

(b)(6)



U.S. Citizenship
and Immigration
Services

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 AAO will withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, we will remand the petition for further action and consideration.

The petitioner is a Presbyterian church. 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 worship director. The director determined that the petitioner failed to establish the beneficiary's denominational membership during the two-year period immediately preceding the filing of the petition.

On appeal, the petitioner submits a brief from counsel 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 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 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 petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on March 27, 2014. The petitioner identified itself as affiliated with the [REDACTED]. Accompanying the petition, the petitioner submitted a March 6, 2014 letter from [REDACTED] Massachusetts, stating that the beneficiary was a member of the church from October 2009 until February 2013, and served a worship minister. The letter further stated, in part:

I understand that [the beneficiary] was involved in leading worship at a [redacted] [redacted] in California while on his OPT [Optional Practical Training]. Our church in [redacted] is an [redacted]. There is great theological affinity between both denominations. They hold to very similar theological tenets, and generally demonstrate great affinity in their worship styles.

The petitioner submitted a March 25, 2014 letter from the [redacted] Office of the General Assembly, stating that the denomination is “in correspondence” with [redacted] according to the terms of [redacted] constitution, the Book of Order, allowing for the exchange of ministers between the two denominations. The petitioner also submitted the relevant excerpt of the Book of Order. In response to a Request for Evidence (RFE), issued on April 15, 2014, the petitioner asserted through counsel that [redacted] are the “same type” of denomination in accordance with the definition of “denominational membership” at 8 C.F.R. 214.2(r)(3). The petitioner also submitted evidence that the two denominations belong to some of the same “umbrella organizations,” including the [redacted]

The director denied the petition on July 26, 2014, finding that the petitioner failed to establish the beneficiary’s denominational membership during the two years immediately preceding the filing of the petition. The director found that the beneficiary maintained membership in [redacted] church, until February 2013. The director stated that [redacted] are “separate denominations with no documentary evidence to establish that a connection exists between them.” The director also stated that the petitioner failed to establish “that there is an institutional relationship or a common governing body shared by the petitioner and the beneficiary’s previous church as required.”

In its brief on appeal, the petitioner contends that [redacted] share several of the characteristics listed in the definition of “religious denomination” under 8 C.F.R. § 214.2(r)(3), and that the beneficiary has therefore been a member of the “same type of religious denomination” as the petitioning organization during the two years preceding the filing of the petition. The petitioner submits a September 24, 2014 letter from the [redacted]. The letter asserts that, in addition to allowing [redacted] ordained ministers to serve as pastors in [redacted] churches, the Book of Order allows “joint witness” congregations, in which PCUSA and [redacted] congregations join together to serve a community.

The regulations do not require the petitioner to demonstrate “an institutional relationship or a common governing body” between the petitioning organization and the beneficiary’s previous religious organization in order to establish the beneficiary’s denominational membership. The regulation at 8 C.F.R. § 214.2(r)(3) instead defines “religious denomination” as a religious group that is administered under a “common type” of government, in addition to having one or more of the listed characteristics in common. Further, the definition of “denominational membership” includes membership in the “same type of religious denomination” during the two-year period immediately preceding the filing of the petition.

The submitted evidence is sufficient to establish that the beneficiary has been a member of the same type of religious denomination as the petitioning organization for at least the two years immediately preceding the filing of the petition. Accordingly the director's findings are withdrawn.

The above discussion indicates that the petitioner has overcome the only stated basis for denial of the petition. However, review of the record shows an additional ground of eligibility that has not been established. 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 petitioner has not established how it intends to compensate the beneficiary. 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.

* * * *

On the Form I-129 petition and in an accompanying March 10, 2014 job offer letter, the petitioner stated that the beneficiary will receive \$46,200 per year.

The petitioner indicated in an explanation page on the petition and in a letter responding to the director's RFE that it is able to afford the beneficiary's salary based on the rent it receives from a tenant, [REDACTED]. The petitioner asserts that it receives \$20,000 per month in rent. The petitioner submitted a copy of a deed recording the petitioner's ownership of real estate in Los Angeles, California, as well as brochures for [REDACTED]. However, the petitioner has not submitted documentary evidence demonstrating the amount or duration of the purported rental agreement to establish the petitioner's ongoing ability to provide the proffered salaried compensation. 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)).

Finally, the regulation at 8 C.F.R. § 214.2(r)(16) reads:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The director shall determine whether the petitioner has satisfied the regulation at 8 C.F.R. § 214.2(r)(16) and whether a compliance review, onsite inspection or other verification of the petitioner's claims is appropriate in the instant petition.

The matter is remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. 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 director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.