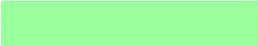




U.S. Citizenship
and Immigration
Services

(b)(6)

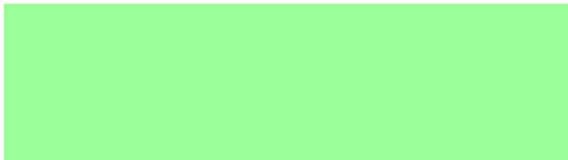


DATE: **AUG 01 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R) of the Immigration and Nationality Act (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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition and dismissed a subsequent motion to reopen and reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner is a Vietnamese evangelical church. It seeks classification of 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 an assistant pastor. The director determined that the petitioner failed to establish the beneficiary's denominational membership during the two years immediately preceding the filing of the petition.

On appeal, the petitioner submits a brief and copies of additional documentation previously submitted.

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

Denominational membership means membership during at least the two-year period immediately preceding the filing date of the petition, in the same type of religious denomination as the United States religious organization where the alien will work.

Religious denomination means a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes one or more of the following:

- (A) A recognized common creed or statement of faith shared among the denomination's members;
- (B) A common form of worship;
- (C) A common formal code of doctrine and discipline;
- (D) Common religious services and ceremonies;
- (E) Common established places of religious worship or religious congregations; or
- (F) Comparable indicia of a bona fide religious denomination.

The Form I-129, Petition for a Nonimmigrant Worker, was filed on January 28, 2013. On the petition and in a supporting letter, dated January 24, 2013, the petitioner stated that the beneficiary has been a member of its church since May 2010.

On March 20, 2013, the director issued a Request For Evidence (RFE) asking that the petitioner submit, in part, evidence that the beneficiary had been a member of the petitioner's religious denomination for two years preceding the filing of the petition. In a May 21, 2013 letter responding to the RFE, the petitioner stated that the beneficiary "had [been] baptized in Vietnam and she [was]

already a Christian before she arrived at our church.” The petitioner submitted an unsigned “Church Record” stating that “Mr. and Mrs. [REDACTED] were “Received into Membership” on January 10, 2010 “At: Church.” The petitioner also submitted a copy of executive committee meeting minutes dated May 12, 2012, stating that the petitioner was presenting a job offer to the beneficiary “after two years of membership (January 2010 – present).” The petitioner did not explain the discrepancies between the evidence indicating that the beneficiary became a church member in January 2010 and the petitioner’s previous statements that the beneficiary became a member in May 2010. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The director issued a decision, dated August 15, 2013, denying the petition on the grounds that petitioner failed to establish the beneficiary’s denominational membership during the two years immediately preceding the filing of the petition.

The petitioner filed a motion to reopen and a motion to reconsider the director’s decision on September 18, 2013. In its brief on motion, the petitioner asserted that it was submitting new material evidence that “was not available to it at the time of the Request For Evidence.” The petitioner stated:

The appellant is hereby submitting both in the Vietnamese language and also its English translation of its “Confession of Faith” taken by the beneficiary. This document is the confirmation of baptism by the church.

The document, entitled “CONFESSION OF FAITH (BAPTISM RECEIVED),” states that the beneficiary “received Christ on December 5, 2000.” The document was dated January 10, 2010, and was signed by the beneficiary as “a new member who confesses.” No further information about the beneficiary’s baptism was included. The petitioner did not indicate why the document was not available at the time of the RFE and was not mentioned in the petitioner’s response to that notice.

On November 22, 2013, the director denied the petitioner’s motion to reopen and reconsider on the grounds that the petitioner failed to establish the beneficiary’s denominational membership during the two years immediately preceding the filing of the petition. On appeal, the petitioner submits a brief and copies of documents previously submitted. The petitioner contends that the submitted documentation establishes the beneficiary’s denominational membership during the qualifying period.

The petitioner failed to resolve discrepancies, discussed above, regarding the dates of the beneficiary’s membership in the petitioning church. The petitioner asserted in its letter of May 21, 2013 that the petitioner was baptized in Vietnam and was a Christian prior to joining the petitioning church. However, the document submitted as confirmation of the beneficiary’s baptism, the Confession of Faith, was signed only by the petitioner and beneficiary. 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)). In addition, although the petitioner indicates that the beneficiary has been an active church member

since either January or May of 2010, the submitted evidence does not establish that the beneficiary was residing in North Carolina throughout the period in question. The petitioner submitted evidence that, beginning January 11, 2010, the beneficiary held F-2 nonimmigrant status based on her husband's status as a full-time student at [REDACTED] California. For these reasons, the petitioner failed to establish the beneficiary's denominational membership during the two years immediately preceding the filing of the petition.

As an additional matter, the petitioner has not submitted sufficient evidence to establish how it intends to compensate the beneficiary. We conduct appellate review on a de novo basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

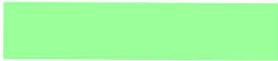
The USCIS regulation at 8 C.F.R. § 214.2(r)(11) provides:

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.

* * * *

The petitioner indicated on the Form I-129 that the beneficiary will be paid an annual salary of \$11,400 per year (\$950.00 per month) plus room, board, insurance and other incidentals. Accompanying the petition, the petitioner submitted copies of bank statements for the months of August through November 2012. The petitioner did not, however, submit any documentation showing the petitioner's expenses or financial obligations so that those expenses could be compared to the petitioner's bank balances or other assets. The record does not contain a church budget showing that the petitioner has budgeted for the petitioner's salary or that previous employees, if any, have been compensated for similar work. Further, while the petitioner stated in its May 21, 2013 response to the director's RFE that it currently had two paid positions, the petitioner did not provide IRS documentation of compensation paid for these positions, or an explanation for the absence of such documentation, as required under 8 C.F.R. § 214.2(r)(11).



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.