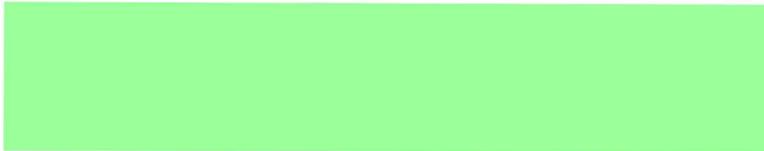


(b)(6)

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: **OCT 21 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:

SELF-REPRESENTED

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 that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, first denied the employment-based nonimmigrant visa petition on January 24, 2013. The matter was appealed to the Administrative Appeals Office (AAO) which then withdrew the director’s decision on May 31, 2013 and remanded the petition for further action and consideration. The director again denied the petition on August 12, 2013 and certified it to the AAO for review. The AAO will affirm the certified decision. The petition remains denied.

The petitioner is a church and a denomination of the [redacted] headquartered in [redacted] Tennessee. It seeks to classify the beneficiary as a nonimmigrant religious worker under section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1), to perform services as a pastor from October 10, 2012 to October 10, 2015. In the certified decision, the director determined that the beneficiary is ineligible for the classification sought because the petitioner failed to respond to a Notice of Intent to Deny (NOID) and did not establish how it intended to compensate the beneficiary. After being given proper notice of the certification of the director’s denial to the AAO, the petitioner filed a brief acknowledging that it had not timely responded to the director’s NOID due to the death of its attorney.¹ The petitioner further stated in its brief that:

- The beneficiary has been a member of its organization for two years preceding the filing of the Form I-129 petition.
- It will compensate the beneficiary as follows:

Housing on church premises	\$12,000
Food from church kitchen	\$5,180
Cash	\$12,000
Total compensation	\$29,180

- It is able to pay the proffered wage; and
- The beneficiary seeks to enter the United States “for the purpose of carrying on the vocation of a minister of our Religious Denomination . . .”

To support the statements, the petitioner indicated that it is submitting a “copy of a current statement of account for the period July 01, 2013 – July 31, 2013 and [a] financial statement reviewed by a certified public account[ant] (Accountant’s Review) on the Financial Statements for the year 2010 and 2011.”

The petitioner did not submit a copy of its July 01, 2013 – July 31, 2013 “statement of account” as stated in its brief. The petitioner also failed to submit the 2010 and 2011 financial statement. However, the referenced financial statements are the same financial statements submitted by the petitioner with the filing of its Form I-129 on September 26, 2012. Specifically, the referenced statements are the

¹ The AAO confirmed the petitioner’s statement in this regard with a telephone call to counsel’s office on September 24, 2013.

accountant's compiled statement of assets, liabilities and net assets – modified cash basis, as of August 31, 2010, and the petitioner's statement of assets, liabilities and net assets – modified cash basis, as of August 31, 2011 with its accountant Review Report for that year.

The petitioner also submitted, by correspondence dated August 14, 2013, a response to the director's June 14, 2013 NOID. Although the petitioner states that it is enclosing a "TD Bank Statement of Account" and financial statements for the year ended August 31, 2011, the "TD Bank Statement of Account" was not enclosed with the petitioner's response as stated by the petitioner and is not part of the record. Again, the referenced 2011 financial statements were previously submitted by the petitioner and are part of the record.

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 USCIS regulation at 8 C.F.R. § 214.2(r)(11) requires the petitioner to state how it intends to compensate the beneficiary, and to submit verifiable evidence explaining how the petitioner will do so. The regulation at 8 C.F.R. § 214.2(r)(11) states:

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.

The regulation at 8 C.F.R. § 214.2(r)(11)(i) states that:

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.

In her August 12, 2013 decision denying the petition, the director stated, in part:

The petitioner indicated on the Form I-129, Petition for Nonimmigrant Worker, that the beneficiary would receive a salary of \$29,180 in addition to receiving housing, food, and transportation. The petitioner's annual gross income was \$688,983 and net annual income was \$658,857. On the Form I-129 Supplement R, the petitioner valued the housing at \$9,180 and stated that the beneficiary would receive utilities worth \$20,000 and total cash of \$29,180. In its August 10, 2012 letter, the petitioner stated that the beneficiary would receive housing on church premises valued at \$12,000 per year. The petitioner provided inconsistent information regarding the nature of the beneficiary's proposed compensation. Additionally, the petitioner submitted no documentation of the non-salaried compensation.

