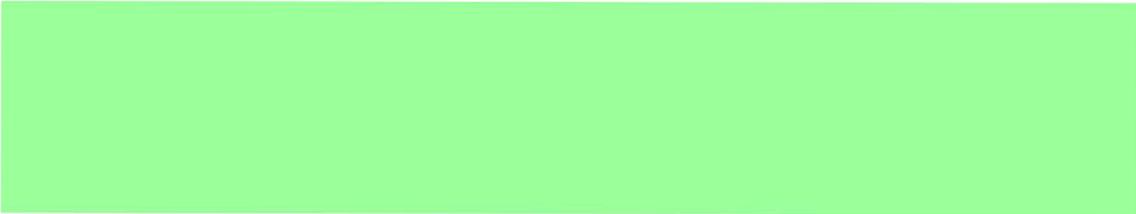




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JUN 25 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,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, initially approved the employment-based nonimmigrant visa petition on November 3, 2011. On further review, the director determined that the beneficiary was not eligible for the visa classification. Accordingly, the director served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the visa petition stating the reasons therefore and subsequently exercised her discretion to revoke the approval of the petition on September 19, 2013. The matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner is a Pentecostal religious organization. It seeks to extend the beneficiary's classification 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 of music. The director determined that the petitioner violated the terms and conditions of the approved petition and revoked approval of the petition.

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) 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, 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. [Internal Revenue Service (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 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.

The USCIS regulation at 8 C.F.R. § 214.2(r)(18) provides as follows:

(iii) *Revocation on notice.*

(A) *Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:

- (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;
- (2) The statement of facts contained in the petition was not true and correct;
- (3) The petitioner violated terms and conditions of the approved petition;
- (4) The petitioner violated requirements of section 101(a)(15)(R) of the Act or paragraph (r) of this section; or
- (5) The approval of the petition violated paragraph (r) of this section or involved gross error.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on August 1, 2011, seeking to extend the stay of the beneficiary in R-1 nonimmigrant status as a religious worker. The petitioner submitted evidence that the beneficiary had previously been granted R-1 nonimmigrant status from March 14, 2011 through September 18, 2011. With the filing of the instant petition, Part 5., questions 8 and 9, the petitioner indicated that the beneficiary would be paid wages of \$461.54 per week and that no other compensation would be provided. Further, in response to § 1, 5(d), of the Form I-129 Supplement R, which instructed the petitioner to describe the proposed salaried or non-salaried compensation to be provided for the beneficiary, the petitioner stated:

As the Minister of Music, [the beneficiary] will be compensated \$461.54 per week.

[REDACTED] has been, and will continue, compensating her directly for her services rendered as Minister of Music.

The petitioner did not indicate that the beneficiary would be compensated with any form of nonmonetary compensation. In a July 7, 2011 letter accompanying the petition, [REDACTED] bishop of the petitioning church, asserted the petitioner's "financial ability to pay [the beneficiary] \$461.54 per week," with no mention of any other form of compensation. The petitioner submitted copies of pay stubs indicating weekly payments of \$461.54 to the beneficiary for the period from May 28, 2011, to July 1, 2011. The petitioner also submitted a paystub dated July 15, 2011, indicating payment of \$809.59 to the beneficiary for the pay period July 1, 2011, to July 15, 2011.

The director approved the petition on November 3, 2011. On February 25, 2013 the director issued a NOIR based on the negative findings of a site visit and telephone interviews with the signatory of the petition and the beneficiary. The director stated, in part:

The compliance review report on the site check conducted December 21, 2011 at the designated work location ([REDACTED]) indicates that the petitioner[s] compliance to regulations has not been verified. The signage by the roadside does not show the petitioning organization's name. The work site is a large building that appear[s] to have been converted from a warehouse. There are two detached residences on the property. The beneficiary and the signatory were not available on site. The visiting officer made a phone contact with the signatory who verified that he is the authorized signatory and that the [beneficiary] has been employed by the organization as a Minister of Music and also holds Spanish language services. He claimed that the beneficiary lives in the one-story detached house on the property. The signatory did [not know] the beneficiary's whereabouts at that time and indicated that most of the church workers were on Christmas vacation.

During a phone conversation with the beneficiary, the officer reported that the beneficiary works full-time for the petitioner ministering in Spanish to [the] immigrant community and youth through church services and visitations. The beneficiary claimed to report to Pastor [REDACTED] who directs her day to day work. She claimed to be paid \$500.00 per week[, being] paid semi-monthly since March 14, 2011. Her pay record as of July 15, 2011 shows a total of \$3,117.29. The visiting officer requested documentation of employee pay via email to the signatory on December 22, 2011. The signatory response stated that the was out of [the] office until January 3, 2012; but will be coming to [the] office on December 28, at which time he can answer all [of the] officer's questions. There was no follow-up response and the requested evidence of compensation had not been received. The petitioner failed this site check.

