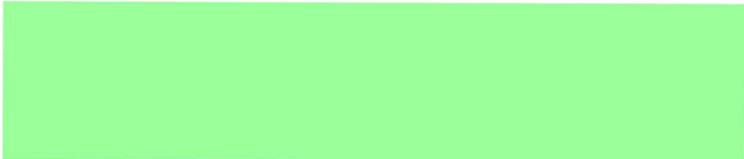


(b)(6)

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

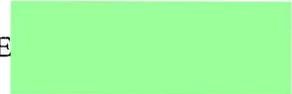


U.S. Citizenship
and Immigration
Services

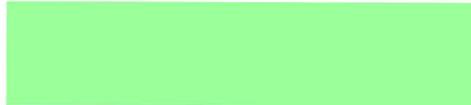


DATE: **JUN 19 2014**

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:

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 black ink, appearing to read "Ron Rosenberg".

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 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 priest. The director determined that the petitioner failed to establish that the beneficiary will be employed in a qualifying position and failed to establish how it intends to compensate the beneficiary.

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 first issue to be discussed is whether the petitioner has established that the beneficiary will be employed in a qualifying position for at least 20 hours per week.

The USCIS regulation at 8 C.F.R. § 214.2(r)(3) includes the following definition:

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.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on December 31, 2012. On the petition, the petitioner stated that the beneficiary will work in a full-time position as a priest. In a November 20, 2012 letter accompanying the petition, [REDACTED] Executive Member, [REDACTED] described the duties to be performed by the beneficiary as follows:

- Conducting the Parkash (installation every morning at dawn) and Semapti (closure at dusk) of the Holy Book and leading the morning and evening daily prayers.

- Leading congregation in prayer at Gurburab (Sikh Festival) and other religious functions, perform the Kirtan (musical rendition of the scriptures), Katha (discourses explaining the meanings of the writings of the Gurus and the holy literature), Ardas (prayers) and providing spiritual direction and upliftment to the Sangat (congregation).
- Performing the Sikh ceremonies- birth ceremonies, engagement prayers, wedding ceremonies, Baptism, funerals, Ardas (prayer) and other blessings.
- Conducting Akhand Path (continuous 48 hour non-stop readings of the 1430 page Holy Book (Sri Guru Granth Sahib).
- Preparation of the Prashad (holy sweet food) and Langar (free community food).
- Conducting weekend religious classes for the children and adults, teaching them about the Sikh Gurus, the Guru Granth Sahib (the Holy Book) – how to pronounce the words of Gurbani and also explaining the meaning of the Burbani, Burmukhi (Punjabi language) and Kirtan (spiritual music).
- Provide spiritual counseling.
- Perform any other duties as approved by the board.

On February 19, 2013, the director issued a Request for Evidence (RFE) asking, in part, that the petitioner provide additional information regarding the proffered position, including a list of specific job duties the beneficiary would perform along with the number of hours per week the beneficiary would spend performing each duty. In a letter responding to the RFE, dated April 19, 2013, the petitioner again provided the above list of the beneficiary's proposed duties and additionally provided a "Morning Schedule" listing three hours of duties, an "Evening Schedule" listing three hours of duties, a "Saturday Schedule" of one and a half hours, and a "Sunday Schedule" of three hours. The Saturday and Sunday schedules each also stated: "Morning and evening programs are same."

On August 28, 2013, the director denied the petition finding, in part, that the petitioner failed to establish that the beneficiary would be working for at least 20 hours per week as required by 8 C.F.R. § 214.2(r)(1). The director interpreted the submitted schedule to indicate that the beneficiary would work a total of 10.5 hours per week.

On appeal, the petitioner states that the morning schedule of three hours and evening schedule of three hours, described in its response to the director's RFE, would be performed every day. The petitioner states that, in addition to those hours, the beneficiary would work an additional one and a half hours on Saturday and an additional three hours on Sunday for a total of 46.5 hours per week. This assertion is consistent with the petitioner's previous descriptions of the beneficiary's duties, which indicated that the beneficiary would perform "morning and evening daily prayers" and would conduct the parkash "every

morning at dawn.” Accordingly, the petitioner has established that the beneficiary will be working at least 20 hours per week and the director’s decision on this issue will be withdrawn.

As an additional ground for denial, the director found that the petitioner failed to establish its intent and ability to compensate the beneficiary.

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 stated on the Form I-129 that the beneficiary will be compensated with a weekly salary of \$150.00, plus nonmonetary compensation of “free lodging, free food & other amenities.” The petitioner indicated on the petition that, at the time of filing, it had no current employees and all the duties of the priest were performed by volunteers.

In the director’s February 19, 2013 RFE, the director instructed the petitioner to provide evidence of its ability to compensate the beneficiary including IRS documentation or an explanation for its absence along with comparable, verifiable documentation. In response to the RFE, the petitioner submitted a balance sheet for 2011 and 2012 with a budget estimate for 2013, which included \$24,000 for “Total Priest Services Related Expenses.” The petitioner also submitted a list of member donations for 2011 and 2012, copies of bank statements from December 2012, January 2013, and February 2013, and copies of checks to two purported former priests as “[p]roof of past salaries ... for similar positions.” As the petitioner only submitted copies of the front of the checks, the copies do not establish that the checks were in fact negotiated through the regular banking system. Additionally, the petitioner submitted a “client copy” of a Form 1040, U.S. Individual Income Tax Return, for a former priest, [REDACTED] indicating \$21,038 in total income for 2011. The return was not certified by the IRS and did not include a Form W-2, or Form 1099-MISC, Miscellaneous Income, to identify the source of [REDACTED]’s income.

The director found that the petitioner had not submitted sufficient verifiable documentation of its ability to provide the proffered compensation. On appeal, the petitioner submits additional bank statements, copies of five checks issued by the petitioner to various individuals in 2013, and copies of the beneficiary's bank statements from May, 2013, through August, 2013. As previously indicated, the petition was filed on December 31, 2012. The petitioner must establish that the petition was approvable as of that date. 8 C.F.R. § 103.2(b)(1),(12). As the check copies and banking documentation submitted on appeal show the petitioner's activities in 2013, which post-dates the filing of the petition, that evidence does not establish the petitioner's intent and ability at the time of filing. See *Matter of Michelin Tire Corporation*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978).

If the petitioner intends to provide salaried or non-salaried compensation, the regulation at 8 C.F.R. § 214.2(r)(11) requires IRS documentation, "such as IRS Form W-2 or certified tax returns," or an explanation for its absence along with comparable, verifiable documentation. The only IRS documentation submitted by the petitioner consisted of an uncertified copy of a former priest's tax return that does not identify the petitioner as the source of his income. The budget documentation submitted by the petitioner on appeal shows wages paid to two priests in 2011 and 2012. The petitioner provided no explanation for the absence of Forms W-2 or Forms 1099-MISC for its former priests. Further, the petitioner did not provide "verifiable documentation that room and board will be provided." The petitioner did not submit proof of housing provided to its former priests or documentation showing the provision of food or other amenities. Finally, the budget sheets and bank statements submitted by the petitioner do not establish the petitioner's ability to compensate the beneficiary. The bank statements show the amount in an account on a given date, and do not show the sustainable ability of the petitioner to compensate the beneficiary. The record does not establish that the bank balances will be used to pay the beneficiary's compensation as opposed to the petitioner's ongoing operational expenses.

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.