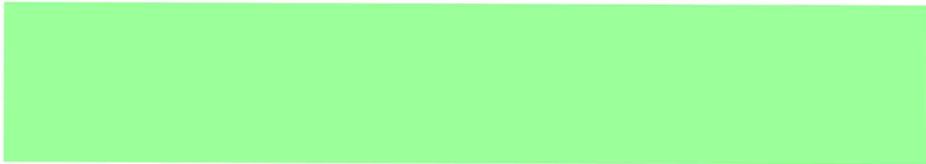


(b)(6)



U.S. Citizenship  
and Immigration  
Services



DATE: **AUG 26 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:

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,

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. We will dismiss the appeal.

The petitioner is a Christian missionary organization. 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 missionary in residence at [REDACTED] New Jersey. The director determined that the petitioner failed to establish how it will compensate the beneficiary.

On appeal, the petitioner submits a brief and additional evidence.

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)(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. [Internal Revenue Service (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.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on November 4, 2013, indicating in Part 1, question 2 that it is the beneficiary's prospective employer. On the petition, the petitioner stated that the beneficiary would receive compensation of \$75,000 per year plus medical insurance, to be "provided by the partner church and facilitated through [the petitioning organization]." In an attached explanation page, the petitioner indicated that the beneficiary will report to the petitioner's board, but that the partner church will oversee his day-to-day operations and work environment and will raise and provide his financial support. Accompanying the petition, the petitioner submitted a copy of its audited financial statements for the year ending September 30, 2012 and September 30, 2011.

On December 10, 2013, the director issued a Request for Evidence (RFE), in part requesting additional evidence of how the petitioner intends to compensate the beneficiary. In an unsigned, undated letter responding to the notice, the petitioner stated, in pertinent part:

The partner churches provide all financial support to the beneficiary. We simply make the connection and assist with the transition and recommendations based on our

relationships with the beneficiary and our partner churches. In this instance, our partner church [REDACTED] will be providing the financial support of \$75,000.00 per year for the length of stay for the beneficiary and his family as well as supporting them in relocating to the United States, subsequent housing and medical insurance coverage as well as providing the location for the beneficiary to work out of and all of the related work materials including an office, computer and related items to the position the beneficiary will be working in Missionary in Residence/Teacher/Elder.

The petitioner submitted a February 10, 2014 letter from [REDACTED] Director of Operations of [REDACTED] stating that his organization “will be the sole provider for the beneficiary in terms of compensation of \$75,000, relocation costs and medical insurance for [the] beneficiary and his family.” The petitioner also submitted an unaudited copy of [REDACTED] 2013 balance sheet, listing total assets of \$51,607.28. In addition, the petitioner submitted an unaudited copy of [REDACTED] profit and loss statement from October 2011 through September 2013, listing total net income of \$22,151.68 over two years. The profit and loss statement also listed total “HR/Staff Expense” of \$804,515.78 over two years.

On April 24, 2014, the director denied the petition, finding that the petitioner failed to establish how it will compensate the beneficiary. The director stated that the submitted financial statements failed to establish that [REDACTED] has the means to provide the proffered compensation.

On appeal, the petitioner submits an undated letter from [REDACTED] Chairman of the Board of Elders at [REDACTED] Mr. [REDACTED] states that the senior pastor of [REDACTED] resigned on July 29, 2013, thus making available \$90,000, previously budgeted for the senior pastor’s compensation, to be used for the beneficiary’s compensation. The petitioner submits documentation related to the resignation, as well as a copy of the senior pastor’s 2012 Form W-2, Wage and Tax Statement, and internal payroll documents from [REDACTED]

Although not addressed by the director, the issue initially to be decided is whether the petition has been filed by the beneficiary’s prospective employer. In this instance, the petitioner has indicated that the beneficiary will be working at [REDACTED] and that all of his compensation will come from that organization. The regulation at 8 C.F.R. § 214.2(r)(1)(iv) requires that the beneficiary “be coming to or remaining in the United States at the request of the petitioner **to work for the petitioner.**” (Emphasis added). In addition, the regulation at 8 C.F.R. § 214.2(r)(7) provides that the petition shall be filed by “[a]n employer in the United States seeking to employ a religious worker,” and the regulation at 8 C.F.R. § 214.2(r)(8) requires “[a]n authorized official of the prospective employer” to attest to various statements regarding the terms and conditions of the proposed employment. Accordingly, it is the prospective employer who must file the petition, including an employer attestation, on behalf of a beneficiary.

Assuming that the petitioner is the prospective employer, it has not submitted documentary evidence to establish that it has the financial ability to provide the proffered compensation, nor has it indicated

that it intends to provide the beneficiary's compensation. The USCIS regulation at 8 C.F.R. § 214.2(r)(11) and the employer attestation require the petitioner to "submit verifiable evidence explaining how the petitioner will compensate the alien" and to "state how the petitioner intends to compensate the alien." The cited regulation twice specifies the petitioner, *i.e.*, the employer, as the entity that will "compensate the alien." The regulation does not state that the petitioner can discharge this responsibility by arranging for third parties to compensate the alien. Accordingly, we find that the proposed arrangement, in which the beneficiary will not be compensated by the petitioner, does not meet the requirements of 8 C.F.R. § 214.2(r)(11)(i).

If the petitioner does not intend to provide salaried or non-salaried compensation, the regulation at 8 C.F.R. § 214.2(r)(9)(ii) requires the petitioner to submit evidence documenting the beneficiary's sources of self-support, as well as evidence that the proffered position is part of an "established program for temporary, uncompensated missionary work." The regulation at 8 C.F.R. § 214.2(r)(9)(ii)(C)(5) lists "donations from the denomination's churches" as an acceptable source of self-support. However, the petitioner has not submitted the required evidence to demonstrate that the proffered position is part of an established program as defined under 8 C.F.R. § 214.2(r)(9)(ii)(B), including evidence that foreign workers have previously participated in R-1 status, and that the petitioner's missionary workers are traditionally uncompensated.

Although the petitioner submits evidence on appeal regarding [REDACTED] ability to provide the proffered compensation, [REDACTED] did not file the petition as the beneficiary's prospective employer. Therefore, contrary to the director's analysis, such evidence will not satisfy the requirements of the regulation at 8 C.F.R. § 214.2(r)(9), which requires evidence establishing how the petitioner intends to compensate the beneficiary. For the reasons discussed, the submitted evidence does not establish the petitioner's intent and ability to compensate the beneficiary.

The AAO conducts 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 appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative 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).

**ORDER:** The appeal is dismissed.