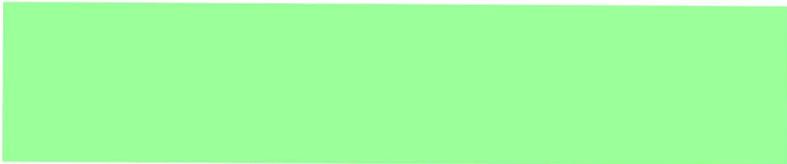


(b)(6)

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



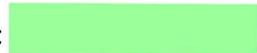
U.S. Citizenship  
and Immigration  
Services



DATE: NOV 29 2013

OFFICE: CALIFORNIA SERVICE CENTER

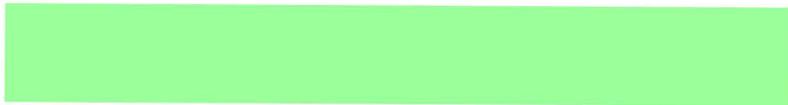
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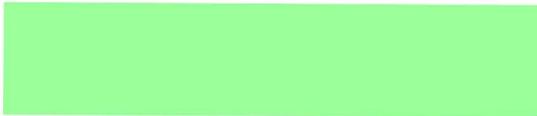
Petitioner:

Beneficiary:



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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

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

Ron Rosenberg

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 pursuant to 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 minister and translator. The director determined that the petitioner failed to establish that the beneficiary will be employed in a qualifying position. The director also found that the petitioner failed to establish how it intends to compensate the beneficiary and that it qualifies as a bona fide non-profit religious organization.

On appeal, the petitioner submits a brief from counsel.

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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(1) states that, to be approved for temporary admission to the United States, or extension and maintenance of status, for the purpose of conducting the activities of a religious worker for a period not to exceed five years, an alien must:

- (i) Be a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least two years immediately preceding the time of application for admission;
- (ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);
- (iii) Be coming solely as a minister or to perform a religious vocation or occupation as defined in paragraph (r)(3) of this section (in either a professional or nonprofessional capacity);
- (iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and
- (v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

The first issue to be discussed is whether the petitioner has established that the beneficiary will be employed in a qualifying position.

The USCIS regulation at 8 C.F.R. § 214.2(r)(3) includes the following definitions:

*Minister* means 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.

*Religious occupation* means an occupation that meets all of the following requirements:

- (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination;

(B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination;

(C) The duties do not include positions which are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible; and

(D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

*Religious worker* means 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 USCIS regulation at 8 C.F.R. § 214.2(r)(10) requires the petitioner to submit the following documentation if the alien will work as a minister:

(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 filed the Form I-129, Petition for a Nonimmigrant Worker on June 5, 2012. On the petition, the petitioner listed the title of the proposed position as "Ministry, Translations." On the

Form I-129 Supplement R, the petitioner described the beneficiary's proposed daily duties as "serving communion, street ministry-prison ministry preaching afternoon services, ministry to children." The petitioner described the beneficiary's qualifications as follows: "Trained by Elder and licensed in areas of said ministries above – 8 week courses for prison ministries, 1-2 year course study preaching ministries." In a letter accompanying the petition, the petitioner stated the following regarding the beneficiary's role in the church:

Minister Monserrat ministers to the Hispanic members of the church. He preaches every quarter to a larger but mixed Hispanic community, as our senior pastor cannot speak the Hispanic language at the present time. Minister Monserrat and his family interpretations skills and experiences are very much needed as we are a universal church. I have seen many examples of his ministry and talents and have long been impressed by him.

The petitioner submitted a "Certificate of Baptism" stating that the beneficiary was baptized on October 4, 2009. The petitioner also submitted an undated "Certificate of Completion" certifying "successful completion of all new membership classes required for confirmation and reception into [REDACTED]". The "Certificate of Completion" was issued to "Servant" without identifying a recipient.

On July 13, 2012, USCIS issued a Request for Evidence (RFE), in part requesting additional evidence regarding the proffered position "to establish that the position qualifies as a religious occupation." Specifically, the petitioner was instructed to submit a daily work schedule with a "detailed description of the work to be done, specific job duties, level of responsibility, number of hours per day performing the work duties and the minimum education, training, and experience necessary to do the job."

In a letter responding to the RFE, the petitioner stated the following:

Minister [REDACTED] schedule is Sunday's 10:30 – 2:00 pm Sunday school translation and Worship Services for the Hispanic Ministry.

Monday's – Thurs – 4 p.m. – 6 pm. Spanish translation classes for Americans and Hispanic Community.

The petitioner resubmitted copies of the "Certificate of Baptism" and "Certificate of Completion," as well as letters of recommendation from members of the petitioner's congregation.

