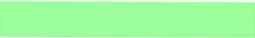


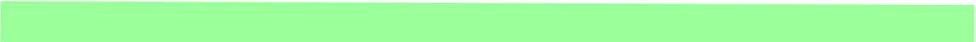


U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: FEB 28 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.

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

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 officiant/teacher. The director determined that the petitioner failed to establish that the beneficiary will be employed in a qualifying position for at least 20 hours per week.

On appeal, the petitioner submits a letter from the Internal Revenue Service (IRS), dated July 9, 2013, two letters from the petitioner, 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 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 issue to be discussed is whether the petitioner has established that the beneficiary will be coming to work in a qualifying position in at least a part-time position.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on January 22, 2013, seeking to employ the beneficiary as an "Officiant/Teacher." In Part 5, Question 7, the petitioner indicated that the position is not a full-time position, but did not indicate the number of hours per week to be worked. The petitioner stated in Part 9. Explanation Page: "The invitation is for a once a year visit, 2 weeks long, for the next 5 years and on." In Supplement R to the petition, the petitioner stated that the beneficiary would perform ministerial and teaching duties. The petitioner indicated that it is affiliated with the Spiritualist National Union denomination. In a letter accompanying the petition, dated September 12, 2012, the petitioner stated:

Officiant [beneficiary] is fully qualified to lead religious worship services. Her duties while visiting our church will also be to teach religious and philosophical classes. She will also instruct our students in religious doctrine.

In a separate letter, dated January 14, 2013, the petitioner stated:

This letter of invitation to our guest ministers, officiants and teachers are extended to those associated to our church by the religion of Spiritualism.

The itinerary for these guests is to conduct our Sunday public worship services while bringing diversity from our mother church in England to our church here in NJ.

To teach and instruct our students in public speaking.

To conduct public healing services held at our church weekly.

To teach our students regarding the philosophy of the religion of Spiritualism.

To address our general congregation on the philosophy of Spiritualism and the seven principles.

These invaluable visits which last for about two weeks make our church thrive.

The petitioner submitted a printout from the website of The Spiritualists' National Union regarding the duties and qualifications of an "Officiant of the SNU."

On March 27, 2013, USCIS issued a Request for Evidence (RFE), in part requesting additional information about the proffered position including the number of hours per week to be spent performing each duty. In response to the RFE, the petitioner resubmitted a copy of its January 14, 2013 letter regarding the beneficiary's "itinerary" and stated the following on a note attached to the RFE coversheet: "Please note our request is for a 10 day yearly visit, 10-12 days once a year." The petitioner also submitted copies of the beneficiary's credentials, including documentation indicating that she is recognized as an "Officiant of The Spiritualists' National Union."

On August 13, 2013, the director denied the petition. The director found that the petitioner failed to indicate the number of hours per week that the beneficiary would work and therefore failed to establish "that the beneficiary will be working at least part-time (20 hours per week)."

In a letter submitted on appeal, dated August 26, 2013, the petitioner describes the beneficiary's proposed schedule as follows:

Sunday – 2 religious services 9:00 am and 11:30 am followed by fellowship.  
Total hours Sunday 6 hours

Monday – Teach class on Spiritualist philosophy evening and conduct several private assessments for students 5 hours

Tuesday – Teach class on Spiritualist philosophy/healing evening and conduct several private assessments for students 5 hours

Wednesday – day off

Thursday – Conduct class to church students on public speaking evening and conduct several private assessments for students 5 hours

Friday – Conduct class for church congregation on the Philosophy of Spiritualism and our religion – 4 hours

Saturday – class for students and ministers in training on the history of Spiritualism – 6 hours.

Although the petitioner failed to provide an adequate description of the beneficiary's schedule prior to adjudication of the petition, the schedule provided on appeal is consistent with the petitioner's previous descriptions of the proposed duties. Accordingly, on appeal, the petitioner has established that the beneficiary will be working at least in a part time, qualifying position.

