

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: DEC 29 2014

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:

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

for 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 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 an associate 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, and failed to establish how it intends to compensate the beneficiary. The director also found that the beneficiary failed to maintain lawful nonimmigrant status prior to the filing of the petition.

On appeal, the petitioner submits a letter from counsel and copies of documents already in the record.

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 11, 2013, identifying itself as affiliated with [REDACTED]

On the petition, the petitioner described its relationship with [REDACTED] as follows:

[REDACTED] in Bogota, Colombia was founded by Senior Pastor [REDACTED] and [the beneficiary]. As a result of a longstanding relationship and common spiritual vision, Senior Pastor, [REDACTED] [signatory of the instant petition] founded [the petitioning church] in the United States to perpetuate the message his Colombian counterpart had been spreading for years. [The petitioner] has been part of [REDACTED] ministry for the last 20 years, partnership on various spiritual missions together and working towards a common goal. Twelve (12) years ago, Senior Pastor [REDACTED] and [the beneficiary] assisted Senior Pastor [REDACTED] and Pastor [REDACTED] in establishing [the petitioning church] in Miami, Florida. Now, [REDACTED] in Bogota, Colombia would like to send [the beneficiary] to assist [the petitioner] as an Associate Pastor. The ministries in Colombia and in the U.S. share a common vision, mission, doctrine of faith and purpose.

Accompanying the petition, the petitioner submitted excerpts from its website, including a link to the [REDACTED] website and a blurb about the beneficiary and his wife and their visits to the petitioning church “for the past 12 years.” The petitioner submitted evidence relating to the beneficiary’s credentials, including an April 17, 1994 certificate from [REDACTED] in Colombia, an April 11, 1999 diploma from [REDACTED] in Columbia, and a September 12, 2012 letter from [REDACTED], stating that the beneficiary served [REDACTED] in various roles since 1997.

In response to a May 15, 2013 Request for Evidence (RFE), the petitioner submitted additional evidence of the beneficiary’s credentials, including a copy of the beneficiary’s September 15, 1997 certificate of ordination from [REDACTED]. The petitioner also submitted information about its vision, mission, and doctrinal statement. In response to a second RFE, issued on November 7, 2013, the petitioner submitted excerpts from [REDACTED] website concerning its vision and mission. In addition, the petitioner submitted a December 3, 2013 letter from [REDACTED] which stated the following in pertinent part:

[The beneficiary] has worked as Associate Pastor of [REDACTED] since its inception in 1997. In addition to being Associate Pastor, he has served as our Vice President from 1999 to the present time.

Pastor [REDACTED] is also a long time member of [REDACTED] in Colombia. In 2001 Pastor [REDACTED] and his wife, [REDACTED], started our sister church, [the petitioner,] a non-profit Christian organization in the United States. [The beneficiary] has been supporting [the petitioner] and its members since 2001 until the present day and travels yearly to the United States to visit with [the petitioner’s] members in person.

I have known [the beneficiary] and his family for over 16 years and hereby attest under penalty of perjury that he is, and has been, a Christian Minister and faithful

member of [REDACTED] and of [the petitioner] for many years, including the two years immediately preceding the filing of the R-1 visa petition.

On July 23, 2014, the director denied the petition, in part finding that the petitioner failed to establish the beneficiary's denominational membership during the two years immediately preceding the filing of the petition according to regulatory requirements. The director stated that the petitioner failed to submit evidence that it is "affiliated with" [REDACTED] or that the two churches share any of the common characteristics listed in the definition of "religious denomination" under 8 C.F.R. § 214.2(r)(3).

While the regulatory definition of "religious denomination" does not require an institutional relationship between two churches, the submitted evidence supports the petitioner's assertions regarding its affiliation with [REDACTED] as a "sister church." 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 petitioner has submitted sufficient evidence 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 on this issue will be withdrawn.

As a second ground for denial of the petition, the director found that the petitioner failed to establish 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. 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.

(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 stated on the petition that the beneficiary's compensation would include \$36,000 per year in wages in addition to "Standard company benefits." The petitioner listed its gross annual income as \$80,000 and entered "N/A" in the block designated for net annual income. The petitioner stated that it currently has two employees, identified as its senior pastor and pastor. Although the petitioner's February 27, 2013 cover letter stated that it was submitting "Copies of 2002-2007 IRS Form 990, Returns of Organization Exempt from Income Tax," a review of the record indicates that no such documentation was submitted. The petitioner submitted a January 10, 2008 letter from the IRS indicating in part that the petitioner is not required to file a Form 990 return. The petitioner also submitted copies of invoices from various vendors and copies of contracts with hotels for the use of space for worship services. In addition, the petitioner submitted "Evidence of contributions made by the organization," which included various records dated between 2005 and 2009.

