

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: **JUL 03 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:

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,

A handwritten signature in cursive script, appearing to read "Ron Rosenberg".

f 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. We will dismiss the appeal.

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 a minister. The director determined that the petitioner failed to establish how it intends to compensate the beneficiary and that the beneficiary would be employed in a qualifying position. The director also found that the petitioner failed to successfully complete a compliance review site visit.

On appeal, the petitioner submits a brief and additional evidence.

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.

(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.

The first issue to be considered is whether the petitioner has submitted verifiable evidence to establish its intent and ability to compensate the alien or how the alien will be self-supporting.

The Form I-129, Petition for a Nonimmigrant Worker, was filed by the petitioner on February 25, 2013. The petitioner stated that it will provide the petitioner with a "room and board sponsor" throughout his stay and employment, and that he will be entitled to receive cash offerings donations. In the employer attestation portion of Form I-129 Supplement R, the petitioner stated that the beneficiary will not be salaried, and that "[h]is financial sponsor is [REDACTED] a company whereof he is a Director, from Nigeria." As noted in the regulation above, if the beneficiary will be self-supporting, the petitioner must submit documentation establishing 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. To

establish this, the petitioner must show, in part, that it has a missionary program in which foreign workers have previously participated in R-1 status. 8 C.F.R. § 214.2(r)(11)(ii)(B)(I).

In support of the Form I-129 and the petitioner's ability to compensate the beneficiary, the petitioner submitted a letter of employment dated January 3, 2013, and signed by [REDACTED] Church Administrator, who stated that the beneficiary will be employed as a missionary, will be compensated by the petitioner with the provision of free room and board, and that the beneficiary will otherwise be self-supporting. The petitioner also submitted a copy of its By-Laws. In an index of the submitted evidence, the petitioner noted sections 325, 400, and 450 of the By-Laws as evidence of its "established program for temporary uncompensated missionary work." The noted sections addressed the petitioner's recognition of ordained ministers, church services including "Missions Services for both local and foreign churches," and the establishment of "other local churches," respectively. The petitioner additionally submitted a financial sponsor affidavit signed by [REDACTED], the beneficiary's brother, stating that [REDACTED] "will finance and financially sponsor" the beneficiary throughout the duration of his employment with the petitioner. Attached to the affidavit, the petitioner submitted the Certificate of Incorporation of [REDACTED], a list of its directors, and a copy of the company's bank statements with the [REDACTED] from March 30 to August 10, 2012.

On April 18, 2013, the petitioner issued a Request for Evidence (RFE) asking, in part, that the petitioner provide verifiable evidence of the petitioner's ability to provide for the beneficiary's room and board, and evidence that the petitioner has an established program for temporary, uncompensated missionary work. In response to the RFE, the petitioner provided an affidavit signed by Ms. [REDACTED] who stated, in part, that the petitioner has had other "non-salaried minister(s)/staff(s) employed by the Church under R1 status," and that proof of said employment is attached to the affidavit. The relevant documentation attached is a "List Of Workers" naming six other workers who purportedly worked for the petitioner as ministers. Dates or details of employment were not provided, nor did the petitioner provide proof that any of the workers were ever granted R-1 nonimmigrant status. Further, a review of USCIS records indicates that the petitioner has not filed a Form I-129 petition on behalf of any of the named individuals. While USCIS records indicate that the petitioner has successfully petitioned on behalf of other beneficiaries as R-1 nonimmigrants, the record does not contain sufficient evidence to determine whether these individuals were employed as uncompensated missionaries.

The petitioner also submitted an "Affidavit of Support Room and Board Sponsor," dated July 13, 2012, and signed by Ms. [REDACTED] stating that she will provide free room and board to the beneficiary at her residence [REDACTED] NY [REDACTED] during his employment with the petitioner.

On October 3, 2013, the director denied the petition, in part finding that the petitioner failed to establish its intent and ability to compensate the beneficiary. The director found that the petitioner failed to submit sufficient documentation to establish that the proffered position 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.

On appeal, the petitioner states:

The Petitioner's Bylaw and other Supporting Documentation, filed alongside the I-129 Petition, should have been considered in making [the] decision, as per the Petitioner being part of a temporary, uncompensated missionary program, which is part of a broader international program of missionary work sponsored by the denomination.

In a supporting brief, the petitioner notes additional sections of its By-Laws as evidence of its international program of missionary work.

Apart from its own unsupported assertions, the petitioner has provided no verifiable evidence of ever having employed any beneficiary in R-1 nonimmigrant status as a missionary as required under 8 C.F.R. § 214.2(r)(11)(ii)(B)(1). 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)). As such, the petitioner has failed 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 as required by 8 C.F.R. § 214.2(r)(11). The petitioner has failed to present verifiable evidence that it maintains missionary programs abroad as required by 8 C.F.R. § 214.2(r)(11)(C)(2). The only evidence submitted in this regard is the uncorroborated statement of the petitioner that its pastor visits Africa twice a year on mission trips. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici* at 165.

Even if the petitioner had successfully demonstrated that the beneficiary's position is part of an established program and that it maintains missionary programs abroad, the petitioner has not established the beneficiary's ability to support himself. Regarding the beneficiary's self-support, the petitioner submits affidavits from the beneficiary and his father, stating that [REDACTED] "Our Family Company," will be supporting the beneficiary through money transfers into an established bank account. The five months of bank statements for [REDACTED] submitted by the petitioner, are insufficient to establish that [REDACTED] has the ability to provide for the beneficiary's living expenses in the United States throughout the term of the beneficiary's intended stay. The bank statements show sums on deposit through August, 2012, with the Form I-129 being filed five months later in February, 2013. [REDACTED] states that it will deposit into an account on behalf of the beneficiary, \$5,500 per month and pay other expenses as they may arise. The bank statements for [REDACTED] show deposits of foreign currency as the bank is an [REDACTED]. The record does not state the value of said accounts in American dollars on the deposit dates. The petitioner did not present budgets for the company showing that it had budgeted for the beneficiary's support and the petitioner did not present any financial statements demonstrating the company's ability to compensate the beneficiary. Accordingly the petitioner has not established the beneficiary's ability to self-support while residing in the United States.

