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



U.S. Citizenship
and Immigration
Services

DATE: OCT 22 2014

OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. We will withdraw the director's decision and will remand the petition for further action and consideration.

The petitioner is a Hindu temple. 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 priest. The director determined that the petitioner failed to successfully complete a compliance review site visit as provided for in 8 C.F.R. § 214.2(r)(16). The director further determined that the beneficiary violated the terms of his B-2 visitor's status by working for the petitioner and receiving compensation for his services.

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 [U.S. Citizenship and Immigration Services] 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.

On May 21, 2013, the director issued the petitioner a Notice of Intent to Deny (NOID) the petition, noting that the petitioning organization had failed to satisfactorily complete a compliance verification review based on a physical site check of locations noted in the Form I-129, Petition for a Nonimmigrant Worker. The NOID stated as follows:

On April 9, 2013, [a] USCIS officer found the petitioner temple at [REDACTED] [REDACTED] [REDACTED] to be a run-down dilapidated residential house, with no available parking space or paved access to the property. The president/signatory of the petition had to [unlock] the gate during the visit as he came from an extended lunch to meet with the visiting officer. No one was at the "temple" during the visit at around 12:30 pm. The signatory claim[ed] knowledge of the petition and indicated his intention to pursue the petition. He stated that the beneficiary is currently working for the temple as a priest and has been doing so since the beginning of the year. He stated the beneficiary works full-time and is being paid \$1000.00 per month; however, he could not provide documentation on this claim. This contradicts the petition, which reflects the offered position as part-time for \$1733.00 monthly plus housing and car allowance. The signatory said that the beneficiary is not being provided with a car. The signatory, however, could not provide information as to the beneficiary's qualifications and whereabouts.

Several attempts to contact the beneficiary at different locations (work location at [REDACTED] and residence at [REDACTED] were unsuccessful. The petitioner has not been verified to be operating as claimed in the petition.

In its response, the petitioner stated that the condition of the petitioner's temple is not relevant to prove or disprove the bona fides of the petition, noting that the temple was functional and met the needs of the petitioner's congregants. The petitioner further stated that the beneficiary was unavailable on the date of the site visit because he was attending a funeral in the San Francisco Bay area.

In a June 14, 2013 letter, the petitioner's president, [REDACTED] stated that the temple was started in 2009 and the petitioner subsequently purchased a building to be used as a temple. The building consisted of one bedroom, a bathroom, a kitchen and a 40 x 37 hall and corridor, and, according to Mr. [REDACTED] the building is slowly being renovated.

Mr. [REDACTED] denied telling the inspecting immigration officer that the beneficiary was being paid the sum of \$1000.00 per month for his services as a priest. Mr. [REDACTED] stated that he recalled telling the inspecting officer "that a payment of \$1000.00 will be paid." He stated that he did not recall the officer asking if the beneficiary was currently being paid and that he "may have misunderstood" the officer because of the officer's accent. The petitioner submitted copies of its bank statements for 2011 and 2012 and carbon copies of checks issued between September 27, 2012 and June 9, 2013, as evidence that it had not paid the beneficiary during that time. The petitioner's treasurer, in an undated letter, stated that a review of the accounting books revealed no evidence of payment to the beneficiary.

In further response to the NOID, the petitioner submitted the following letters from individuals who stated that they had knowledge of the beneficiary's religious activities during the relevant time frame:

- An undated and unsworn letter from Mrs. [REDACTED] Trustee

Mrs. [REDACTED] stated that the beneficiary has been performing religious functions at the temple, [REDACTED] from November 2012 to date.

- An undated and unsworn letter from [REDACTED]

Mr. [REDACTED] stated that the beneficiary has been performing religious services at the petitioner's temple, [REDACTED] for "the last 7 to 8 months," and that he has been given accommodation there.

- An undated and unsworn letter from Pt. [REDACTED] General Secretary, [REDACTED] of U.S.A., [REDACTED] CA

¹Mr. [REDACTED] first name is spelled differently throughout the petition.

Mr. [REDACTED] stated that the beneficiary is a bona fide member of the [REDACTED] of U.S.A., and a knowledgeable priest who performs Hindi ceremonies such as marriages, poojas and funeral services.