The director denied the petition on February 12, 2013, in part based on the petitioner's failure to establish that the beneficiary would be employed in a qualifying position. The director found that the submitted schedule indicated that the beneficiary would be working less than the minimum of 20 hours per week required under 214.2(4)(1)(ii). The director also found that the petitioner failed to establish that the beneficiary's work as a translator would meet the definition of a religious occupation.

On appeal, counsel for the petitioner states:

Although the [petitioner's] letter specifies specific hours of service and classes, it does not take into consideration the hours of preparation and ministry that go along with the specific duties of religious translator and minister. If these hours are included, the beneficiary's commitment far surpasses the 20 hour limit. In addition, the service opined that the beneficiary's translation work does not relate to a traditional religious function. The respondent's translating is a necessary and indispensable component of religious teaching and ministry. As a minister, the Beneficiary's translation duties are more religious than secular.

The work schedule submitted by the petitioner indicated that the beneficiary's schedule would include 11.5 hours of duties per week. The petitioner does not submit any evidence in support of counsel's assertion that the beneficiary spends at least 8.5 additional hours on "preparation and ministry." The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Further, no explanation is provided as to why these additional hours were not included on the submitted schedule. 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). Accordingly, the petitioner has not established that the beneficiary will be working an average of at least 20 hours per week.

Regarding the nature of the beneficiary's position, the petitioner has not established that the position would qualify as either a religious occupation or a ministerial position. The regulation at 8 C.F.R. § 214.2(r)(3) provides that a religious worker must be qualified for the proffered position "according to the denomination's standards." On the Form I-129 petition, the petitioner indicated that the beneficiary qualified for the position by completing "8 week courses for prison ministries" and "1-2 year course study preaching ministries." However, the petitioner did not submit any documentary evidence to support the assertion that the beneficiary met these qualifications. 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)).

Counsel asserts on appeal that the beneficiary's translation duties are necessary for "religious teaching and ministry" and "more religious than secular." However, in order to meet the definition of a religious occupation, the beneficiary's duties must also "be recognized as a religious occupation within the denomination." The petitioner has not established that the role of translator is traditionally recognized as a religious occupation within the petitioner's denomination.

The petitioner has described the beneficiary as a minister, but has not submitted evidence of his qualifications as a minister as required under 8 C.F.R. § 214.2(r)(10). Although the petitioner

submitted proof that the signatory of the petition, [REDACTED] has been ordained, no similar documentation was submitted relating to the beneficiary. Neither the baptism certificate nor the "Certificate of Completion" indicate that the beneficiary has been recognized as a minister. The petitioner stated on the petition that the beneficiary was "licensed in the areas of [street, prison and children's] ministry," but no documentation was submitted in support of this assertion.

Further, the petitioner identified the position title as "ministry, translations." To the extent that the beneficiary's role as a translator is separate from his role as a minister, the petitioner has not established that the beneficiary would be working "solely as a minister" as required under 8 C.F.R. §§ 214.2(r)(1)(iii) and 8 C.F.R. § 214.2(r)(3).

The second issue to be discussed 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 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.

On the Form I-129 petition, the petitioner indicated that the proffered position was a "non-salaried position." In its letter responding to the July 13, 2012 RFE, the petitioner stated that the beneficiary "is not on the paid staff" at the petitioning church and that "all of [his] duties are solely voluntary."

In the decision denying the petition, the director found that the petitioner indicated that the beneficiary would be self-supporting, but failed to 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."

On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); see also *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO). The petitioner failed to submit evidence in compliance with 8 C.F.R. §§ 214.2(11)(ii)(B) and (C). Accordingly, the petitioner failed to establish how it intends to compensate the beneficiary.

The final issue to be discussed is whether the petitioner established that it qualifies as a bona fide non-

profit religious organization. The USCIS regulation at 8 C.F.R. § 214.2(r)(3) states, in pertinent part

(5) Definitions. As used in paragraph (m) of this section, the term:

*Bona fide non-profit religious organization in the United States* means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the Internal Revenue Service (IRS) confirming such exemption.

*Bona fide organization which is affiliated with the religious denomination* means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the IRS confirming such exemption.

*Tax-exempt organization* means an organization that has received a determination letter from the IRS establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the Internal Revenue Code . . .

The regulation at 8 C.F.R. § 214.2(r)(9) states:

- (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 Internal Revenue Code, 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.

The director discussed this criterion and found that the petitioner failed to submit evidence to establish its eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. This issue is therefore considered to be abandoned. *Sepulveda*, 401 F.3d at 1228 n. 2. The petitioner did not submit a valid IRS determination letter confirming its tax exempt status. Accordingly, the petitioner failed to establish that it qualifies as a bona fide non-profit religious organization.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.