The petitioner has overcome the only stated basis for denial of the petition. However, review of the record shows additional grounds of eligibility that have not been established. 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 petitioner has not established that it qualifies as a bona fide non-profit religious organization. The USCIS regulation at 8 C.F.R. § 214.2(r)(3) provides the following definitions:

*Bona fide non-profit religious organization in the United States* means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the Internal Revenue Service (IRS) confirming such exemption.

*Bona fide organization which is affiliated with the religious denomination* means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the IRS confirming such exemption.

*Tax-exempt organization* means an organization that has received a determination letter from the IRS establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the Internal Revenue Code . . .

Regarding evidence of the petitioner's tax-exempt status, the regulation at 8 C.F.R. § 214.2(r)(9) requires the following:

*Evidence relating to the petitioning organization.* A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or

(ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or

(iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, as something other than a religious organization:

(A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

The instructions on the Form I-129 petition also list these identical evidentiary requirements. On the petition, the petitioner identified itself as the prospective employer and listed its address as [REDACTED] New Jersey, and its Federal Employer Identification Number (EIN) as [REDACTED]. Accompanying the petition, the petitioner submitted a letter from the IRS, dated June 25, 1997, addressed to [REDACTED] at [REDACTED] "c/o [REDACTED]. The letter stated that the IRS determined the organization to be exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code.

The current regulations governing special immigrant and nonimmigrant religious workers were published on November 26, 2008. In the preamble to the final rule, USCIS discussed the determination letter requirement:

USCIS acknowledges that obtaining a determination letter from the IRS will require the payment of a user fee to the IRS, as discussed in the proposed rule, if the organization does not possess its original determination letter. 72 FR at 20449.

USCIS has, however, confirmed with the IRS that determination letters do not expire. Therefore, an organization will need to pay a fee only once to obtain a determination letter. Although USCIS will accept determination letters of any date, USCIS may request evidence or confirm that the exemption is still valid. For example, if the address on the letter differs from the address given in the petition, an explanation should be provided. USCIS has retained the reference to "currently valid" determination letters in the rule text to emphasize that a letter revoked by the IRS cannot be used to meet the definition of tax-exempt organization under the INA. USCIS will routinely examine the publicly available tax documentation for the petitioning organization to determine the ability of the organization to provide support, will consult with the IRS on whether any petitioning organization is validly exempt from taxation under IRC section 501(c)(3), 26 U.S.C. 501(c)(3), and may refer to IRS Publication 78, Cumulative List of Organizations, to verify whether the determination letter is current.

USCIS will routinely consult with the IRS on whether any petitioning organization is validly exempt from taxation under IRC section 501(c)(3), 26 U.S.C. 501(c)(3), and may refer to IRS Publication 78, Cumulative List of Organizations, to verify whether the determination letter is current. Although existing regulations permit applicants to submit material to USCIS regarding an applicant's non-profit status, the Department of Homeland Security (DHS) has determined that anti-fraud efforts, economy, and efficiency warrant the use of the formal IRS determinations, rather than an independent determination by USCIS.

In response to the March 27, 2013 RFE, the petitioner submitted a copy of a Form 8822-B, Change of Address – Business, signed April 22, 2013, requesting a change of address for [REDACTED] to [REDACTED]. The form listed the organization's EIN as [REDACTED]. The petitioner also submitted an uncertified copy of its Form 900, Return of Organization Exempt From Income Tax, for 2009, which listed the EIN [REDACTED]. No explanation was provided for the discrepancies regarding the petitioner's EIN. 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).

On appeal, the petitioner submits a letter from the IRS to the petitioner, dated July 9, 2013, with an address and EIN matching those indicated on the petition. The letter states, in part: "Our records indicate that you were recognized as exempt under section 501(c)(3) of the Internal Revenue Code in a determination letter issued in June 1997." However, the petitioner again fails to explain discrepant claims and documents regarding the petitioner's EIN.

Additionally, the petitioner failed to establish how it intends to compensate the beneficiary. 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. 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.

