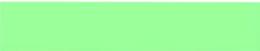


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U.S. Citizenship  
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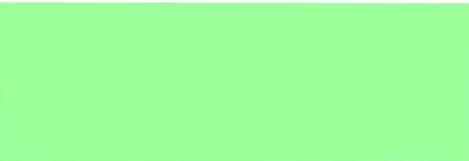


DATE: **DEC 29 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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.

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 The director's decision will be withdrawn. The matter will be remanded to the director for further action and consideration

The petitioner is a [REDACTED] 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 an assistant priest. The director determined that the petitioner failed to establish that the beneficiary will be employed in a qualifying position. Specifically, the director states that "the petitioner failed to submit documentary evidence to show that the beneficiary has the experience to be a priest in accordance with the denomination's standards" as required by 8 C.F.R. § 214.2(r)(3)(A).

On appeal, the petitioner submits 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 regulation 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 director conflates whether the proffered position qualifies as a religious occupation under 8 C.F.R. § 214.2(r)(3) with whether the petitioner has established that the beneficiary has the necessary experience to be a [REDACTED] assistant priest according to the denomination's standards as required by 8 C.F.R. § 214.2(r)(3)(A). The director states in her decision denying the petition that "[t]he issue to be discussed is whether the petitioner has established that the position offered to the beneficiary qualifies as a religious occupation." The director then discusses only the beneficiary's qualifications to be a priest and does not address the issue of whether the proffered position qualifies as a religious occupation. The issue to be discussed in this decision is whether the beneficiary meets the requirements of ordination to become an assistant priest according to the denomination's standards as required by 8 C.F.R. § 214.2(r)(3)(A), as that was the sole basis for the director's denial of the petition.

The Form I-129, Petition for a Nonimmigrant Worker, was filed on June 5, 2013. The beneficiary's duties as an assistant priest were detailed therein as follows:

Mr. [REDACTED] will perform the following work for the [REDACTED]. He will be performing all religious duties and helping other priests in the Temple. One of his jobs is to read the [REDACTED]. He works 12 hours per day Monday through Sunday. He works based on the following schedule, he helps to lead[] prayers 5[a.m.] – 9 [a.m.] in the morning. Again at 11 [a.m.] – 3 [p.m.] he stays with [REDACTED] in the main hall and his duties are to study the holy book as well as to distribute [REDACTED] [,] a type of sweet[,], to people that enter the congregation. At that time[,], people are also able to come to him to ask him questions and advice as well. He also helps in the closing of the [REDACTED]. Mr. [REDACTED] is involved in the assistance of all religious duties which includes performing marriages and funerals. On Sunday[,], Mr. [REDACTED] works during the whole day performing various religious duties. Sunday is the busiest day and we have religious

activities throughout the day. Mr. [REDACTED] works almost the whole day and only takes a break from about 3 [p.m.] – 5 [p.m.].

In a letter dated May 3, 2013 submitted in support of the petition and signed by the petitioner's president, [REDACTED] the requirements for ordination as an assistant priest were detailed as follows:

Requirements for Ordination: The [REDACTED] Priests do not have any prescribed course for such a job. They do not get any certificate or authorization to act as a minister of this [religious] denomination. The [REDACTED] Priest qualifies by experience in this field. Once he can perform the ceremonies and can recite the religious book he is considered qualified and ordained to act as a [REDACTED] Priest.

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

*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.

....

*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.

The 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 director issued a Request for Evidence (RFE) on July 8, 2013 asking that the petitioner submit additional evidence in support of the petition. Although the director did not request additional evidence regarding the petitioner's requirements for ordination to become a priest according to the denomination's standards, the petitioner submitted the following documents in response to the RFE which are relevant to the beneficiary's qualifications to perform the duties of an assistant priest:

- A statement bearing the signature of [REDACTED] (Last name unreadable)", Secretary, [REDACTED] India, dated September 5, 2013.

The statement indicates that the beneficiary has been a member of [REDACTED] since April 2008. According to the statement, the beneficiary "has learned the performance of [REDACTED] in the morning and evening. [The beneficiary] performs daily prayer (Path) at our [REDACTED]. He also take[s] part in [REDACTED] and assists the people in [REDACTED]." The beneficiary is stated to have a good understanding of the religion.

