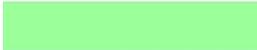


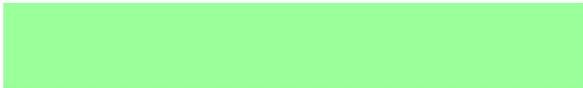


U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **SEP 19 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:

SELF-REPRESENTED

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 matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Lutheran 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 youth ministry coordinator. The director determined that the petitioner failed to establish how it intends to compensate the beneficiary. The director also found that the petitioner failed to establish the beneficiary's qualifications for the proffered position.

On appeal, the petitioner submits additional evidence.

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)(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. [Internal Revenue Service (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.

(ii) *Self support.*

(A) If the alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.

(B) An established program for temporary, uncompensated work is defined to be a missionary program in which:

(1) Foreign workers, whether compensated or uncompensated, have previously participated in R-1 status;

- (2) Missionary workers are traditionally uncompensated;
- (3) The organization provides formal training for missionaries; and
- (4) Participation in such missionary work is an established element of religious development in that denomination.

(C) The petitioner must submit evidence demonstrating:

- (1) That the organization has an established program for temporary, uncompensated missionary work;
- (2) That the denomination maintains missionary programs both in the United States and abroad;
- (3) The religious worker's acceptance into the missionary program;
- (4) The religious duties and responsibilities associated with the traditionally uncompensated missionary work; and
- (5) Copies of the alien's bank records, budgets documenting the sources of self-support (including personal or family savings, room and board with host families in the United States, donations from the denomination's churches), or other verifiable evidence acceptable to USCIS.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on November 18, 2013. On the petition, the petitioner indicated that it would provide \$7,800 per year in salaried compensation, and that a family from the church would provide the beneficiary's room, board, and transportation. The petitioner did not provide its gross and net annual income as requested on the petition in Part 5. Basic Information About the Proposed Employment and Employer, instead writing "nonprofit" in the spaces provided. Accompanying the petition, the petitioner submitted a copy of its 2013 budget indicating \$177,410 in income and \$177,410 in expenses for the year, including \$4,800 designated for a "Youth Worker." The petitioner also submitted a copy of its 2014 budget indicating \$186,121 in income and \$186,121 in expenses, including \$7,800 designated for "Wages-Youth Worker." In addition, the petitioner submitted an undated letter from [REDACTED] stating their intent to provide room, board, and transportation to the beneficiary during his employment with the petitioning church.

On February 11, 2014, the director issued a Request for Evidence (RFE), in part requesting additional evidence of how the petitioner intends to compensate the alien, including verifiable evidence of the [REDACTED] ability to provide the beneficiary's room and board. In response, the petitioner submitted a notarized "Affidavit of Sponsor Providing Free Room, Board and Transportation," in which the [REDACTED] asserted ownership of the property where the beneficiary will reside, and again indicated their intent to provide his room, board, and transportation. The petitioner also submitted a summary of an

October 10, 2013 church council meeting, at which the council approved the “proposed budget for 2014, with the addition of the youth ministry workers salary.”

The director denied the petition on March 18, 2014, stating in part that the petitioner failed to submit verifiable documentation regarding the provision of room and board. The director found that the petitioner failed to establish how it intends to compensate the beneficiary.

On appeal, the petitioner submits copies of [REDACTED] 2013 IRS Forms W-2, Wage and Tax Statements, a copy of the [REDACTED] 2013 IRS Tax Return Transcript, and a copy of their 2013 Real Estate Property Tax Bill for the property where the beneficiary will reside. As evidence of past compensation for the position of youth ministry coordinator, the petitioner submits a financial report showing actual expenditure of \$2,275.83 for “Wages – Youth Coordinator” for 2013, as well as a copy of a 2013 Form W-2 for [REDACTED] indicating payment of \$2,275.83. In a letter dated April 3, 2014, the petitioner indicates that Ms. [REDACTED], its previous youth ministry coordinator, resigned from the position in August 2013.

The petitioner submits additional evidence on appeal demonstrating that the beneficiary’s room and board will be provided by the [REDACTED] family. However, although not specifically discussed by the director, the petitioner has not established its ability to provide the proffered salaried compensation of \$7,800 per year. 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). Because the past salary for the position was lower than the proffered salary, the submitted evidence of past compensation is not sufficient to establish the petitioner’s ability to provide the proffered wage. The petitioner’s 2014 budget indicates that it has designated \$7,800 for the proffered position. However, the petitioner has not submitted documentary evidence to support the figures asserted in the budget and to establish that they are based on realistic expectations. 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)). Accordingly, the petitioner has not established how it intends to provide the proffered compensation.

