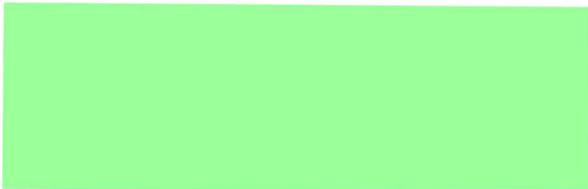


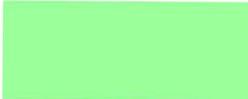
(b)(6)

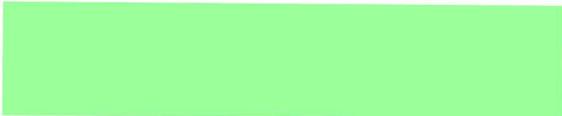
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: **MAY 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.

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 and the petitioner's subsequent motion to reopen the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. We will withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, we will remand the petition for further action and consideration.

The petitioner is a church. 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 pastor. The director determined that the petitioner failed to submit required evidence to establish that the petitioner is a bona fide non-profit religious organization or a bona fide organization that is affiliated with the religious denomination.

The petitioner submits additional evidence on appeal.

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)(3) provides the following definitions:

Bona fide non-profit religious organization in the United States means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the Internal Revenue Service (IRS) confirming such exemption.

Bona fide organization which is affiliated with the religious denomination means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the IRS confirming such exemption.

Tax-exempt organization means an organization that has received a determination letter from the IRS establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the Internal Revenue Code . . .

Regarding evidence of the petitioner's tax-exempt status, the regulation at 8 C.F.R. § 214.2(r)(9) requires the following:

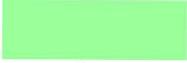
Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or
- (iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, as something other than a religious organization:
 - (A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;
 - (B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;
 - (C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and
 - (D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

The instructions on the Form I-129, Petition for a Nonimmigrant Worker, also list these identical evidentiary requirements. The petitioner filed the petition on November 13, 2012. On August 5, 2013, the director denied the petition, finding that the petitioner failed to submit a valid IRS determination letter confirming its tax-exempt status or evidence that it is covered under a group exemption. The petitioner filed a motion to reopen on August 13, 2013. On motion, the petitioner submitted a July 24, 2013 IRS determination letter confirming its tax exempt status under 501(c)(3) of the Internal Revenue Code, effective December 14, 1992. The director denied the petitioner's motion to reopen on October 1, 2013.

The submitted IRS determination letter establishes that the petitioner qualifies as a bona fide non-profit religious organization.

The petitioner has overcome the only stated basis for denial of the petition. However, review of the record shows an additional ground of eligibility that has not been established. 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 petitioner failed to establish how it intends 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.

* * * *

On the Form I-129 petition, the petitioner described the proposed compensation as \$30,000 annual salary, plus \$25,200 for housing. In a letter dated October 10, 2012, the petitioner stated that it had employed the beneficiary since February, 2010. The petitioner submitted uncertified copies of the beneficiary’s IRS Forms 1040, U.S. Individual Income Tax Returns, for 2010 and 2011. The forms stated that the beneficiary received \$27,600 in wages and \$21,264 in “Parsonage Allowance” during 2010, and \$27,600 in wages and \$26,414 in “Parsonage Allowance” during 2011. Additionally, the petitioner submitted copies of processed checks showing monthly payments of \$2,500 from the petitioner to the beneficiary for the months of May, 2012, to September, 2012, and monthly payments of \$1,980 to [REDACTED] with the handwritten notation “housing” on the photocopies, for the same period. The petitioner also submitted copies of its bank statements from [REDACTED] for the months of June, 2012, to September, 2012.

The petitioner additionally submitted a statement of its revenue and expenses for 2011, and a copy of its budget for 2012, which included \$30,000 for “Pastor’s Salary” and \$25,200 for “Pastor’s Housing.” The 2012 budget listed total revenue of \$224,808.48 and total expenses of \$215,500.00. However, the listed revenue for 2012 included \$39,808.48 “Carried Balance from Prior Year,” without which the petitioner’s revenue, \$185,000, would not cover its expenses for the year. As the 2012 net balance is only \$9,308.48, the submitted budget calls into question the petitioner’s continuing ability to provide the proffered compensation in addition to its other expenses. Further, 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 consists of uncertified copies of the beneficiary's Forms 1040 for 2010 and 2011. The Forms 1040 do not identify the source of the beneficiary's income and the petitioner provided no explanation for the absence of Forms W-2, Wage and Tax Statements, or Forms 1099-MISC, Miscellaneous Income. Further, both Forms 1040 were signed on June 11, 2012, and were prepared by [REDACTED] the signatory of the petition. Therefore, even if the petitioner established that the forms were in fact filed with the IRS, the 2010 return would have been filed late. Like a delayed birth certificate, the late tax return created several years after the fact raises serious questions regarding the truth of the facts asserted. Cf. *Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991)(discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings).

Finally, there are unresolved discrepancies in the record concerning the petitioner's bank accounts. The [REDACTED] statements accompanying the instant petition are addressed to the petitioning church at [REDACTED] San Bruno, CA [REDACTED]. In support of a previous Form I-129 petition filed on the beneficiary's behalf [REDACTED], the petitioner submitted copies of 2009 statements for the same [REDACTED] account, some of which were addressed to the petitioning church at [REDACTED]. The prior petition and the instant petition both identify this as the beneficiary's address. Separate [REDACTED] statements submitted in support of the previous petition indicate that, on October 21, 2009, \$300,000 was withdrawn from a checking account and deposited in a "CD" account. Statements for both of these accounts were also addressed to the petitioning church at the beneficiary's address. The petitioner stated on the instant petition that the beneficiary has only been a member of the petitioning church since February, 2010. Therefore, it is unclear why the petitioner's bank statements from September through November of 2009 listed that 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).

On remand, the director may request any additional evidence deemed warranted and should 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 entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.