- A second statement signed by [REDACTED] (Last name unreadable)", Secretary, [REDACTED] India, dated February 22, 2012.

This statement indicates that the beneficiary "has completed the necessary training in Path and [REDACTED] from our [REDACTED] in September 2011 under the guidance of [REDACTED]." The statement indicates that the beneficiary has been involved in all aspects of [REDACTED] religion and culture performing daily prayers in the morning and evening, knowing which prayers are to be performed at different functions, and is able to assist the development and understanding of religion amongst the people.

- A fill-in-the-blank [REDACTED] certificate which states that the beneficiary served at the [REDACTED] for “3 ½” years and got a training in Path.” The statement is dated September 13, 2011 and signed by “[REDACTED] (Last name unreadable)”, Secretary.

The director denied the petition on February 12, 2014 finding that the petitioner had not submitted sufficient evidence to establish that the beneficiary has the necessary experience to be an assistant priest according to the religion’s standards as required by 8 C.F.R. § 214.2(r)(3)(A). The director indicated that there was no evidence submitted to show the requirements of the petitioning entity for the qualifications of a priest, or an assistant priest, the proffered position, only the statement of its president. Nor did the petitioner submit any evidence stating the qualification requirements for a [REDACTED] priest from any other [REDACTED] temple or the [REDACTED] religious denomination as a whole. 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 (Comer 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regal Comer 1972)).

However, it appears that the director based her denial, at least in part, upon information not contained in the record of proceeding. The director called into question the beneficiary’s occupation, training and education based on information outside of the record which was contained in a Compliance Review Report prepared subsequent to a preadjudication site inspection conducted on December 30, 2013. For example, the director stated in her February 12, 2014 decision denying the petition:

However, after further review of the record, the USCIS has evidence that the beneficiary’s occupation and schooling was in dental assistant. Moreover, the beneficiary is currently in a non-teaching staff [position] at [REDACTED] as an automobile driver. Further review reveals that [the] [REDACTED] does not appear to [offer] major courses of study offered pertaining to religion.

The director further stated in her decision:

In addition, the petitioner also stated that the beneficiary has worked at the [REDACTED] [REDACTED] in India for the past 8 years directly after the beneficiary finished high school and that the beneficiary currently attends college to become a [p]riest.

The petitioner was not given notice of the derogatory information contained in the compliance review report and afforded an opportunity to rebut and/or respond to it.

On appeal, the petitioner states that the referenced evidence of the beneficiary’s education, occupation and qualifications in India should have been presented to the petitioner and that said evidence is inaccurate. The petitioner submitted the following documents in support of the appeal:

- An undated letter from the beneficiary addressed to the Senior Superintendent of Police, Sector, Police Head Quarters, [REDACTED] India;
- A March 7, 2014 affidavit from the beneficiary; and
- A letter dated March 2, 2014, and signed by Dr. [REDACTED].

In the letter addressed to the Senior Superintendent of Police, the beneficiary states that he completed training in Path and [REDACTED] in September 2011 under the guidance of Saint [REDACTED] and presently performs his duties as [REDACTED]. The beneficiary states that he was denied a visa by the United States government after being wrongly identified as another individual who works as a driver (same name, different father – [REDACTED] for Dr. [REDACTED] the General Secretary of [REDACTED] India. The beneficiary asks that the police verify his name, address and educational qualifications. The petitioner has not presented a response to the beneficiary’s letter requesting police assistance in verifying his name, address and educational qualifications.

The beneficiary states in this March 7, 2014 affidavit his address and the name of his father ([REDACTED]) that he has completed his training in Path and [REDACTED] in September 2011, and that he presently is performing his duties as a Granthi/Priest. The beneficiary states that he was denied a visa by the United States government after being wrongly identified as another individual who works as a driver (same name, different father - [REDACTED] for Dr. [REDACTED] the General Secretary of [REDACTED] India.

The March 2, 2014 letter from Dr. [REDACTED] states that “Mr. [REDACTED] is my personal driver since 1996. He has no concern with any [REDACTED] established in India.” The petitioner submitted a copy of the driver’s government identification card and Indian Union Driving License which indicates that this individual’s father is “[REDACTED]” and that the driver’s birth date is February [REDACTED].

