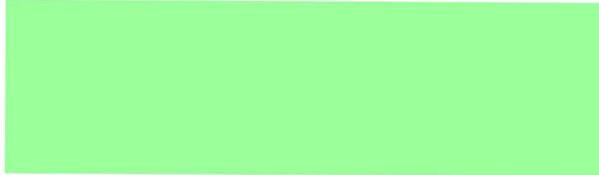


(b)(6)

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

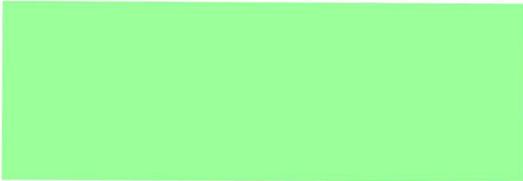


DATE: JAN 31 2014 OFFICE: CALIFORNIA SERVICE CENTER FILE [REDACTED]

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:

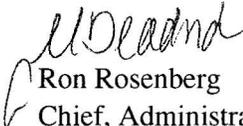


INSTRUCTIONS:

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,


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 Sikh temple. 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 Sikh priest. The director determined that the petitioner failed to establish how it intends to compensate the beneficiary.

The petitioner submits additional documentation on appeal.

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.

* * * *

On the Form I-129, Petition for a Nonimmigrant Worker, Part 5, questions 8 and 9, the petitioner stated that the beneficiary would be paid \$200 per week, and would be provided boarding and lodging within the [redacted] (Sikh Temple). In the employer attestation, Form I-129 Supplement R, the petitioner stated:

The alien will be compensated at a weekly salary of \$200.00 during his stay in the United States. In addition, boarding, lodging, medical, travelling and any other expenses incurred by him during his stay in the United States will be borne by our organization.

In a letter accompanying the petition, the petitioner stated that copies of the beneficiary's 2010 and 2011 tax returns were being submitted. However, a review of the record indicates that no tax returns were submitted at the time of filing the petition. The petitioner submitted a copy of a Form 1099-MISC, Miscellaneous Income, indicating that the beneficiary received \$9,600.00 in nonemployee compensation from the petitioner in 2010. In the space provided on the Form 1099-MISC for the "Recipient's identification number," the petitioner stated "applied for."

On November 13, 2012, the director issued a Request for Evidence (RFE) asking, in part, that the petitioner submit verifiable evidence of how the petitioner intends to compensate the alien. The notice stated:

Submit the following evidence. Such evidence may include but it's not limited to:

- proof of past compensation for similar position(s);
- verifiable documentation that room and board will be provided;
- budgets showing monies set aside for salaries, leases, etc., (ex. audited financial statements, bank statements/cancelled checks, paystubs) and,
- IRS documentation, such as IRS Form W-2 or certified tax returns, if available.

If IRS documentation is unavailable, submit an explanation for the absence of IRS documentation, along with comparable, verifiable, documentation.

The RFE also noted that the petitioner submitted evidence indicating that it had previously employed the beneficiary. The petitioner was instructed to submit copies of the beneficiary's IRS Forms W-2, Wage and Tax Statements, or certified federal income tax returns for the preceding two years.

In a letter responding to the RFE, the petitioner stated that the beneficiary "is currently being paid a monthly salary of \$500.00." The petitioner presented copies of checks to the beneficiary for \$500 per month from November 23, 2011 to December 2, 2012. The check copies, however, showed only the front of the check and did not establish that the checks had been negotiated and paid through normal banking channels. The petitioner also submitted uncertified copies of the beneficiary's Forms 1040, U.S. Individual Income Tax Returns, for 2010 and 2011, listing total income of \$7,200 in each of those years. In a letter dated December 15, 2012, the petitioner's General Secretary stated the petitioner was unable to issue Forms W-2 or 1099 "[d]ue to the pending immigration case," but that the beneficiary would apply for a social security number after the case is resolved and "[a]fter that, we will issue the W-2/Form 1099 and [he] will file the required tax returns." The petitioner did not explain why the beneficiary's pending petition would prevent issuance of a Form W-2 or Form 1099, or why the petitioner previously submitted a Form 1099-MISC to USCIS that was purportedly issued to the beneficiary with regard to his 2010 income. Further, no explanation was provided for the discrepancy between the \$9,600 in income listed on the 2010 Form 1099-MISC and the \$7,200 listed

on the 2010 Form 1040. The petitioner did not submit evidence to resolve whether the uncertified Forms 1040 submitted in response to the RFE had in fact been filed with the IRS, or would be filed after resolution of the immigration case as indicated in the letter. 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). In a separate letter, also dated December 15, 2012, the petitioner's General Secretary stated that the petitioner does not file an annual return with the IRS because it is a tax-exempt organization.

The petitioner additionally provided the following documentation in response to the director's RFE concerning how the beneficiary would be compensated:

- Documentation showing that the petitioner had an outstanding mortgage balance of \$1,858,886.30 on its real estate/temple grounds as of December 10, 2012.
- Two months of bank records showing the petitioner's account balances at the [REDACTED]. A bank statement for November 30, 2012 showed a bank balance of \$61,929.94 and a second statement for October 30, 2012 showed a bank balance of \$75,265.90. A letter from the [REDACTED] dated December 18, 2012 was also submitted stating that the petitioner had a checking account balance of \$70,497.16 on December 18, 2012 and that the petitioner held another account (account ending in 8815) with a balance of \$15,000.
- Financial statements for years ending December 31, 2011 and November 30, 2012. The statements were not accompanied by an accountant's report stating that the reports were audited. Therefore, the reports are deemed to be the representations of management.

On March 13, 2013, the director denied the petition, finding that the petitioner failed to establish its ability to provide the proffered compensation.

On appeal, the petitioner submits an uncertified copy of its 2012 Form 990, Return of Organization Exempt From Income Tax, listing "Revenue less expenses" of \$139,266 for the year. The petitioner also submits 2012 Forms 1099-MISC for [REDACTED] listing nonemployee compensation of \$7,200, \$2,200, and \$16,800, respectively, but does not indicate that the beneficiary will be replacing any of the employees.

If a petitioner intends to provide salaried or nonsalaried compensation, the regulation at 8 C.F.R. § 214.2(r)(11) requires the petitioner to submit IRS documentation or an explanation for its absence, along with comparable, verifiable documentation. The only IRS documentation submitted by the petitioner consisted of uncertified copies, with no evidence to establish that the documents were filed with the IRS. Further, as discussed previously, unresolved inconsistencies in the petitioner's statements and evidence call into question the credibility of the purported IRS documentation of the beneficiary's past earnings. 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. at 591.

It is further noted that the petitioner has not provided evidence of its ability to provide the beneficiary with room and board although the director specifically requested such evidence in the RFE. Although the petitioner stated in response to the RFE that the beneficiary was being provided with room and board and other non-salaried compensation, the petitioner failed to provide any documentary evidence that it had obtained living quarters for the beneficiary or made arrangements for the beneficiary's food and other personal living necessities.

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.