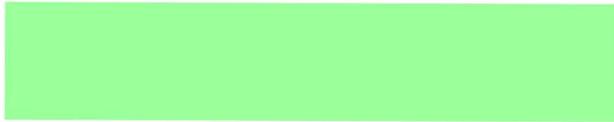




U.S. Citizenship
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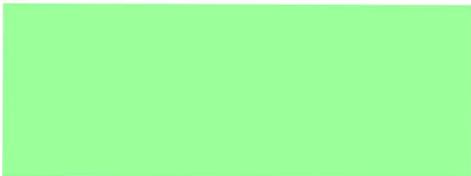


DATE: **JUL 23 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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:



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,


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 us at the Administrative Appeals Office on appeal. We will dismiss the appeal.

The petitioner is a [REDACTED]. It seeks to classify the beneficiary as a nonimmigrant religious worker under 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 priest. The director determined that the petitioner had not established how it intends to compensate the beneficiary, and that the petitioner provided conflicting information regarding its location.

On appeal, the petitioner submits a compiled financial statement. The petitioner also indicates that a brief and/or additional evidence will be forthcoming within 30 days. To date, a year after the filing of the appeal, the record contains no further substantive submission from the petitioner. We therefore consider the record to be complete as it now stands.

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)(I) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(I), pertains to a nonimmigrant who seeks to enter the United States solely for the purpose of carrying on the vocation of a minister of the religious denomination described above.

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 director, in the May 8, 2013 denial notice, stated that there was one ground for denial of the petition. Review of the denial notice, however, shows two grounds. We will address both below.

I. Compensation

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

- (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.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on October 26, 2012. At the time the petitioner filed the petition, the beneficiary was not yet an R-1 nonimmigrant authorized to work for the petitioner. On Section 1, line 5d of the accompanying employer attestation, the petitioner stated: “The alien will not be self-supporting. The church will fully support the alien by covering all the alien’s medical expenses, provide for food, room, place of worship, all necessities for any work to be done, as well as [a]ny personal needs.” The only evidence submitted with the original filing consisted of documents establishing the beneficiary’s B-1/B-2 nonimmigrant status.

The director issued a request for evidence (RFE) on January 23, 2013, instructing the petitioner to submit the types of evidence described in the regulation at 8 C.F.R. § 214.2(r)(11)(i), including the requirement that the petitioner submit either IRS documentation or an explanation for its absence. The petitioner responded to the request for evidence, and addressed other areas of concern such as the beneficiary’s ordination and the petitioner’s tax-exempt status. The petitioner’s response, however, did not 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 IRS documentation, such as IRS Form W-2 or certified tax returns. The petitioner did

not submit an explanation for the absence of IRS documentation, along with comparable, verifiable documentation.

The director denied the petition, stating that the petitioner had failed to submit the required evidence regarding the beneficiary's intended compensation. On appeal, the petitioner submits copies of compiled financial statements, showing that the petitioner's net income amounted to \$40,883 in 2011 and \$44,608 in 2012. These statements do not meet the requirements spelled out in the regulations at 8 C.F.R. § 214.2(r)(11). Documentation of net income, for instance, is not verifiable documentation that room and board will be provided.

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). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The petitioner has not submitted required evidence regarding the beneficiary's intended compensation, and has neither accounted for its failure to do so nor provided alternative evidence that would establish the necessary facts. Therefore, the petition may not be approved.

II. The petitioner's address

Part 1, line 3b of Form I-129 lists the petitioner's address as [REDACTED]. Section 1, line 5e of the accompanying employer attestation instructed the petitioner to list "the specific address(es) or location(s) where the beneficiary will be working." This wording allowed the petitioner to list multiple addresses if applicable. The petitioner specified only one address – again, [REDACTED]. The address appears elsewhere on the petition documents, specified as the petitioner's street address. Bishop [REDACTED] of the petitioning organization signed Part 7 of Form I-129, thereby certifying under penalty of perjury that the petition and the evidence submitted with it are true and correct to the best of his knowledge.

In the RFE, the director instructed the petitioner to submit documentation "to establish religious activity at [REDACTED]. In response, the petitioner submitted copies of an occupancy permit issued by the County of [REDACTED], Virginia, on October 8, 2010; an October 3, 2012 gas bill from [REDACTED]; mortgage documentation from [REDACTED] dated October 5, 2012; and an October 8, 2012 electric bill from [REDACTED]. All of these documents show the petitioner's address as [REDACTED]. Other documents show no address. None of the submitted documents show that the petitioner does, or ever did, operate at [REDACTED].

In denying the petition, the director stated that "the petitioner has not provided any explanation for the variation" in the addresses shown on the Form I-129 and the supporting documents. Because of this variation, the director stated that the petitioner had not established that the [REDACTED] documents related to the petitioning entity.

The petitioner's submission on appeal does not address this issue, except that the financial statements described above show the petitioner's address as [REDACTED].

USCIS officers visited the Cape Court address on March 11, 2014, to perform an on-site inspection as described in the regulation at 8 C.F.R. § 214.2(r)(16). The officers verified that the petitioner operates as a church from that site. The record contains no explanation for why the petitioner had originally claimed an address on [REDACTED], and asserted that the beneficiary would work there. Submitted evidence places the church on [REDACTED] at least as early as 2010, and it remained there in 2014, but in 2012 the petitioner originally claimed to be located – and that the petitioner would work – on [REDACTED].

Doubt cast on any aspect of the petitioner's proof may 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. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92. Here, evidence submitted in support of the petition contradicts claims that the petitioner made, under penalty of perjury, on the petition form itself. The petitioner has not explained or accounted for the discrepancy.

We will dismiss the appeal for the above stated reasons, with each considered as an independent and alternate 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, the petitioner has not met that burden.

ORDER: The appeal is dismissed.