pastor for the petitioning organization.

The petitioner claimed a gross annual income of only \$20,000, which was insufficient to meet its financial obligations if it included payment to the beneficiary of a \$375 per week salary. Although the petitioner stated in its March 8, 2012 letter submitted in support of the petition that it had signed pledges totaling \$10,000 annually that would be used to support the beneficiary, the petitioner submitted no evidence of these pledges. When requested to do so by the director in her April 10, 2012 RFE, the petitioner submitted pledges dated after that date of the RFE.

The AAO acknowledges that the size of a congregation is not per se evidence of its financial viability and that community outreach is a means to help grow the congregation. However, the petitioner alleges that the beneficiary has worked in a volunteer capacity with the organization since 2010, and the efforts of three different pastors do not appear to have been sufficient to increase the size of the church's congregation. When a job offer is the basis for immigration, there must be a high degree of certainty that the employment will not end or be modified because the employer is no longer able to meet the terms agreed upon in the job offer. It must be established, with some degree of certainty that the petitioner is viable to the point where the beneficiary's employment will not end or change because the petitioner is unable to meet the terms of the job offer.

Given the evidence provided by the petitioner, the director was within her authority to question the viability of the petitioning organization and the need for the beneficiary's services.

The director determined that the petitioner had failed to establish how it will compensate the beneficiary. The petitioner alleged on the petition that its gross annual income was \$20,000. According to its fourth quarter 2011 and first quarter 2012 financial statements, the petitioner's expenses exceeded \$8,800 in each of the quarters. The evidence presented by the petitioner was insufficient to establish how it intended to compensate the beneficiary.

In response to the RFE, the petitioner submitted pledges of support for the beneficiary. However, none of the pledges, which appear to have been solicited after the director's RFE, were promised to start prior to July 2012. The petitioner must establish eligibility at the time of filing the petition. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248. The petitioner's evidence does not provide verifiable documentation of how it would compensate the beneficiary at the time the petition was filed.

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.