



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **JUL 02 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)

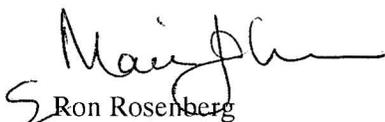
ON BEHALF OF PETITIONER:

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 petitioner appealed the decision to us at the Administrative Appeals Office. We withdrew the director's decision and remanded the petition for a new decision. The director again denied the petition and certified the decision to us for review. We will affirm the denial of the petition.

The petitioner is a nonprofit corporation affiliated with the [REDACTED]. It filed Form I-129, Petition for a Nonimmigrant Worker, on December 21, 2012, seeking to classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R) of the Act, to perform services as an audits officer. The beneficiary is a member of the [REDACTED].

The director initially denied the petition on March 28, 2013, having determined that the petitioner had not established that it qualifies as a *bona fide* tax-exempt organization. We withdrew that finding in a remand notice dated December 26, 2013, but found that the petitioner had not met its burden of proof with respect to the beneficiary's claimed non-salaried compensation. The director certified a new denial notice to us on March 13, 2014, based on the issue of the beneficiary's non-salaried compensation.

In a related but distinct finding, the director also found that the petitioner had not submitted required evidence of the beneficiary's past non-salaried compensation, as required by the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(12)(ii). This issue applies not to the petition as such, but to the concurrent request to extend the beneficiary's existing R-1 nonimmigrant status. Under the USCIS regulation at 8 C.F.R. § 214.1(c)(5), we have no appellate jurisdiction over requests for extension of status.

In response to the certified denial, the petitioner submits a letter and several supporting exhibits.

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 USCIS regulation at 8 C.F.R. § 214.2(r)(11) reads, in pertinent part:

Evidence relating to compensation. Initial evidence must state how the petitioner intends to compensate the alien, including specific monetary or in-kind compensation. . . . [T]he petitioner must submit verifiable evidence explaining how the petitioner will compensate the alien. . . . 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.

Lines 14 and 15 of Part 5 of Form I-129 instruct the petitioner to state its gross and net annual income. The petitioner did not provide this information, instead stating “Non-profit” in the spaces provided for the figures. The petitioner also did not provide the beneficiary’s “Current U.S. Address” as instructed on Part 3, line 2j of the form, instead providing counsel’s address.

In Section 1, line 5d of the accompanying employer attestation, the petitioner stated: “As a member of the [redacted] [the beneficiary] receives room and board, medical, dental, transportation, uniforms, and a small weekly allowance of \$50 and occasional bonuses.” In an accompanying letter, Rev. [redacted] director of the petitioning entity, stated that the petitioner “continues to have sufficient assets to compensate [the beneficiary] for her services.”

In a notice of intent to deny (NOID) issued on February 12, 2013, the director stated: “The petitioner has not submitted any evidence to establish how they intend to compensate the alien with salaried or non-salaried compensation. They have merely stated they have sufficient assets to compensate [the beneficiary] for her services.” In response, the petitioner submitted copies of IRS Form W-2 Wage and Tax Statements, indicating that the petitioner paid the beneficiary \$3,025.34 in 2011 and \$6,121.46 in 2012. In a photocopied affidavit, attorney [redacted] stated that the non-salaried compensation of [redacted] members is exempt from reporting on IRS Form W-2 under section 119 of the Internal Revenue Code.

In the March 2013 denial notice, the director repeated a statement from the NOID: “The petitioner has not submitted any evidence to establish how they intend to compensate the alien with salaried or non-salaried compensation. They have merely stated they have sufficient assets to compensate [the beneficiary] for her services.”

On appeal, the petitioner submitted copies of quarterly wage and tax reports and further copies of the previously submitted financial statement and IRS Forms W-2. The petitioner asserted that this evidence shows that it “compensates its salaried non-religious workers [sic].”

In our December 2013 remand notice, we stated:

The financial and tax documents submitted in response to the NOID, and again on appeal, show that the petitioner has paid the beneficiary in excess of \$50.00 per week. These materials, however, cover only the beneficiary’s salary, which is admittedly a small fraction of the beneficiary’s overall compensation. The petitioner must provide not only IRS documentation regarding the beneficiary’s salaried compensation, but also verifiable documentation, comparable to IRS documentation, to establish non-salaried compensation. The financial statements do not meet this standard; single-line references to expenses for “staff welfare” are general claims rather than verifiable documentation. 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)).