The director's May 15, 2013 RFE instructed the petitioner to submit additional evidence of how it intends to compensate the beneficiary, including IRS documentation or an explanation for its absence along with comparable, verifiable documentation. In an August 6, 2013 cover letter responding to the RFE, the petitioner stated through counsel that it "does not currently have any paid ministers," and that [REDACTED] and his wife currently serve as senior pastor and pastor of ministries "on a volunteer, non-compensated basis." The petitioner submitted an unaudited "Profit & Loss Detail" statement for the period January 1, 2013, through August 6, 2013. The statement listed total income of \$34,331.46, and total expenses of \$33,259.60, including \$13,437.00 in payments to the beneficiary under "Pastoral Expenses," leaving net income of \$1,071.86. The petitioner also submitted receipts for "Tithes and Offerings" during 2012, totaling \$67,287.91.

The petitioner also submitted a July 6, 2013 letter from [REDACTED] in response to the May 15, 2013 RFE, which stated in part:

We, [REDACTED], domiciled at [REDACTED] Florida, as Senior Pastors, hereby agree to guarantee and be liable for the payment of [the beneficiary's] salary. We have also compromised with [the beneficiary] that in the next 24 months we will be making significant donations to assure that [the petitioner] can rent its own location for our church services.

By filing a support letter for this petition, we agree to the terms of the labor condition and that this guarantee shall remain in effect for the duration of the beneficiary's authorized period of stay for employment.

The petitioner submitted copies of Ms. [REDACTED] account statements from [REDACTED] for the months of March 2012 through September 2012, and December 2012, as well as property records relating to real estate owned by [REDACTED].

In denying the petition, the director found that the petitioner's evidence failed to establish its ability to provide the proffered compensation.

As stated previously, the petitioner submitted a letter from the IRS indicating that it is not required to file a Form 990 tax return. However, the petitioner initially indicated its intent to provide copies of tax returns. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Accordingly, the petitioner has not explained the absence of IRS documentation, as required under 8 C.F.R. § 214.2(r)(11). Further, the petitioner has not submitted comparable, verifiable documentation of its ability to provide the proffered compensation. The evidence of "contributions" made by the petitioner to various individuals between 2005 and 2009 is not sufficient to demonstrate its ability to compensate the beneficiary at the time of filing the petition in 2013. The submitted "Profit & Loss Detail" statement does not establish that the petitioner had sufficient funds to provide the beneficiary with the proffered compensation of \$36,000 per year (\$3,000 per month) plus "Standard company benefits" of an

unidentified amount at the time of filing the petition. The listed net income of \$1,071.86 would not cover the difference between the amount provided to the beneficiary for his service as a pastor, \$13,437, and the proffered wage during the covered period. Regardless, the unaudited "Profit & Loss Detail" statement does not constitute verifiable evidence, as it consists only of the assertions of management without supporting documentary evidence. 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)). Although the petitioner submitted what it states are "Tithes and Offerings" receipts as evidence of its income, originals of the receipts were not provided and the receipts were not from the same time period as the submitted financial statement.

Regarding Mr. and Mrs. [REDACTED] stated intent "to guarantee and be liable for the payment of [the beneficiary's] salary," the regulation at 8 C.F.R. § 214.2(r)(11) and the attestation require the petitioner to "state how the petitioner intends to compensate the alien" or how the alien will be self-supporting, and to "submit verifiable evidence explaining how the petitioner will compensate the alien." To the extent that the beneficiary will receive funds from a third party, this arrangement does not constitute compensation from the petitioner. Accordingly, evidence regarding the intent and ability of Mr. and Mrs. [REDACTED] to pay the beneficiary's salary does not establish how the petitioner intends to compensate the beneficiary. Although the regulations also allow for self-support, the petitioner has not submitted evidence that the beneficiary will be participating in an established program for temporary, uncompensated missionary work, as required under 8 C.F.R. § 214.2(r)(11) when an alien will be self-supporting.

For the reasons discussed above, the petitioner has not established how it intends to compensate the beneficiary.

As the final ground for denial, the director found that the beneficiary engaged in unauthorized employment in violation of his B-2 nonimmigrant visitor status. Under the regulation at 8 C.F.R. § 248.1(a), an alien must maintain status in order to qualify for change of nonimmigrant status. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status. 8 C.F.R. § 214.1(e). Therefore, unauthorized employment would disqualify the beneficiary from changing to R-1 nonimmigrant status. This issue, however, lies outside our appellate jurisdiction, because it is a change of status issue rather than a petition issue. See 8 C.F.R. § 248.3(g).

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.