The director also found that the petitioner failed to establish the beneficiary’s qualifications for the proffered position. The USCIS regulation at 8 C.F.R. § 214.2(r)(3) includes the following definitions:

*Religious occupation* means an occupation that meets all of the following requirements:

- (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination;
- (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination;
- (C) The duties do not include positions which are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund

raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible; and

(D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

*Religious worker* means an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister.

On the Form I-129 petition, the petitioner stated that the beneficiary will be employed as "Youth Ministry Coordinator." In the employer attestation portion of the petition, the petitioner described the beneficiary's qualifications for the proffered position as follows:

Servant Youth Leader with [REDACTED] which included leading Bible studies and providing spiritual guidance to youth. Two years of theological studies in college. Personal saving faith and belief that the Bible is the true Word of God.

Accompanying the petition, the petitioner submitted an undated job description for the position of "Youth Coordinator," which included an educational requirement of a "B.A. in Theology, Pastoral Ministry, or related field." The petitioner also submitted an undated letter from [REDACTED] stating that the beneficiary has been a member of [REDACTED] and "has been an active servant youth leader, member, and advocate for our organization."

In the February 11, 2014 RFE, the director noted the educational requirement listed on the submitted job description and instructed the petitioner to submit evidence of the beneficiary's credentials. In a March 3, 2014 letter responding to the RFE, the petitioner asserted that it had mistakenly submitted an outdated version of the job description when it filed the petition:

In the mid 2000's, we had an Associate Pastor at [REDACTED]. One of his duties was coordinating the youth of the church. During that time, we re-worded the job description to include a BA in Theology to fit the Associate Pastor's role. This pastor was called to another church and in September of 2012 the job description was re-worded again to remove that qualification. In September of 2013 the job description was re-worded to its current version. Unfortunately, when the documents were put together the first time and sent with the petition, the last two job descriptions (from 2012 and 2013) were inadvertently left out of the stack of papers. We have included them now. Thank you for your understanding on this human error.

The petitioner submitted two additional job descriptions, a September 2012 description for a "Youth Ministry Coordinator," and a September 2013 description for a "Youth Coordinator." The requirements included in the job descriptions related to the employee's "understanding of the Holy

Scriptures,” and his/her “genuine personal saving faith.” Neither job description included an educational requirement. The October 10, 2013 church council meeting summary, also submitted in response to the RFE, included a discussion of the “Youth Ministry Coordinator Search” stating that the search team had contacted the beneficiary and that “[t]he committee felt he was a good choice for the position.”

In denying the petition, the director stated that the petitioner failed to establish that the beneficiary had the educational credentials required according to the job description submitted with the petition. On appeal, the petitioner again asserts that the job description submitted with the petition was outdated, and that the “September 2013 revision is what we used for the interview process.” The petitioner states that the beneficiary’s “sound understanding of the Holy Scriptures and demonstrated personal saving faith relationship with Jesus make him qualified to work with the youth of our church.” The petitioner submits a copy of the beneficiary’s diploma indicating that he earned a Bachelor of Science degree in Nursing from the [REDACTED] in 2010. The beneficiary’s resume indicates that he also has an Associate’s degree in Health Science Education from [REDACTED]. In addition, the petitioner contends that its previous youth coordinator was a college student without a degree. In support of this assertion, the petitioner submits a copy of Ms. [REDACTED] job application, which indicates that she was employed as a certified nursing assistant and was a current nursing student when she applied for the youth ministry coordinator position.

The petitioner asserts that it has no educational requirement for the proffered position and that an outdated job description was initially submitted in error. However, the petitioner has not explained why it stated on the petition that the beneficiary’s qualifications for the position included two years of theological studies in college. The petitioner has not submitted evidence, and the submitted resume does not indicate, that the beneficiary completed two years of theological studies. 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). Furthermore, the regulation at 8 C.F.R. § 214.2(r)(3) indicates that a religious worker must be qualified for a religious occupation “according to the *denomination’s* standards” (emphasis added). The petitioner indicated on the petition that it is affiliated with the American Association of Lutheran Churches. However, the petitioner has not submitted evidence to demonstrate that the duties of a youth ministry coordinator are traditionally recognized as a religious occupation by other churches within the Lutheran denomination, or to establish the denomination’s qualification requirements for such a position.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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, that burden has not been met.

**ORDER:** The appeal is dismissed.