In his previously submitted affidavit, [REDACTED] stated that the beneficiary’s non-cash compensation is not taxable and therefore does not appear on IRS Form W-2. His affidavit, however, is not verifiable documentation that the petitioner provides those forms of non-cash compensation. Therefore, the affidavit cannot satisfy the requirement that the petitioner submit verifiable documentation that it will provide non-salaried compensation.

Mr. [REDACTED] acknowledged that employee housing is non-taxable only under certain conditions. One of those conditions is that the housing is “on the employer’s business premises.” The petitioner, however, did not establish that the beneficiary’s housing is on the petitioner’s business premises. On Part 5, line 13 of Form I-129, the petitioner indicated that its “Current Number of Employees in the U.S.” was “66.” On the employer attestation, the petitioner indicated that the beneficiary would work at [REDACTED] and that all 66 of the petitioner’s employees work at that same location (*see* lines 5e and 1d of the employer attestation). Neither the petitioner’s initial submission nor its response to the NOID included verifiable documentation to show that the property at [REDACTED] includes work space, dining facilities and housing for 66 employees. The record also contained no verifiable documentation that the petitioner provides medical care, uniforms, or the other benefits listed on the petition.

For the above reasons, the submitted evidence meets the petitioner’s burden of proof regarding the beneficiary’s salaried compensation, but not the non-salaried compensation including room, board, and other benefits.

(Footnote omitted.) On January 16, 2014, the director issued a second NOID, quoting or paraphrasing language from our remand order to state that the petitioner had not established the beneficiary's non-salaried compensation.

The director received no response to the NOID, and denied the petition on March 13, 2014. The director stated that, because the petitioner had not responded to the NOID, the petitioner had failed to meet its burden of proof.

The record contains subsequent correspondence from the petitioner, marked as "Response to Notice of Intent to Deny" and containing the introductory sentence: "Herein is a timely Response to the Notice of Intent to Deny . . . issued on March 13th, 2014." The director issued the NOID on January 16, 2014. The director's March 13, 2014 notice was a notice of certified denial, which included a courtesy copy of the NOID. The inclusion of a copy of the NOID with the certified decision does not constitute a reissuance of the NOID, and it did not provide the petitioner with an additional opportunity to respond to the NOID.

In response to a notice of intent to deny, and within the period afforded for a response, the applicant or petitioner may: submit a complete response containing all requested information at any time within the period afforded; submit a partial response and ask for a decision based on the record; or withdraw the benefit request. 8 C.F.R. § 103.2(b)(11).

If the petitioner fails to respond to a notice of intent to deny by the required date, the benefit request may be summarily denied as abandoned, denied based on the record, or denied for both reasons. 8 C.F.R. § 103.2(b)(13)(i). Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the benefit request. 8 C.F.R. § 103.2(b)(14).

Apart from its incorrect identification as a response to the NOID, the petitioner's April 11, 2014 response misidentifies the grounds for denial. The response claims that the NOID cited the lack of "a currently valid determination letter from the IRS." The 2014 NOID contained no such finding, but the response letter focuses almost entirely on the issue of the petitioner's tax-exempt status and its affiliation with a religious denomination. Almost every exhibit submitted in response to the certified decision concerns the petitioner's tax-exempt status, and is not relevant to the actual stated grounds for denial. The petitioner also submits copies of the director's January 2014 NOID and March 2014 denial notice, establishing that the petitioner received those notices. The submitted copies match the file copies, and therefore demonstrate that the director, in 2014, did not cite the petitioner's tax-exempt status as a ground for denial of the petition.

The only statement in the response letter that addresses an element of the 2014 NOID is the following passage:

The USCIS also requested information on the Petitioner's location. The address on the IRS determination letter is [REDACTED] This is the main office of the administrative arm of the [REDACTED] The

Petitioner also has an office at

The location(s) of the beneficiary's place of work and residence was an element of the 2014 NOID, but the director had not simply asked the petitioner to identify the addresses. The director stated that the petitioner had not substantiated its claims in that regard. The petitioner's April 2014 submission does not remedy that deficiency.

The USCIS regulation at 8 C.F.R. § 214.2(r)(11)(i) requires the petitioner to submit IRS documentation or comparable, verifiable documentation of the beneficiary's non-salaried compensation. The petitioner did not submit this required evidence, and the response to the certified decision addresses entirely different grounds than the director cited in the denial notice. The petitioner has failed to establish how it intends to provide the beneficiary with non-salaried compensation.

The AAO will affirm the certified denial of the petition for the above stated reasons. 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, the petitioner has not met that burden.

ORDER: The director's decision of March 13, 2014 is affirmed. The petition is denied.