**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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: MAY 16 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.

Thank you,

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. The AAO will withdraw the director's decision. As the present record does not support approval of the petition, the matter will be remanded for further action and consideration.

The petitioner is a Buddhist temple. It seeks classification of 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 Buddhist instructor. The director determined that the petitioner failed to successfully complete a compliance review site visit.

On appeal, the petitioner submits a brief from counsel 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
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> (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,
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> (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
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> (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 petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on December 12, 2012. In a letter accompanying the petition, the petitioner identified itself as "a Traditional Buddhist Temple located at ." The petitioner stated that there are two Buddhist monks residing and working at the temple and 100 people that attend various ceremonies every month. The petitioner submitted photographs purportedly showing religious activities taking place at the petitioning temple.

USCIS issued a Notice of Intent to Deny (NOID) on February 28, 2013 based on the negative findings of a site visit conducted on an unspecified date[1] and a follow-up site visit on October 21, 2007. The USCIS immigration officer conducting the inspection noted that the petitioner's facilities were located on the grounds of Inc., a commercial orchid grower, that the petitioner did not appear to have regularly scheduled services or educational classes, and that operations appeared limited to a visitation site for customers of Inc. The immigration officer stated that the petitioner's facilities were locked at the time of the follow-up visit and described the petitioner's facilities as a "a small fenced area occupied by a 10 x 12 foot wooden platform, covered by a corrugated metal roof containing a large statute of the Buddha," with a cooking facility adjacent to the structure. The officer observed living quarters adjacent to the orchard greenhouse that appeared to be co-located with the offices of the property owner. According to the inspection report, the petitioner paid rent to the property owner of $500.00 per month and the petitioner's facility was located in a residential neighborhood without street signage leading to the site. The NOID instructed the petitioner to present additional evidence in support of the petition, including the beneficiary's work schedule and the hours of operation for the petitioner's facility.

By correspondence dated March 29, 2013, , corporate treasurer of the petitioner, responded to the director's NOID. Ms. stated, in part:

the nursery on the same property [as the petitioner], does not need to be

[1] Although not specified in the NOID, USCIS records indicate that the initial site visit was conducted on May 22, 2007.

> open for the monks to perform their duties in the temple. There are no gates at the driveway entrance, so the members of the temple freely drive in, park and walk to the temple area. . . . The hours of the temple are largely by appointment, or during ceremonies, generally on Saturday or Sunday for convenience of the members. There are no set hours for the temple to be "open" as in the Thai Buddhist tradition, the temple is always available for people to come and practice daily meditation. Many people, principally from the tri-counties, call the temple and make appointments for discussion of the Dhamma. The only priority of [the petitioner] is to provide a sanctuary for students of all nationalities who want to study the teachings of Buddha with an ordained Thai monk, or study and practice meditation with the guidance of the monks, or enjoy participating in the ceremonies as called for by the Thai Buddhist traditions. Very few customers of are Buddhist, but they of course are welcome to visit the temple and talk with the monks or learn about the value of meditation when visiting the nursery. Although the temple (and the commercial nursery) is indeed in a residential neighborhood, the temple does not require a sign. Unlike the nursery, it does not recruit tourists driving through the area. The Thai community at large knows the temple is here, and they visit from far and wide. . . . There is a mailbox with the address on it at the entrance to the parking area, and a wooden gold Buddha on the fence at the entrance to the temple.

As additional evidence in response to the NOID, the petitioner provided: a Schedule of Buddhist events for 2013; a daily religious services schedule for the petitioner; a copy of the petitioner's Articles of Incorporation; pictures of religious activities at the temple; a copy of an insurance company invoice for the petitioner; and a copy of a construction invoice for work done at the temple.

The director denied the petition on June 14, 2013, finding that the petitioner failed to satisfactorily complete a compliance review site visit and to establish that the petitioner is operating in the capacity claimed on the petition. The director stated that the petitioner did not provide a reason why the premises were locked during the follow-up visit, and that "[t]here are inconsistencies between the site check conducted on October 21, 2007 and the response that the petitioner submitted on April 5, 2013." The director did not further identify the inconsistencies in question. The director found that the petitioner failed to present sufficient documentation of its religious activities as of the date the petition was filed and the date of the onsite inspection.

In support of the appeal the petitioner presents a statement from counsel for the petitioner. Mr states that: he is familiar with the petitioner's temple as he is a regular visitor and congregant; he first visited the temple in 2004 and has attended regularly with his wife since 2009; he visits the temple on a weekly basis and that the monks are sometimes not present as they attend other religious functions in other locations, but that the temple remains accessible to congregants on most occasions; and the petitioner's web site and calendars distributed in the Thai-American communities in are the primary means of informing the public of its religious offerings.

The petitioner also submits a statement from stating that she is the owner of and rents the temple location to the petitioner. Ms. states that she is personally familiar with the

petitioner's operations and that the petitioner is a bona fide nonprofit religious organization with regular ongoing religious functions at the temple's physical address, having been in operation there since 2003.

Additionally the petitioner submits a statement from a Buddhist monk and permanent resident of the United States. He states that he served as a resident monk at the petitioner's temple from 2006 to 2011 and currently continues to assist the monks at that location. Mr. states that he has personal knowledge that, since he was a resident monk in 2006, the temple has conducted ceremonies on holy days specified in the Thai Buddhist calendar, on most Sundays and on other days by appointment with the resident monks. He further states that the temple has a chalkboard with a schedule of upcoming events attached to the temple wall.

Finally, the petitioner submits a copy of the petitioner's letterhead and photographs of religious services held at the temple and other locations. Mr. attests that he took the pictures and that the dates and locations written next to them are based on his own personal knowledge.

The submitted witness statements and documentation provide sufficient rebuttal to the findings of the aforementioned site inspection. This is particularly true given that the site inspection was performed in 2007 regarding a different beneficiary and the present petition was filed on December 12, 2012.

However, the USCIS regulation at 8 C.F.R. § 214.2(r)(16) provides:

> *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.

This matter shall be remanded to the director to determine whether a new site visit is warranted based on the new facts and evidence and the passage of time.

As an additional matter, the petitioner has not submitted sufficient documentation to establish how it intends to compensate the beneficiary. We conduct appellate review on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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:
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> (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 indicated on the Form I-129 petition that Buddhist monks do not receive salaried compensation for their services, but that the petitioner will provide food, lodging, and incidental expenses for the beneficiary. The record, however, is insufficient to establish how the petitioner will provide this non-salaried compensation. The petitioner has not submitted sufficient verifiable evidence of its tenancy of the temple premises or evidence that living quarters will be maintained for the beneficiary on those premises or at another location. The petitioner must also submit evidence of how the beneficiary's food and incidental expenses are provided. Although the petitioner submitted copies of several bank statements, the petitioner did not submit its budget to demonstrate that the account balances are sufficient to support the beneficiary in addition to covering the petitioner's other expenses. The director should seek such evidence as deemed necessary to establish the petitioner's ability to compensate the beneficiary, giving the beneficiary an opportunity to reasonably provide necessary evidence.

The director may request any additional evidence deemed warranted and must allow the petitioner to submit additional evidence in support of its position within a reasonable period of time.

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).

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and the issuance of a new decision, which, if adverse to the petitioner, shall be certified to the AAO for review.