On the Form I-129 petition, the petitioner indicated that the beneficiary would not be paid wages, but that the petitioner would "provide for her needs while she is here." In the employer attestation portion of Form I-129 Supplement R, question 5.d., the petitioner was instructed to provide a description of the proposed salaried or non-salaried compensation or, if the beneficiary would be self-supporting, documentation to establish "that the position the beneficiary 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." In response, the petitioner stated: "This is a broader teaching/ministerial work to further the philosophy and religion of Spiritualism."

In a letter accompanying the petition, dated September 12, 2012, the petitioner stated: "Our church will provide her with full and complete housing, food and transportation while she is here with us in the United States." In a separate letter, dated January 14, 2013, the petitioner stated:

We have here at our church a guest room and showers so visitors may stay at the church and are provided for.

We also at times will provide a guest room at [REDACTED] which is two minutes from the church.

We, the church, pay the expenses of flights to our church.

All meals are provided by our congregation.

The petitioner submitted a June 20, 2012, letter from [REDACTED] to the petitioner, indicating that the petitioner's 2011 Federal Return of Organization Exempt from Income Tax and its 2011 Federal Exempt Organization Business Income Tax Return were "enclosed" to be signed and filed with the IRS. However, the petitioner did not submit copies of the referenced returns.

In the March 27, 2013, RFE, the director requested verifiable evidence of how the petitioner intends to compensate the beneficiary, including IRS documentation if available, or an explanation for its absence along with comparable, verifiable documentation.

In response, the petitioner submitted an uncertified copy of its 2009 Form 990, indicating "Net assets or fund balances" of \$390,676 for the year. The petitioner submitted a November 18, 2009, American Express statement for a Business Cash Rebate Card held by the petitioning organization. The statement

included charges for [REDACTED] on October 28, 2009, and [REDACTED] [sic]" for October 21, 2009, to November 2, 2009. The petitioner also submitted Group Booking Agreements, dated January 21, 2012, and January 30, 2013, for the [REDACTED]. The petitioner stated that the petitioner "does also have guest accommodations at the church approved for visitors to our church." The petitioner also stated:

Re: Lack of w-2 Forms

The Journey Within will pursue a Social Security number if our guests become regular workers, at this time the minister/teachers are only here for one week out of the year, maybe two. They are not getting a weekly paycheck from us. We do not anticipate this becoming a weekly employment ever.

In a letter submitted on appeal, the petitioner states: [The petitioner] which hosts our guests understands that if our guests begin to earn income over \$3000.000 we must obtain a social security number for them and pay taxes, which we will do if necessary."

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, "such as IRS Form W-2 or certified tax returns," or an explanation for its absence along with comparable, verifiable documentation. The petitioner has indicated that it intends to provide non-salaried compensation in the form of room and board and travel expenses. The only IRS documentation pertaining to compensation submitted by the petitioner was an uncertified 2009 Form 990. The letter from [REDACTED] submitted with the petition, indicates that the petitioner filed a tax return in 2011. Although the petitioner has explained the lack of past Forms W-2, Wage and Tax Statement, it has not explained the absence of its own certified tax returns. Further, the petitioner has not submitted sufficient verifiable evidence of its ongoing to ability to provide the proffered non-salaried compensation.

To the extent that the petitioner's response to Form I-129 Supplement R, question 5.d., indicated that the beneficiary would be self-supporting as a participant in an established program for temporary, uncompensated missionary work, as permitted under 8 C.F.R. § 214.2(r)(11)(ii), the petitioner has not submitted sufficient evidence in compliance with that regulation. The petitioner has not submitted any evidence of the beneficiary's ability to support herself, as required under 8 C.F.R. § 214.2(r)(11)(ii)(C)(5).

Finally, the USCIS 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 petition is remanded in order for the director to determine whether or not the petitioner has satisfied the regulatory requirements at 8 C.F.R. § 214.2(r)(16).

On remand, 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.