



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **MAY 29 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

[Redacted]

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, denied the employment-based nonimmigrant visa petition. The director reopened the petition on the petitioner's motion and again denied the petition. The Administrative Appeals Office (AAO) rejected the petitioner's appeal from that decision and dismissed a motion to reconsider. We then reopened the petition on our own motion, and affirmed the denial of the petition. The petitioner then filed another motion to reopen and reconsider. We granted the motion to reopen, dismissed the motion to reconsider, and affirmed the denial of the petition. The matter is now before us on another motion to reopen and reconsider. We will dismiss the motions.

According to its director, Rabbi [REDACTED], the petitioner "is a Jewish Orthodox Synagogue . . . affiliated with the [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 an assistant rabbi.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on November 9, 2010. The director initially denied the petition on November 30, 2011, having determined that the petitioner failed to provide sufficient evidence regarding the beneficiary's intended compensation, and that the petitioner had not successfully completed a compliance review. We later made an additional finding that the petitioner had not established that the beneficiary's intended position qualifies as a religious occupation. (More thorough discussion of the various intervening motions appeared in our earlier decisions in this proceeding.) In our most recent decision, issued December 31, 2013, we found that the petitioner had satisfactorily shown that the beneficiary's occupation qualifies as a religious occupation. We also found that the petitioner had addressed some of the circumstances regarding the compliance review process, but that it remained that the petitioner has not yet completed that process. We affirmed the previous finding regarding the beneficiary's intended compensation.

With the current motion, the petitioner submits a statement and copies of our December 31, 2013 decision, the regulations relating to special immigrant religious workers, and a district court decision.

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.

A motion to reopen must state the new facts to be proven in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The petitioner, on motion, alleges no new facts and submits no new evidence. The exhibits submitted on motion consist of a copy of our December 31, 2013 decision; a printout of the USCIS regulations at 8 C.F.R. § 204.5(m), pertaining to special immigrant religious workers; and a copy of a September 2013 district court decision relating to a special immigrant religious worker petition. The focus of the district court decision was a regulation that exists only for special immigrant religious worker petitions, and not for their nonimmigrant counterparts. The statement accompanying the motion does not mention the district court decision or explain its relevance to the motion.

The motion does not state new facts to be proven in the reopened proceeding, and is not supported by affidavits or other documentary evidence. The motion does not meet the requirements of a motion to reopen and therefore must be dismissed. *See* 8 C.F.R. §§ 103.5(a)(2), (4).

The petitioner's latest motion focuses only on the issue of the beneficiary's compensation. The motion qualifies as a motion to reconsider only if it establishes that our decision was incorrect based on the evidence of record at the time of that decision. The motion now under consideration is not a motion on the denial of the petition itself. Rather, it seeks reconsideration of the most recent decision. The petitioner cannot prevail on motion by seeking to reconsider the entire proceeding. The petitioner must instead establish errors of fact or law in our December 2013 decision.

The USCIS regulation at 8 C.F.R. § 214.2(r)(11) reads, in pertinent 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. 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 states: "The issue is whether the Petitioner provided sufficient documentation to prove its ability to pay the Beneficiary an annual salary of \$10,000 for the duration of 2.5 years." The salary was not the only compensation described on Form I-129, Petition for a Nonimmigrant Worker. Rather, the petitioner had indicated that the beneficiary "will receive \$10,000 per annum for his duties as an Assistant Rabbi. He will also be provided a food allowance in the form of parsonage."

At various points in the proceeding, the petitioner submitted copies of bank statements showing balances between \$39,000 and \$51,000. The petitioner states that "a series of bank statements . . . showed that no less than \$30,000 was kept in a separate account at all times to cover the proffered wage for [the] entire duration of proposed employment over a three year period." The petitioner further states:

In a series of Denials, the USCIS at first claimed that 2 bank statements covering a span of a year "did not convey the financial health of the organization."

When bank statements of the organization covering a period of 2 years were presented, showing that the funds were available for the entire period of consideration of I-129, the agency declared that the bank statements were insufficient per se and affirmed its previous denial. No explanation was ever provided for the departure of the agency from its previous opposition when it did accept bank statements as proof of ability to pay, as for instance in case [REDACTED] where bank statements satisfied the requirement.

The approved petition referenced by the petitioner relates to an entirely separate petitioner and beneficiary and resides in an unrelated record of proceeding. The petitioner does not submit any documentation from the approved petition. Therefore, it is not possible to determine how closely the relevant facts of the two cases resemble one another. Furthermore, while the regulation at 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

The petitioner continues:

The bank statements were provided . . . because past experience . . . indicated that bank statements constituted acceptable evidence to USCIS. It was not until the AAO decision of June 14, 2013 that the agency discounted bank statements as verifiable proof of ability to pay, [stating] "The petitioner cannot adequately address this deficiency by submitting more bank statements."

The claim that “[i]t was not until the AAO decision of June 14, 2013 that the agency discounted bank statements as verifiable proof of ability to pay” is not consistent with the petitioner’s acknowledgment that the director’s March 12, 2012 denial decision held the petitioner’s bank statements to be insufficient evidence. The USCIS regulation at 8 C.F.R. § 214.2(r)(11)(i), quoted above and in effect throughout this proceeding, does not list bank statements among the acceptable types of documentary evidence. The petitioner notes that the regulatory language includes the phrase “or other evidence acceptable to USCIS,” but this wording leaves it to the discretion of USCIS to determine what “other evidence” is “acceptable” in any particular instance. The decisions on motion did not indicate that bank statements are never acceptable under any circumstances, but rather that “bank statements, presented without context, cannot suffice to meet the regulatory requirements.”

