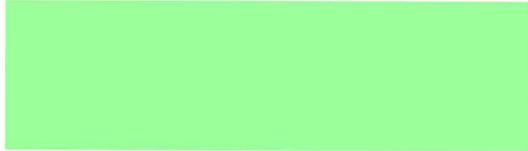


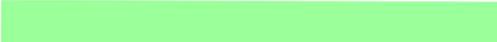


U.S. Citizenship
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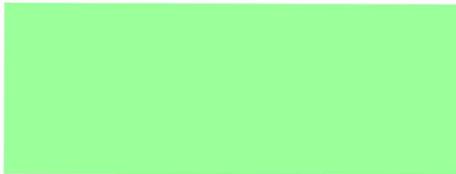


DATE: **SEP 19 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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:



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 church. It seeks to extend the beneficiary's classification 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 minister. The director determined that the petitioner failed to establish how it intends to compensate the beneficiary. The director also determined that, as the petitioner has failed to provide documentation of the beneficiary's compensation under a previously approved Form I-129, Petition for a Nonimmigrant Worker, the petitioner has failed to establish the beneficiary's eligibility for an extension of stay.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(12) requires that any request for an extension of stay as an R-1 must include initial evidence of the previous R-1 employment (including Internal Revenue Service (IRS) documentation if available). The issue of the beneficiary's prior employment is significant only insofar as it relates to the application to extend that status. An application for extension is concurrent with, but separate from, the nonimmigrant petition. There is no appeal from the denial of an application for extension of stay filed on Form I-129. 8 C.F.R. § 214.1(c)(5). Because the beneficiary's past employment is an extension issue, rather than a petition issue, the AAO lacks authority to decide those questions, and we will discuss them only as it is applicable to the petitioner's intention to compensate the beneficiary under the terms of the instant petition.

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 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. IRS 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 regulation at 8 C.F.R. § 214.2(r)(8)(iii) requires the prospective employer to specifically attest to whether the alien will receive salaried or non-salaried compensation and the details of such compensation. The petitioner filed the Form I-129 on September 5, 2013, seeking continuation of previously approved employment without change and with the same employer. The petitioner submitted evidence that the beneficiary was approved for R-1 nonimmigrant religious worker status with the petitioner from April 11, 2011 to October 11, 2013. The petitioner submitted with the petition an August 8, 2013 letter from the petitioner's senior pastor, [REDACTED] stating that the beneficiary had been working with the petitioner as a full-time minister since April 2011. Reverend [REDACTED] stated in the letter and on the petition that the beneficiary will be compensated at the rate of \$2,000 per month. In support of the petition, the petitioner submitted a copy of its 2012 unaudited financial statement reflecting budgeted salaries and allowances of \$81,167, and total checking and savings account balances of \$706,140.43. The petitioner provided copies of paychecks showing the monthly sum of \$2,000 paid to the beneficiary from February through June of 2013. The petitioner also submitted uncertified copies of the beneficiary's 2011 and 2012 tax returns showing business income earned by the beneficiary as a minister of \$14,000 in 2011 and \$6,000 in 2012.

On September 19, 2013, the director issued a Request for Evidence (RFE) asking, in part, that the petitioner submit evidence of how it intended to compensate the beneficiary. Specifically, the petitioner was asked to submit official IRS documentation showing payments made to employees in 2012. The petitioner was also asked to submit copies of the beneficiary's IRS Form 1099-MISC, Miscellaneous Income, for 2012 and a copy of the beneficiary's 2012 individual income tax return with all supporting schedules. The director requested an official IRS printout of the tax return.

In response to the RFE, the petitioner submitted a copy of the 2012 Form W-2 for its senior pastor showing wages paid of \$38,817, and copies of 2012 Forms 1099-MISC for eight other individuals, including the beneficiary, who was paid \$6,000 in nonemployee compensation. The petitioner provided an uncertified copy of the beneficiary's 2012 federal tax return indicating that the beneficiary earned \$6,000 in nonemployee compensation as a church pastor, and a copy of a December 31, 2012 check from the petitioner made payable to the beneficiary in the amount of \$6,000. The petitioner further submitted copies of monthly pay checks to the beneficiary in the amount of \$2,000 for the months of January through June of 2013.

