(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

DATE: FEB 07 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a church. It seeks to classify the beneficiary as a nonimmigrant religious worker under 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 how it intends to compensate the beneficiary.

The petitioner submits no additional evidence on appeal. On the Form I-290B, Notice of Appeal or Motion, filed on June 12, 2013, counsel indicated that the petitioner would submit a brief and additional evidence to the AAO within 30 days. A review of the record reveals that nothing further has been received. Therefore, the record will be considered complete as it now stands.

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.

* * * *

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on November 9, 2012. On the petition, Part 5, Question 8, and in an accompanying letter, the petitioner stated that it would pay the beneficiary $23,862 per year as compensation. In Supplement R, the petitioner stated that it would pay the beneficiary $25,000 per year. The petitioner indicated on the petition that it had no current employees and that it sought qualification of the beneficiary as a nonimmigrant religious worker based on "New employment."

At the time of filing, the petitioner submitted a copy of its June 2012 bank statement from which indicated an average ledger balance of $18,184.32 for the month. The petitioner also submitted a 2011 annual financial report, prepared by its general treasurer, which stated only that the petitioner had income of $148,867.91 and expenses of $136,935.30, leaving a net income of $11,932.61. The report did not show a breakdown of expenses to indicate whether funds were set aside for the beneficiary's income. The petitioner did not submit evidence to establish that the financial report had been audited, and no evidence was submitted in support of the figures asserted in the report. 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)).

On January 2, 2013, USCIS issued a Request for Evidence (RFE), in part requesting verifiable evidence of how the petitioner intends to compensate the beneficiary, including IRS documentation or an explanation for its absence along with comparable, verifiable documentation. The petitioner was also instructed to submit bank statements for the last five months and "a complete financial report for 2011 to include the Statement of Financial Position, Statement of Activities, and a Statement of Cash Flows."

In response, the petitioner stated that its "financial statements for 2011 have been revised, certified and corrected." The petitioner submitted a chart, "Report of Financial Statement Year 2011," showing income and expenses for the months of January through October. The column for the month of November was not legible and the chart did not include the month of December or any year-end totals. The petitioner's net monthly balances for January through October add up to $11,932.61, the same amount as the petitioner's purported net income for the year according to the figures in the previously submitted financial report. No explanation was provided regarding this discrepancy and the petitioner did not specify what revisions or corrections had been made to the initial report. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The petitioner also submitted statements for September 2012 through January 2013, indicating average ledger balances ranging between $3,180.97 and $6,454.16. In a letter dated March 21, 2013, counsel for the petitioner stated that "the Rev. the Senior Pastor of [the petitioning church] is a volunteer therefore; there are no employees receiving salaries."

On May 14, 2013, the director denied the petition, finding that the petitioner failed to establish how it intends to compensate the beneficiary. The director found that the "corrected" financial statement was not credible evidence and that the petitioner's bank statements did not establish the petitioner's ability to pay the proffered wage. The director also noted that, although counsel stated that the petitioner had no compensated employees, the submitted bank statements included photocopies of processed checks to and the beneficiary. 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. *Id.*, at 591-92.

On appeal, counsel for the petitioner argues that the director erred by concluding that the submitted evidence failed to establish the petitioner's ability to pay the proffered salary.

If the petitioner intends to provide salaried or non-salaried compensation, the regulation at 8 C.F.R. § 214.2(r)(11) requires IRS documentation or an explanation for its absence along with comparable, verifiable documentation. The petitioner did not submit IRS documentation or provide an explanation for its absence. Although counsel asserted that the petitioner's senior pastor is a volunteer and the church has no compensated employees, this assertion is contradicted by the evidence. The petitioner's bank statements include checks paid to [redacted] with notations indicating they are for his housing allowance, as well as checks to [redacted] for housing allowance. Further, the financial statement submitted in response to the RFE includes, under "Expenses," monthly payments to "[redacted]

Apart from the lack of IRS documentation, the petitioner has not submitted verifiable evidence of its ability to pay the proffered wage. The figures included in the submitted financial statements are not supported by documentary evidence. Further, the petitioner's asserted net income of $11,932.61 is insufficient to pay the proffered wage of $23,862 per year, and the submitted bank statements do not show sufficient funds to cover the difference.

For the reasons discussed above, the petitioner failed to establish how it intends to compensate the beneficiary.

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.