The regulation at 8 C.F.R. §(b)(16)(i) states:

(16) *Inspection of evidence.* An applicant or petitioner shall be permitted to inspect the record of proceeding which constitutes the basis for the decision, except as provided in the following paragraphs.

(i) *Derogatory information unknown to petitioner or applicant.* If the decision will be adverse to the applicant or petitioner and is based on derogatory information

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<sup>1</sup> The Form I-129 states the beneficiary’s date of birth as October [REDACTED]. A copy of the beneficiary’s passport lists his date of birth as October [REDACTED]. A copy of the beneficiary’s birth certificate lists his date of birth as October [REDACTED] and his father’s name as [REDACTED].

considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

On appeal the petitioner states that USCIS is required by regulation to issue a NOID because the director made a decision which was adverse to the petitioner and based on derogatory information of which the petitioner was unaware. In such circumstances, the regulation at 8 C.F.R. §(b)(16)(i) requires the director to advise the petitioner of the derogatory information and offer the petitioner an opportunity to rebut the information and submit additional evidence in its behalf before a decision is rendered. Any explanation, rebuttal or information presented by or on behalf of the petitioner shall then be included in the record of proceeding. The director failed to adhere to the regulation's requirements. The director's decision, therefore, is withdrawn. This matter shall be remanded to the director to issue a NOID setting forth any derogatory information used in denying the petition which was not included in the record of proceeding. The petitioner shall be given an opportunity to rebut that information, offer explanation if any, and submit additional evidence in this regard. The petitioner's response shall become a part of the record.

Beyond the decision of the director, the record does not contain sufficient evidence to establish how the petitioner intends to compensate the beneficiary. The petitioner states in Part 5 of the Form I-129, Petition for a Nonimmigrant Worker, that the beneficiary will be paid wages of \$250.00 per week plus room and board.

The 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 [U.S. Citizenship and Immigration Services]. IRS [Internal Revenue Service] documentation, such as IRS Form W-2 [Wage and Tax Statement] 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 response to the director's RFE, the petitioner submitted the following evidence to establish how it intended to compensate the beneficiary:

- The petitioner's 2011 and 2012 Forms 990-EZ, Return of Organization Exempt From Income Tax, which state the following year-end net assets or fund balances: 2011 - \$102,949; 2012 - \$123,301. The tax returns, however, state total annual revenue of only \$36,533 in 2011 and \$33,018 in 2012.
- The petitioner's bank statements for 2011 and 2012. Those statements show monthly bank balances ranging from \$104.56 to \$39,054.75.

Section 1 of the Form I-129 Supplement R provides conflicting information about the petitioner's employees. In question 1 of the supplement, the petitioner states that it has "0" employees working at the same location where the beneficiary will be employed. Question 3, however, asks the petitioner to provide a summary of the responsibilities of those employees who work at the same location where the beneficiary will be employed. There, the petitioner lists "Assistant Priest and Teachers of religious music." Thus, it is unclear whether the petitioner has other employees. It is incumbent upon 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, 591-592 (BIA 1988). The petitioner did not submit a budget showing salaries budgeted for priests or other religious workers. Nor did the petitioner submit evidence of past compensation for similar positions or IRS documentation, such as IRS Form W-2s [Wage and Tax Statement] or certified tax returns as required by 8 C.F.R. § 214.2(r)(11). If the petitioner has additional employees as indicated in Question 3 of the Form I-129 Supplement R, there should be some IRS documentation pertaining to those employees compensation. The petitioner did not provide an explanation for the absence of IRS documentation, or provide related comparable, verifiable documentation. The record, as it presently exists, does not contain sufficient evidence of how the petitioner intends to compensate the beneficiary.

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is remanded to the director to issue a NOID in accordance with 8 C.F.R. §(b)(16)(i). The director shall also request additional evidence concerning the requirements of the Sikh religion for the qualifications of its priests or other relevant religious workers and how the beneficiary meets those requirements, and evidence of how the petitioner intends to compensate the beneficiary as required by 8 C.F.R. § 214.2(r)(11). The director may also request any additional information she deems necessary in the adjudication of the petition. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director shall review the entire record and enter a new decision. If the director's decision is adverse to the petitioner, the matter shall be certified to the AAO for review.

**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 the foregoing. If the director's decision is adverse to the petitioner, the matter shall be certified to the AAO for review.