Furthermore, the petitioner’s assertion on motion quotes a sentence fragment from our earlier decision, omitting important context. In our decision dated June 14, 2013, we stated:

The submitted bank statements show an overall pattern of growth in the account, but they are not sufficient to meet the plain language of the regulation at 8 C.F.R. § 214.2(r)(11). At the time of filing the petition, the petitioner claimed two employees, who presumably would have been subject to IRS income reporting requirements. The record, however, contains neither IRS documentation nor any explanation for its absence. Furthermore, the petitioner has provided no details about the food allowance that it claims the beneficiary will receive (such as whether the documented bank balance would cover that expense). The director already advised the petitioner that bank statements, presented without context, cannot suffice to meet the regulatory requirements. The petitioner cannot adequately address this deficiency by submitting more bank statements.

The petitioner now states:

In response to that Decision, the Petitioner then presented proposed budgets and other proof of non-salar[ied] compensation, but the agency refused to consider this new evidence erroneously stating that “Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal.”

The Petitioner, in fact, was not put on notice of the deficiency, because a Notice of Intent to Deny issued to Petitioner on September 28, 2011, was in fact issued pertaining to a different case . . . and a different organization. . . . Numerous requests to the agency to issue a corrected RFE [request for evidence] were ignored by the Service, and forced this Petitioner to file multiple motions to Reopen.

We addressed this issue in our June 2013 decision, stating:

The director issued a notice of intent to deny the petition on September 28, 2011. The last two pages of the notice show a different petition receipt number, and mention the address

of a different petitioner in Houston, Texas. The notice instructed the petitioner to submit various types of evidence, including IRS documentation of past salaries paid.

In response to the notice, counsel correctly noted that two pages of the notice showed a different receipt number and address. Counsel concluded that those pages “do not pertain to [the petitioner],” and therefore the petitioner did not submit any of the evidence requested on those pages. . . .

The unidentified author of an accompanying statement . . . repeated the assertion that the last two pages of the September 2011 notice of intent to deny the petition, including the portion of the notice dealing with financial evidence, “did not pertain to our organization,” and claimed that the petitioner would have responded to a notice that “included the correct pages pertaining to our Petitioner.” A file copy of the September 2011 notice is identical to the notice that the petitioner received; there are no “correct pages pertaining to [the present] petitioner.”

. . . [In a subsequent motion, the petitioner] again requested the missing pages of the notice of intent to deny, but the record contains no such missing pages.

One of the mislabeled pages of the notice quoted the regulation at 8 C.F.R. § 214.2(r)(11)(i). The mislabeling of the page did not change these evidentiary requirements, and the petitioner’s mistaken belief that there were missing pages did not relieve the petitioner of the obligation to provide the required evidence.

The petitioner’s statements on motion address earlier decisions by the director and the AAO, rather than our most recent decision issued in December 2013. The petitioner asserts that, in response to our June 2013 decision, “the Petitioner . . . presented projected budgets and other proof of non-salary compensation, but the agency refused to consider this new evidence.” We have already considered that evidence, and addressed it in our December 2013 decision. The petitioner has not addressed any of our findings in its current motion, instead repeating the claim that we did not consider the evidence at all. In our December 2013 decision, we stated:

The newly claimed figures show gross annual income of \$34,000 per year, substantially lower than the [\$50,000] figure claimed initially. . . .

[REDACTED] proprietor of the [REDACTED] New York, states in a newly submitted letter that the restaurant and the petitioner “agreed that [the beneficiary] will be provided with food in the amount of \$500 per month. . . .” Five hundred dollars per month would add up to \$6,000 per year, rather than the “\$5,000 per year” listed among the petitioner’s “Projected Expenses.” . . .

The bank statements from the 14-month period from March 2012 through April 2013 show \$28,900 in non-interest deposits, \$5,100 less than the “Projected Revenues” of \$34,000 per year and well below the initial claim of \$50,000 per year.

The petitioner . . . claims “Projected Expenses” of \$23,000 per year, \$15,000 of which represents compensation that the beneficiary has not yet received. Therefore, the petitioner’s existing expenses amount to approximately \$8,000 per year. The petitioner’s March 2012-April 2013 withdrawals add up to \$39,810, nearly five times that number. The petitioner does not acknowledge or explain this discrepancy.

In our June 2013 decision, we noted that the petitioner claimed to have set aside \$50,000 in a separate account to pay the beneficiary’s salary, but the petitioner has made withdrawals from that account, showing that the funds were not, as claimed, exclusively set aside for the beneficiary’s salary.

The petitioner’s latest motion does not address the above points. Instead, the bulk of the motion restates assertions that we have already addressed in prior decisions. The motion does not establish that the decision was incorrect based on the evidence of record at the time of the initial decision. Therefore, the motion does not meet the requirements of a motion to reconsider and must be dismissed. *See* 8 C.F.R. §§ 103.5(a)(3), (4).

We will dismiss the motion to reopen and the motion to reconsider, because the petitioner’s filing does not meet the requirements of either type of motion.

ORDER: The motions are dismissed. The petition remains denied.