The petitioner submitted copies of its unaudited financial statements for 2010 and 2011, accompanied by an accountant's compilation report. No further supporting documentation was included in the record to support the assertions made by the accountant, or contained within the unaudited financial statements.

On certification, the petitioner has failed to submit verifiable evidence of how it intends to compensate the beneficiary. First, the petitioner provided conflicting information about the compensation to be paid to the beneficiary. The petitioner stated on the Form I-129 Supplement R that it would provide the beneficiary with housing ("Housing and Pastoral House") valued at \$9,180 plus "utilities and transportation" of \$20,000. The petitioner then stated in a letter dated August 10, 2012 and signed by its Administrative Bishop that it would compensate the beneficiary as follows:

Housing on church premises	\$12,000
Food from church kitchen	\$5,180
Cash	\$12,000
Total compensation	\$29,180

This discrepancy in proposed compensation was noted by the director in her NOID and by the AAO in its May 31, 2013 decision remanding the matter to the director for additional proceedings. Despite being put on notice of the discrepancies, the petitioner did not address those discrepancies either in response to the director's NOID or in its brief filed in response to the director's certification of the matter to the AAO for further review. The petitioner stated only that it would compensate the beneficiary as stated immediately above. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. See *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The regulation at 8 C.F.R. § 214.2(r)(11) does not require monetary compensation, instead allowing for salaried and/or non-salaried compensation. The regulation states that the petitioner must submit IRS documentation of its ability to compensate the beneficiary, or provide an explanation for its absence "along with comparable, **verifiable** documentation" (emphasis added). The petitioner did not present any IRS documentation of its ability to compensate the beneficiary. Nor did the petitioner provide verifiable evidence of its ability to pay the non-salaried compensation or the salary it states it will provide for the beneficiary. Such evidence could consist of, for instance, budgets showing monies set aside for salaries, leases, etc., but the petitioner did not submit any such proof. The petitioner also failed to establish that it has pastoral housing for the beneficiary or that kitchen and food stuffs are part of its church facilities. The petitioner did submit a payroll summary showing \$12,039.04 in wages paid to four individuals (not including the beneficiary) for the month of July in 2012, but did not provide verifiable proof of wages paid to these other employees such as Forms W-2 or its employee compensation tax filings, however. 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)). Even if the payroll summary were found sufficient to establish the payment of wages to other employees, and it is not, it does not establish the petitioner's ability to pay additional wages to the beneficiary.

The petitioner submitted unaudited financial statements to establish its ability to compensate the beneficiary. Unaudited financial statements are the representations of management. Without supporting documentary evidence the unsupported representations of management are not verifiable evidence and are insufficient to demonstrate the ability to compensate. Even if the unaudited financial statements were considered to be verifiable evidence, and they are not, the 2010 financial statement (Statements of Revenues, Expenses and Changes in Net Assets – Modified Cash Basis for year ended August 31, 2010) shows that the petitioner's total expenses exceed its total revenues and support by \$4,182. The 2010 Statement of Assets, Liabilities and Net Assets – Modified Cash Basis for year ended August 31, 2010 show that the petitioner's total liabilities exceed its total assets by \$275,976 (negative Net Assets). While the 2011 financial statement (Statements of Revenues, Expenses and Changes in Net Assets – Modified Cash Basis for year ended August 31, 2011) shows that the petitioner's total revenues and other support exceeds its total expenses by \$30,126, its Statement of Assets, Liabilities and Net Assets – Modified Cash Basis for year ended August 31, 2011 show that the petitioner's total liabilities exceed its total assets by \$245,850 (negative Net

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NON-PRECEDENT DECISION

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Assets). The petitioner has failed to establish the ability to compensate, both salaried and non-salaried, the beneficiary.

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 certified decision is affirmed. The petition remains denied.