



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: **OCT 24 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 petitioner appealed the decision to the Administrative Appeals Office. We withdrew the director's decision and remanded the matter for a new decision. The director again denied the petition and certified the matter to us for review. We affirmed the director's decision. The matter is now before us on a motion to reopen and reconsider. We will grant the motion to reopen, dismiss the motion to reconsider, and affirm the denial of the petition.

The petitioner is a Christian church of the [REDACTED] denomination. It seeks classification of the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as a priest. The director found that the petitioner had not: (1) established how it will compensate the beneficiary; (2) successfully completed the compliance review process; and (3) established that the beneficiary would work full time as initially claimed. We affirmed ground (1) and withdrew ground (3). We also indicated that an additional compliance review site inspection may be in order. The director declined to conduct a second site inspection because the petition was not otherwise approvable.

A motion to reopen must state the new facts to be proved 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 Service 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).

On motion, the petitioner submits photographs, bank and tax documents, and a legal brief.

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)(I) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(I), pertains to a nonimmigrant who seeks to enter the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination.

The issue in dispute here concerns the beneficiary's intended compensation. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(11)(i) requires the petitioner to submit verifiable evidence explaining how the petitioner will compensate the alien. 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, Wage and Tax Statement 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 filed Form I-129, Petition for a Nonimmigrant Worker, on November 18, 2011. In the accompanying employer attestation, the petitioner stated: "The church will fully support the alien by covering all the alien's medical expenses, provide for food, room, place of w[or]ship, all necessities for any work to be done, as well as any personal needs."

In a request for evidence dated November 22, 2011, the director instructed the petitioner to submit evidence to meet the regulatory requirement at 8 C.F.R. § 214.2(r)(11)(i), along with an employee list and "copies of the petitioner's Quarterly Wage Reports for all employees for the last two (2) quarters." In response, the petitioner indicated that the beneficiary was the petitioner's only employee, and the petitioner submitted a profit and loss statement for 2010, including the following information:

Gross profit	\$318,577.21
Expenses	
Ministry Expenses	
Clergy Services	\$79,123.29
Temporary Priest's Salaries	\$20,680.00
Travel Expense	\$1,025.13
<u>Books and Teaching Materials</u>	<u>\$4,670.57</u>
Total Ministry Expenses	\$105,498.99
Other Salaries	\$22,200.00
Total Expenses	\$260,382.07
Net Income	\$58,195.14

The petitioner did not explain who received "other salaries" if the beneficiary was the petitioner's only employee. The petitioner did not submit IRS documentation of salaries paid or account for the absence of that evidence.

In notices of intent to deny dated February 22 and April 10, 2013, the director repeated the regulatory language at 8 C.F.R. § 214.2(r)(11)(i) and stated that the petitioner's prior submissions have not met the stated requirements. The petitioner submitted profit and loss statements for 2011 and 2012, including the following information:

	2011	2012
Gross profit	\$390,446.93	\$535,796.83
Expenses		
Ministry Expenses		
Temporary Priest's Salaries	\$3,600.00	—
Clergy Services	—	\$85,303.19
Ministry Expenses – other	\$36,832.04	—
Travel Expense	—	\$5,363.20
Total Ministry Expenses	\$40,432.04	\$90,666.39
Other Salaries	\$24,541.00	\$12,150.00
Total Expenses	\$293,001.21	\$381,645.07
Total Income minus Expenses	\$97,445.72	—
Reserved for Clergy Services	\$96,949.98	—
Net Income	\$495.74	\$154,151.76

The petitioner also submitted partial copies of several bank statements, showing an average balance of \$51,402.61 for November 2011, the month that the petitioner filed the petition, growing to \$164,296.25 for February 2013. Bishop [REDACTED] a regional official of the petitioner's denomination, stated: "We have the financial ability to pay the offered salary of \$66,000 to him."

In the certified denial decision on June 25, 2013, the director stated that the petitioner did not submit sufficient verifiable evidence, as described in the regulation at 8 C.F.R. § 214.2(r)(11)(i), to establish how it will compensate the beneficiary. The director also noted that the petitioner's net income for 2010, as reported on the 2010 profit and loss statement, was less than the beneficiary's intended annual salary.

In our December 2, 2013 decision affirming the denial of the petition, we noted that the brief submitted in response to the denial "quotes the regulatory language requiring submission of 'IRS documentation' or comparable evidence, but does not address the petitioner's failure to meet this requirement or provide any reason why the petitioner should receive an exemption from it."

