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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: NOV 13 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.

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. The director's decision will be withdrawn. 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 church. 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 pastor. The director determined that the petitioner failed to successfully complete a compliance review site visit.

On appeal, the petitioner submits a brief and copies of documents already in the record.

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 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 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 [U.S. Citizenship and Immigration Services] 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 petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on August 2, 2013, seeking to employ the beneficiary as a pastor of the petitioning church at [REDACTED] Florida. The petition was signed by [REDACTED] as president of the petitioning church. In an accompanying letter, Mr. [REDACTED] stated:

Since the [petitioner's] inception in [REDACTED] the Church has grown to 50 members and has operated mainly on a volunteer basis. At this time, we feel that it has grown sufficiently to accommodate a full-time Pastor to lead the congregation in spiritual worship and assist in continuing to grow the congregation.

The petitioner submitted a membership list, photographs purportedly showing religious activities taking place at the petitioning church, a screenshot of the petitioner's Facebook page, and copies of advertisements for the petitioning church at the address [REDACTED] Florida.

On February 26, 2014, the director issued a Notice of Intent to Deny the petition (NOID). In the notice, the director discussed the negative findings of a November 26, 2008 site investigation of the petitioning church, which was conducted in connection with a petition filed on behalf of a different beneficiary. The director stated that the investigating officer had attempted to conduct a site visit at the petitioner's previous address, [REDACTED] Florida, but found the location closed and was unable to make contact with anyone or to verify the validity of the organization. In addition, the director stated that the petitioner's former president, [REDACTED] "was arrested and sentenced for conspiracy for cash smuggling," and that the instant signatory, current president [REDACTED], "had some issues with the law in regards to international money laundering." The director also stated that organizational records, which indicated large deposits of money, "warranted further investigation." Further, the director stated:

Based on the evidence at this time, without further clarification and verification in regards to the organization, it is determined that the petitioner has failed their site check. Although the organization is now located at [REDACTED] [the] record reveals that the petitioner is simply operating at a different location but the organization entity and signatory remains the same.

In a March 27, 2014 letter responding to the NOID, the petitioner noted that the referenced site visit was conducted years before the instant petition was filed at an address no longer used by the petitioning church. Regarding the investigating officer's inability to enter the church, the petitioner contends that it "conducts services only on weekday evenings and weekends." The petitioner submits photographs of its current facility, including several photographs of a "Business Hour" sign which lists meetings on Tuesday and Thursday at 8 p.m. and a "Family Celebration" on Sunday at 10 a.m. As evidence that the petitioning church "is open and functional," the petitioner also submits photographs purportedly taken of the congregation "during a Sunday morning service and on Tuesday, March 25, 2014."

With regard to the director's statements about its former and current presidents, the petitioner stated that although Mr. [REDACTED] was convicted of "cash smuggling," his "charging document makes no reference to [the petitioning church], and the matter was entirely confined to Mr. [REDACTED] personal finances." The petitioner submitted a copy of the United States District Court indictment of Mr. [REDACTED] and his wife. The petitioner further stated that its current president, Mr. [REDACTED] "has never been charged with any money laundering scheme, domestically or internationally," and that USCIS did not provide "a tangible link between [the petitioner] and any of the financial crimes to which the NOID cites."

As an explanation for the "large deposits" noted by the director, the petitioner stated that it receives donations in cash at its services. The petitioner asserted that, "[b]ecause [the petitioner's] parent church in Brazil has a tremendous following in Brazil, including the world renowned soccer star [REDACTED] . . .], donations from tourists are quite common and substantial." The petitioner submitted photographs of collection envelopes with names redacted, as well as a letter from its financial advisor, [REDACTED] stating that all the petitioner's revenue came from donations during weekly services and donations from Brazilian tourists visiting the church, and that

no money was transferred from the petitioner's parent church in Brazil. The petitioner submitted copies of several online articles referencing the popularity of the parent church in Brazil and its connection to the referenced soccer player. The petitioner also submitted copies of bank statements and financial statements for the past two years.

On April 10, 2014, the director denied the petition on the sole basis of the petitioner's failure to successfully complete a site visit. The director stated that the petitioner failed the 2008 site check because the investigation officer was unable to verify the validity of the organization, and that the regulations do not require an additional site visit based on the petitioner's change of address or the passage of time. The director also stated that "[t]he crimes that past and present presidents of [the petitioner] have been charged with or convicted [of]" are relevant to determining the integrity of the organization.

On appeal, the petitioner contends that it has "submitted ample evidence in support of its validity as a religious organization," and that USCIS may not "permanently deny [the petitioner] the right to petition for religious workers" based on the failed 2008 compliance review.

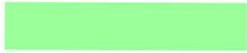
The director states that the 2008 site check failed to verify the petitioner's validity as a church. However, in support of the petition and in response to the NOID, the petitioner submitted evidence regarding its purported current validity as an active church at its new address, including photographs, promotional materials, a membership list, and financial evidence. The director does not discuss these submissions and therefore has not demonstrated that the concerns regarding the petitioner's validity raised by the 2008 site visit are still relevant. Further, although the director cites credibility issues raised by the "crimes" of the petitioner's "past and present presidents," she does not address the petitioner's assertion that its current president, the signatory of the instant petition, was not charged with any money laundering crimes as asserted by the director, nor is there evidence that the petitioning organization has been the subject of a criminal charge.

For the reasons discussed above, the findings of the 2008 site visit are not sufficient to serve as the basis for the denial of the petition. The 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, review of the record shows additional grounds of eligibility that have not been established. 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 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.

* * * *

In the employer attestation portion of the Form I-129 petition, the petitioner indicated that the beneficiary’s compensation will consist of \$3,000 per month plus “room and car.” The petitioner stated that it has one employee working at the same location where the beneficiary will be employed, identified as a “Bishop/Pastor.” The director’s February 26, 2014 NOID requested verifiable evidence of how the petitioner intends to compensate the beneficiary, including bank statements, audited financial statements, and/or IRS tax returns for the year 2011 and 2012. The director instructed the petitioner to submit an explanation for the absence of IRS documentation if such evidence was unavailable.

In response to the NOID, the petitioner submitted copies of its [redacted] bank statements for the months of August 2011 through July 2013, as well as copies of unaudited monthly accounting statements for the same period. In its March 27, 2014 letter responding to the NOID, the petitioner stated that these records “show that through the first 6 months of 2013, the church generated \$21,895.48 in revenue (which would equal \$43,790.96 over the course of a full year).” The petitioner asserted that the submitted evidence therefore establishes the petitioner’s ability to pay the proffered salary.

Although the petitioner cites the amount of income reflected on the bank statements and accounting statements, it does not discuss the petitioner’s expenditures. The bank statements for January through July 2013 show monthly “ending balances” of \$334.11, \$670.30, \$519.68, \$846.62, \$5,575.85, \$4,777.04, and \$1,081.41, respectively. Accordingly, these statements do not establish how the petitioner intends to pay the proffered \$3,000 monthly salary. Further, the submitted accounting statements indicate that the petitioner’s annual expenditures exceeded its revenue during both 2011 and 2012, with a net loss for the year of \$1,233.63 in 2011 and a net loss of \$17,657.13 in 2012.

In addition, the petitioner has not provided an explanation for the absence of IRS documentation. The submitted accounting statements indicate that the petitioner paid \$43,198.01 for “Salaries and

Wages” in 2011 and \$204,124.51 in 2012, but no IRS documentation was submitted regarding these purported wages.

The matter is remanded. 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.