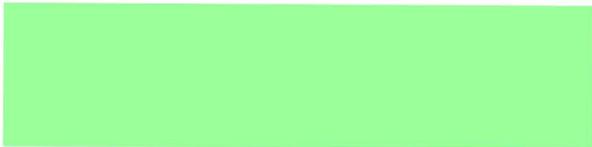


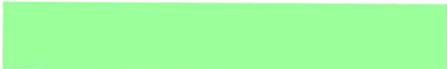


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JAN 28 2014 OFFICE: CALIFORNIA SERVICE CENTER



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. 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 appeal will be dismissed.

The petitioner describes itself as “a world-wide Catholic religious [c]ongregation which has its headquarters in Rome, Italy, and has over 90 jurisdictions/provinces throughout the world, including two in the [United States].” 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 pastoral assistant/priest at [REDACTED] in [REDACTED]. The director determined that the petitioner failed to establish how it intends to compensate the beneficiary.

On appeal, the petitioner submits additional documentation.

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. 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 December 5, 2012. In section 1(5)(d) of the petition, the petitioner stated that the beneficiary, "as a member of a religious Congregation with the vow of poverty, will receive no monetary compensation," but that the petitioner will be responsible for the beneficiary's living expenses. The petitioner specifically stated on the petition that [REDACTED] assume all of [the beneficiary's] expenses: room and board, medical, transportation, etc." The petitioner submitted no documentary evidence of its intent and ability to compensate the beneficiary at the time of petition filing or in response to the

director's Request for Evidence (RFE). However, in a letter responding to the RFE, the petitioner stated:

As a member of a religious congregation with a vow of poverty I [REDACTED] will not receive a salary. However, he will be given room and board along with the other clergy at [REDACTED]. All of his personal and medical needs will be provided by his religious congregation, the [REDACTED].

The director denied the petition stating that the petitioner had not established how the petitioner would compensate the beneficiary as required by the above quoted regulation.

On appeal, the petitioner submits an unaudited copy of a balance sheet for the [REDACTED] as of May 10, 2013, which shows total current assets of \$5,689,483.02, and total liabilities of \$1,259,452.94. Also submitted on appeal is a copy of the 2012 annual church budget of [REDACTED] the church to which the beneficiary is being assigned to work as a priest. That document shows funds budgeted as compensation for [REDACTED] and is accompanied by a letter from the church's pastor stating that the beneficiary will be replacing [REDACTED] and the funds budgeted for [REDACTED] living expenses will be used for the beneficiary.

The documentation submitted does not satisfy the requirements of 8 C.F.R. § 214.2(r)(11) showing how the petitioner will compensate the beneficiary. The Salesian Society, Inc.'s balance sheet is not an audited financial statement, and the petitioner failed to submit any accompanying documentary evidence in support of the figures asserted in the statement. Unaudited financial statements are the representations of management. The unsupported representations of management are not verifiable evidence and are insufficient to demonstrate how the petitioner would compensate the beneficiary under 8 C.F.R. § 214.2(r)(11). 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)). Further, the petitioner must establish its ability to pay the beneficiary at the time the petition is filed, December 2012. 8 C.F.R. 103.2(b)(1),(12). The submitted balance sheet relates to the petitioner's financial condition as of May 2013. A visa petition may not be approved based on speculation of future eligibility or after the petitioner becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978).

The petitioner submitted a budget for the church to which the beneficiary is to be assigned as a priest. That budget shows compensation for two priests, one of whom is to be replaced by the beneficiary according to the statement of the church's pastor. To the extent that the beneficiary will be compensated by his local church rather than the petitioner, the USCIS 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" and to "submit verifiable evidence explaining how the petitioner will compensate the alien." The cited regulation twice specifies the petitioner, *i.e.*, the employer, as the entity that will "compensate the alien." The regulation does not state that the petitioner can

discharge this responsibility by arranging for third parties to compensate the alien. Even if third party compensation was allowed in this instance, however, the regulation at 8 C.F.R. § 214.2(r)(11) requires that the petitioner submit “verifiable evidence explaining how the petitioner will compensate the alien.” As noted above, 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.” In this instance, the budget presented is not supported by verifiable evidence of past salaries paid for similar employees such as IRS tax or withholding documentation. Nor has the petitioner stated that any such information is unavailable or if so, why it is unavailable. The church budget submitted without corroborating verifiable documentation is insufficient to establish how the petitioner will compensate the beneficiary.

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.