We also acknowledged a statement in which trustee [REDACTED] noted that the petitioner's November 2011 bank balance was nearly sufficient to cover a year's salary for the beneficiary, and claimed that the petitioner's earlier expenses for that year included payments to temporary ministers whom the beneficiary would replace. We stated: "The petitioner claims to have paid salaries in 2010 and 2011, which would have been subject to IRS reporting requirements. The director instructed the petitioner to submit the required IRS documentation or account for its absence, and the petitioner failed to do so."

We concluded:

A partial response to a notice of intent to deny will be considered a request for a decision on the record. 8 C.F.R. § 103.2(b)(11). Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the benefit request. 8 C.F.R. § 103.2(b)(14). Under these regulations, the petitioner's failure to submit evidence specifically required under the regulations, and specifically requested by the director, is grounds for denial of the petition. The petitioner has not overcome this basis for denial of the petition.

The brief submitted on motion includes the assertion that the offered salary of \$66,000 "is more than double the federal HHS Poverty Guidelines . . . for a family of four," and therefore the petitioner could permissibly have offered a much lower salary. In point of fact, however, the petitioner offered \$66,000 per year, and thereby assumed responsibility for establishing how it intended to compensate the beneficiary at that level.

On motion, the petitioner submits copies of bank statements covering the period from October 26, 2011 to November 25, 2013. On the statements, the petitioner highlighted entries for monthly checks in increasing amounts, beginning at \$4,000, with the latest checks in the amount of \$7,250. Copies of the corresponding checks show that the payments went to the "[REDACTED]";

[REDACTED] states that these checks "cover[ed] compensation for the Bishop or other priests to substitute and perform the pastoral and ministerial duties of our Priest until the R-1 [petition] is approved." Bishop [REDACTED] offers a similar assertion: "These payments were used to reimburse the Diocese for the salaries paid to these visiting clergy members." Bishop [REDACTED] also states that the temporary substitutes received payment from the diocese, rather than directly from the petitioning church, and therefore the petitioning church did not issue IRS Forms W-2 to reflect the payments. The petitioner submits copies of IRS Forms W-2 issued by the diocese, showing that the diocese paid substitute priests \$54,750 in 2011 and \$54,000 in 2012.

The various documents submitted by the petitioner are not mutually consistent. The regular monthly checks from 2012 add up to \$53,000 – two for \$4,000 each, and the remaining ten each in the amount of \$4,500. There is also an unexplained additional check to the diocese, dated February 6, 2012, in the amount of \$5,000. Added to the monthly checks, the year's total becomes \$58,000. Neither of these amounts matches the \$54,000 shown on the IRS Form W-2 for 2012. The petitioner does not acknowledge or explain this discrepancy.

The petitioner has not explained where the payments to the diocese fit into the previously submitted profit and loss statements. The 2012 statement shows an amount under "Clergy Expenses" that would be large enough to include the payments to the diocese, but the 2011 statement does not include an expense item for "Clergy Expenses." The 2011 statement lists \$96,949.98 as "Reserved for Clergy Services," but it does not show that the funds were actually paid out. The statement implies otherwise,

excluding the amount from the “Expense” section and instead calling them “Reserved.” No reported expense for 2011 is sufficient to cover the \$54,750 reported on the IRS Form W-2 for 2011.

The 2011 statement lists \$3,600 for “Temporary Priest’s Salaries,” which is not consistent with the petitioner’s subsequent submission of two checks for \$4,000 each, identified as covering the salary of the temporary priest in November and December of 2011. The petitioner has not explained why the checks show \$4,400 not reflected on the profit and loss statement.

For the above reasons, the bank and IRS documents submitted on motion are not consistent with the profit and loss statements submitted previously. The discrepancies and inconsistencies raise questions of credibility. Doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Also, the submission of the materials on motion does not overcome the petitioner’s failure to submit such evidence on a timely basis when USCIS first requested it. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988).

The petitioner’s submission of new evidence qualifies the latest filing as a motion to reopen under the regulation at 8 C.F.R. § 103.5(a)(2), but the petitioner has not established that the decision was incorrect based on the evidence of record at the time of the initial decision. Therefore, the filing does not meet the requirements of a motion to reconsider at 8 C.F.R. § 103.5(a)(3).

We affirm the ground for denial of the petition as described in our prior decision of December 2, 2013. 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). Here, the petitioner has not met that burden.

**ORDER:** The Administrative Appeals Office’s December 2, 2013 decision is affirmed. The petition remains denied.