The director instructed the petitioner to provide evidence of compensation paid to the beneficiary from March 14, 2011, through the present.

In response to the NOIR, the petitioner provided tax documentation and payroll records, including IRS Forms W-2, Wage and Tax Statements, for 2011 and 2012, which indicated the petitioner paid wages to the beneficiary of \$7,806.32 and \$12,000 in those years, respectively. The Forms W-2 did not document any housing provided to the beneficiary. The petitioner also submitted payroll records indicating that the beneficiary was being paid the sum of \$461.54 per week from May 28, 2011, through July 1, 2011, and \$999.31 bi-weekly from July 1, 2011, through July 30, 2011. The payroll records also indicate that, from September 16, 2011, through December 30, 2011, the beneficiary was paid \$500.00 per bi-weekly pay period. Payroll records were not provided for the time period March 14, 2011, through May 27, 2011 or August 1, 2011, through September 15, 2011. In a letter dated March 20, 2013, Bishop [REDACTED] stated that the beneficiary has been fully compensated in her appointed position. Bishop [REDACTED] also stated that the beneficiary was paid a base salary in 2011 of \$7,806.00 plus “room and board, including meals and utilities, with the fair market value of \$6,000 [per] year.” He asserted that the beneficiary was provided with this nonmonetary compensation “even before she was enrolled on payroll.” Bishop [REDACTED] further stated that in 2012, the beneficiary received a \$12,000 base salary plus “full-service accommodation, including meals and utilities, with the fair market value [being] \$12,000 [per] year.” The petitioner also submitted a March 13, 2013 letter from a payroll company, [REDACTED] stating that it has provided a payroll service to the petitioner since July 15, 2011.

The director revoked the petition on September 19, 2013. The director noted that, with the filing of the petition, “[t]here was no statement about provision of accommodations with a fair market value of \$12,000 in the petition, nor had evidence for this form of compensation been presented.”

On appeal, the petitioner states that, at the time of filing the petition, it intended to compensate the beneficiary at the rate of \$461.54 per week (\$24,000.08 per year) “with no benefits.” The petitioner states that the pay periods and methods of compensation were changed after the petitioner outsourced its payroll to a third-party provider. According to the petitioner, the beneficiary’s salary was adjusted to reflect nonmonetary compensation of room and board with a fair market value of \$12,000 per year. The petitioner asserts that the change in compensation does not reflect a reduction in pay and that the beneficiary at all times received “the intended total compensation of \$24,000.”

First, the statements on appeal demonstrate that the statement of facts contained in the petition were not true. The petitioner acknowledges that, at filing, the petitioner had already changed to a payroll service and adjusted the beneficiary’s salary and pay periods.

Second, and more importantly, the change in the form of compensation by the petitioner represents a violation of the terms and conditions of the approved petition. The regulation at 8 C.F.R. § 214.2(r)(11) requires the petitioner to set forth “how the petitioner intends to compensate the alien, including specific monetary or in kind compensation.” Additionally, the regulation at 8 C.F.R. § 214.2(r)(8)(viii) requires the petitioner to attest to “the details of such compensation.” The petitioner did not present, with the filing of the petition, evidence of its intent or ability to provide the beneficiary with any form of nonmonetary compensation. USCIS was, therefore, prevented from adjudicating the petition based on the petitioner’s ability to provide the stated nonmonetary compensation. Further, the petitioner has not presented, either on appeal or in response to the director’s NOIR, evidence that the petitioner is in fact providing the beneficiary with “room and board, including meals and utilities” as stated by the

petitioner. 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)).

Further, the petitioner failed to provide verifiable evidence of the value of any nonmonetary compensation. The only evidence of the value of the stated nonmonetary compensation is the unsupported statement of the petitioner's representative. *Id.*, at 165. Moreover, although the signatory of the petition informed the investigating officer that the beneficiary lives in a house on the work site property at [REDACTED], all documentation submitted by the petitioner, including paystubs, tax documents, and the Form I-129 petition itself, identifies the beneficiary's address as [REDACTED]. 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. 582, 591 (BIA 1988). Additionally, the petitioner states on appeal that the beneficiary's compensation was changed when the payroll company was hired, and that her wages were reduced because she began receiving room and board as nonmonetary compensation. However, this assertion contradicts the petitioner's previous statement in response to the NOIR that the beneficiary was provided with this nonmonetary compensation "even before she was enrolled on payroll." Further, as the petition was signed on July 18, 2011 and filed on August 1, 2011, the evidence indicates that the change in payroll took place prior to the filing of the petition. It is incumbent on 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. *See Id.*, at 591.

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.