With regard to the issue of non-salaried compensation, the petitioner asserts that the beneficiary "has been provided with an apartment" at the address of the petitioning church, [REDACTED].

NY [REDACTED] The petitioner submits copies of photographs depicting an office and bedroom. The assertion on appeal that the beneficiary will reside at the petitioning church's address is inconsistent with the previously submitted affidavit which indicated that he would reside with [REDACTED] at her address. 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).

For the reasons discussed above, the petitioner has not submitted sufficient evidence to establish its ability to compensate the beneficiary under 8 C.F.R. § 214.2(r)(11).

The second issue to be determined is whether the petitioner has established that the beneficiary will be employed in a qualifying position. The USCIS regulation at 8 C.F.R. § 214.2(r)(3) includes the following definitions:

Minister means an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and
- (D) Works solely as a minister in the United States which may include administrative duties incidental to the duties of a minister.

Religious worker means an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister.

On the Form I-129 petition, the petitioner stated that it would employ the beneficiary as a full-time "Minister," and listed the duties of the proffered position as follows:

- * Teachings in [the petitioner's] school of [REDACTED]
- * Outreaches in College's and University's campuses
- * Head, [the petitioner's] legal department – drafting legal documents and representing the Church in legal issues and affairs

* Conducting the Church's services and worship.

In her January 3, 2013, letter, Ms. [REDACTED] detailed the beneficiary's duties:

1. Preaching and teaching the gospel of our Lord Jesus Christ, cum His doctrines, tenets and standard, to [the petitioner's] flock;
2. Joining our team of ministers of God in ministrations of same in other churches in US;
3. Teaching in our Sunday school classes;
4. Leading in worship and praises in our church's services;
5. Evangelism and counseling of new members of this church and Campus Evangelism and Outreaches;
6. TV, Radio and Online gospel outreaches; and
7. Joining our prayer team.

In the April 18, 2013, RFE, the director requested additional information about the proffered position, including a detailed description and schedule of the proposed duties. In response, Ms. [REDACTED] stated in a June 4, 2013 affidavit that the beneficiary would be "employed by the [c]hurch as a missionary to work under the [c]hurch's supervision in its [REDACTED] where he would be missionary-in-residence to prepare and train USA citizens coming to Africa on short or long term mission work." The affidavit also referenced the letter of employment submitted with the Form I-129.

In denying the petition, the director found that the petitioner had failed to provide a schedule to show the specific duties of the position and the time to be spent for each duty per day and per week. Additionally, the director stated:

In the site check conducted by USCIS officer on August 16, 2013, the declarations in the petition were found to be inconsistent with the information gathered during the interview with the petition signatory. The signatory, [REDACTED] confirmed that she filed the petition "to some degree" since she was not sure what the position would be. She informed the visiting officer that the beneficiary will be doing 15 hours of missionary work. She added that he will work directly with her at the church and would be assisting her at her private law firm [REDACTED] located at [REDACTED] NY. She stated the pastor selected the beneficiary because the beneficiary's parents are the pastor's friend.

A review of the petition, the petitioner's response to USCIS notice, and the information from the site visit clearly indicate the beneficiary will not be performing full time activities with a rational relationship to the religious calling of the minister; and will not work solely as a minister in the United States as he will be assisting as a lawyer in the signatory's law firm.

On appeal, the beneficiary and the petitioner's bishop, [REDACTED] assert that the beneficiary will be working solely as a minister. Mr. [REDACTED] provides a weekly schedule of the beneficiary's proposed ministerial duties that conflict with Ms. [REDACTED] initial description of the beneficiary's duties. Eligibility at filing is a long-established regulatory requirement for both immigrants and nonimmigrants. See 8 C.F.R. § 103.2(b)(1) and (12); *Ogundipe v. Mukasey*, 541 F.3d 257, 261 (4th Cir. 2008) (to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971); *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l Comm'r 1977); *Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Act. Reg'l Comm'r 1977); *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978) (nonimmigrant must meet eligibility requirements at the time of filing); *Matter of Drigo*, 18 I & N Dec. 223 (BIA 1982); *Matter of Atembe*, 19 I & N Dec. 427 (BIA 1986); and *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Comm'r 1998) (citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the proposition that we cannot "consider facts that come into being only subsequent to the filing of a petition"). The petitioner may not materially change the petitioner's duties to conform to eligibility requirements.

More importantly, the duties listed on appeal conflict with the information obtained by USCIS during the site visit. The petitioner provides no explanation for Ms. [REDACTED] statements during the site visit or the discrepancies between those statements and the petitioner's evidence and assertions regarding the proposed position. 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*, at 591-92. Based on the conflicting information as to what the beneficiary's actual duties will be, the petitioner failed to establish that the beneficiary will be employed in a qualifying position.

As the final ground for denial of the petition, the director found that the petitioner failed to successfully complete a compliance review site visit. 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.

In her decision, the director stated that the petitioner was found not to be in compliance with USCIS regulations during the August 16, 2013 site visit. As stated previously, the petitioner provides no explanation on appeal regarding the findings of the site visit or the statements of the petition's signatory, Ms. [REDACTED] which contradict the petitioner's assertions and submitted evidence. Accordingly, the petitioner has not overcome the negative findings of the compliance review.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.