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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: **OCT 25 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 (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,

*Ubeadnck*

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 AAO on appeal. The director's decision will be withdrawn. The matter will be remanded to the director for additional proceedings.

The petitioner describes itself as an evangelical Pentecostal Christian church and a denomination of the Foursquare 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 "Minister (Evangelism)" from August 1, 2012 to January 1, 2015. The director determined that the beneficiary is ineligible for the classification sought because the petitioner did not establish that it qualified as a "bona fide nonprofit religious organization in the United States that is exempt from taxation" and failed to establish its ability to compensate the beneficiary.

On appeal, the petitioner asserts that it is a qualifying organization.

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.

U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. § 214.2(r) state 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;

The regulation at 8 C.F.R. § 214.2(r)(3) states that a *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 . . . and possessing a currently valid determination letter from the Internal Revenue Service (IRS) confirming such exemption.

The regulation at 8 C.F.R. § 214.2(r)(9) sets forth the following initial evidence requirements for a nonimmigrant worker petition:

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 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 record before the director contained a March 15, 2012 letter from the IRS indicating that the [REDACTED] was granted a group tax-exemption. The petitioner also submitted a December 3, 2012, letter from [REDACTED] VP COO Secretary, of the [REDACTED] confirming the petitioning church's subordinate status.

On appeal, the petitioner continues to assert that it is a bona fide nonprofit religious organization. The petitioner provided further documentation from the IRS website ([http://www.irs.gov/uac/SOI-Tax-Stats-Exempt-Organizations-Business-Master-File-Extract-\(EO-BMF\)](http://www.irs.gov/uac/SOI-Tax-Stats-Exempt-Organizations-Business-Master-File-Extract-(EO-BMF))) confirming the evidence previously submitted regarding the petitioner's affiliation with the [REDACTED] a religious organization which has been granted tax exempt status under section 501(c)(3) of the IRC and which holds Group Exemption No. [REDACTED] for its affiliated organizations. The petitioner has established that it is a bona fide nonprofit religious organization that is exempt from taxation.

The AAO may deny an application or petition that fails to comply with the technical requirements of the law 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 (9<sup>th</sup> 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 USCIS regulation at 8 C.F.R. § 214.2(r)(11) reads, in part:

*Evidence relating to compensation.* Initial evidence must state how the petitioner intends to compensate the alien, including specific monetary or in-kind compensation. . . . [T]he petitioner must submit verifiable evidence explaining how the petitioner will compensate the alien. . . . 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 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 petition indicated in Part 5 of the Form I-129 that the beneficiary is to be compensated for his services with the petitioner paying the beneficiary \$3,600 per year, and providing non-salaried compensation of housing and food for the beneficiary and his family. On November 5, 2012 the director issued a Notice of Intent to Deny (NOID) requesting, in part, that the petitioner provide verifiable evidence of the petitioner's ability to compensate the beneficiary. In response to the NOID, the petitioner provided copies of bank statements and a proposed budget for 2013 based on

its receipt of offerings and pledges from its congregation to establish its ability to pay the \$3,600 per year in salary. The petitioner failed to establish that funds in its bank account were available to pay the beneficiary as opposed to meeting the petitioner's other ongoing expenses. Further, the petitioner's 2013 budget is not evidence of the petitioner's ability to compensate the beneficiary at the time of filing. A petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1),(12); *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978).

With regard to the non-salaried compensation, the beneficiary provided a copy of a lease and a statement indicating that the petitioner's uncompensated/volunteer pastor would provide housing for the beneficiary and his family. The petitioner also provided a letter from a church member wherein the church member pledged to provide \$300 per month for the beneficiary's food while employed by the petitioner. The director stated in her April 3, 2013 decision denying the petition, that "[t]he issue concerning proposed compensation to the alien and the alien's membership have been resolved" based on the petitioner's response to the director's NOID.

The regulation at C.F.R. 214.2(r)(11) requires evidence of how the petitioner intends to compensate the beneficiary. As stated by the petitioner, the non-salaried compensation of food and housing will not be provided by the petitioner but rather discharged to a member of the petitioner's congregation and the spouse of the petitioner's uncompensated/volunteer pastor. The documentation provided by the spouse of the petitioning church's pastor offering free housing and a letter of intended support by another church member to provide \$300 per month for the beneficiary's food are, in effect, pledges to provide future compensation by individuals who are under no legal obligation to provide for the beneficiary's food and housing. Further, the record does not establish that the individuals making the pledges are financially able to provide the non-salaried compensation for the beneficiary throughout the proposed employment period (August 1, 2012 to January 1, 2015). There is no evidence that the petitioner owns the property or provides rent where the housing will be provided. Rather, the property appears to be leased to a private individual, the spouse of the church's pastor. As noted above, 8 C.F.R. § 214.2(r)(11)(i) requires verifiable evidence of the petitioner's ability to compensate the beneficiary.

As the sole ground for denial has been overcome, the matter shall be remanded to the director to determine whether the petitioner has established how it will compensate the beneficiary pursuant to 8 C.F.R. § 214.2(r)(11)(i). The director may request such additional evidence as deemed necessary in making this determination. The petitioner shall be given a reasonable opportunity to respond to the concerns set forth in this decision and to provide additional evidence in this regard.

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).

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*NON-PRECEDENT DECISION*

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**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for additional proceedings and the issuance of a new decision in accordance with this decision. If the director's decision is adverse to the petitioner, the matter shall be certified to the AAO for review.