- An undated and unsworn letter from [REDACTED] Trustee

Mr. [REDACTED] stated that he has known the beneficiary for three years and witnessed him perform religious ceremonies at the temple located at [REDACTED] California.

- An undated and unsworn letter from [REDACTED] Chairperson of Trustees

Mr. [REDACTED] stated that the beneficiary has served as the petitioner's priest since November 2012.

- An undated and unsworn letter from [REDACTED]

Mr. [REDACTED] states that the beneficiary has performed religious services at the petitioner's temple, [REDACTED] CA from November 2013 to date.

- An unsworn letter dated June 18, 2013 from [REDACTED]

Mr. [REDACTED] stated that he attended "the [REDACTED]" a couple of times in February or March 2013 and saw the beneficiary performing religious ceremonies.

The evidence of record is sufficient to overcome the director's concerns based on the USCIS site visit. The petitioner has presented bank records and copies of checks showing that the petitioner is an operating entity. Unsworn letters from 10 individuals attest to religious activities at the petitioner's stated temple location. The record contains additional evidence which shows that the petitioner is recognized as a non-profit religious organization by the Internal Revenue Service (IRS), has a constitution and by-laws, and owns real estate upon which the temple is located. The petitioner submitted pictures purportedly showing religious ceremonies being conducted on the temple premises. The director's decision in this regard is withdrawn.

The second ground for denial cited by the director concerns unauthorized employment by the beneficiary in violation of his B-2 nonimmigrant visitor status. Under the regulation at 8 C.F.R. § 248.1(a), an alien must maintain status in order to qualify for a change of nonimmigrant status. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status and would disqualify the beneficiary for a change of status. 8 C.F.R. § 214.1(e). There is no right to appeal a denial of a change of status. Because the beneficiary's past employment and maintenance of status are extension issues, rather than petition issues, the AAO lacks authority to decide those questions. *See* 8 C.F.R. § 248.3(g).² The AAO, therefore, lacks authority to decide this issue.

² Evidence submitted by the petitioner clearly indicates that the beneficiary is working for the petitioner. The record is unclear as to whether the petitioner is presently being compensated for that employment. Whether compensated or not, such employment is not authorized by USCIS.

While the petitioner has overcome the first stated ground for denial of the petition, the petition cannot be approved as the record now stands. 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.

* * * * *

The petitioner has failed to establish how it intends to compensate the beneficiary.

The petitioner stated on the Supplement R to the Form I-129 that the “beneficiary will receive [an] annual salary of \$20,800, plus [a] housing and car allowance.”

In response to the RFE, the petitioner stated that it would provide room and board for the beneficiary at its temple location. The petitioner submitted copies of its bank statements for 2011 and 2012 showing positive bank balances in each month. Those balances ranged from \$2,539.35 in October 2012 to \$18,847.09 in April of 2012. The submitted bank statements show balances of \$2,866.38 in November 2012 and \$5,706.74 in December 2012, the month the petition was filed and the subsequent month. The petitioner also submitted and a copy of the deed to the petitioner’s temple location.

The evidence of record does not establish how the petitioner intends to compensate the beneficiary and that it has the ability to compensate the beneficiary according to the terms of the petition. The petitioner submitted none of the documentation outlined in the regulation at 8 C.F.R. § 214.2(r)(11). The record does not establish that the petitioner’s positive bank balances, standing alone, are sufficient to pay the proffered salary to the beneficiary.

Additionally, while the petitioner states it will provide the beneficiary with housing at the temple location, no verifiable evidence has been submitted which would show that any such housing space actually exists for the beneficiary. 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)). The evidence of record is insufficient to establish how the petitioner intends

to compensate the beneficiary and that it actually has the ability to provide the monetary and nonmonetary compensation stated in the petition.

This matter shall be remanded to director to determine whether the petitioner has established how it will compensate the beneficiary and its ability to do so according to the terms of the petition. The director may request any additional evidence deemed necessary in this regard, and the petitioner shall be given an opportunity provide any requested evidence and to submit additional relevant evidence.

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 AAO for review.