The director denied the petition stating that the petitioner had provided insufficient documentation of how it intended to compensate the beneficiary. The director specifically noted that the evidence of record showed that the beneficiary was only paid \$6,000 in 2012, rather than the \$24,000 sum he was to be paid under the terms of the previous Form I-129. The director also stated that the petitioner failed to provide documentary evidence in support of the submitted unaudited financial statement from 2012. The director found inconsistencies between the compensation listed in the financial statement and the evidence of compensation submitted for 2012.

On appeal, the petitioner states that the director erred in denying the petition, and that the petitioner provided sufficient evidence of how the beneficiary would be compensated. The petitioner submitted with the appeal a letter from the petitioner's senior pastor which stated that the beneficiary began working as a pastor in April of 2011 and was paid \$2,000 per month for his services, receiving the sum

of \$14,000 in 2011. A copy of the beneficiary's 2011 IRS tax transcript was also submitted which showed the beneficiary received \$14,000 in business income during that year. On appeal, the petitioner's pastor states in a letter dated February 19, 2014 that in 2012, in order to reduce his tax liability, the petitioner provided the beneficiary with nonmonetary compensation in the form of room, board and food as a portion of his salary. The petitioner submitted a copy of a lease for the beneficiary's residence dated July 1, 2012 showing monthly rent owed of \$800.00, which the petitioner states it paid on behalf of the beneficiary.¹ The petitioner provided, on appeal, the beneficiary's Form 1099-MISC for the year 2013 showing nonemployee compensation paid to the beneficiary of \$24,000 and a copy of the beneficiary's 2013 federal tax return. Finally, the petitioner submitted copies of its bank statements for the years 2012 and 2013 showing the petitioner maintained monthly bank balances of approximately \$200,000 during that time period.

While the petitioner submitted evidence that it budgeted for its employees' salaries, paid salaries to its workers, and maintained substantial positive bank balances, there are unexplained inconsistencies in the record that prevent approval of the petition and bring into question the petitioner's intent to compensate the beneficiary in accordance with the terms of the Form I-129.

The monetary terms of the proffered employment remain the same as that in the previously approved Form I-129 (filed on May 23, 2008) and requires the petitioner to pay the beneficiary wages of \$2,000 per month. The beneficiary began employment with the petitioner in April 2011. The petitioner submitted the beneficiary's 2011 IRS tax transcript on which the beneficiary reported business income of \$14,000. It is unclear when the beneficiary's first day of employment was in April of 2011, but, assuming the beneficiary was only compensated for the months of May through December of 2011, he should have been paid a salary of \$16,000. Therefore, according to his tax transcript, he was paid \$2,000 less than the wage stated in the approved Form I-129.

The petitioner submitted a copy of an uncertified copy of the beneficiary's IRS Form 1040, U.S. Individual Income Tax Return, for the year 2012. That document reflects self-employment earnings of \$6,000. The petitioner submitted a corrected copy of a Form 1099-MISC showing nonemployee compensation paid to the beneficiary in 2012 of \$6,000 and a copy of a \$6,000 check made payable to the beneficiary by the petitioner on December 31, 2012. The check was not processed by the bank for payment until February 8, 2013. The petitioner submitted no other evidence of monetary compensation to the beneficiary in 2012. The previous Form I-129 stated that the beneficiary would be compensated at the rate of \$2,000 per month.; While the beneficiary received a lump sum check for \$6,000 on the last day of the year, the record is not clear that the payment was for accrued wages. Regardless, the \$6,000 is far less than the \$2,000 per month that the petitioner stated it would pay the beneficiary. In her RFE, the director requested the petitioner to provide a copy of the beneficiary's 2012 tax transcript. The petitioner did not provide a copy of the transcript but submitted a Tax Return Transcript request notification from the IRS which states that a request for the beneficiary's 2012 tax transcript was made on February 19, 2014, and the IRS had "No record of return filed."

¹ Sample rent receipts were previously submitted in response to the director's RFE showing \$2400.00 paid by the petitioner for the beneficiary's residence in the months of July and October of 2012 and January, April and July of 2013. Each rent receipt states that it is for three months of rent.

As noted above, the petitioner states on appeal in a February 19, 2014 letter from its senior pastor that in order to reduce the beneficiary's tax liability, the petitioner paid the beneficiary nonmonetary room, board and food as a portion of his salary in 2012. Nonetheless, the record does not reflect that the petitioner compensated the beneficiary in the amount of \$24,000 per year. The beneficiary's 2012 IRS tax transcript indicates compensation paid to the beneficiary of \$6,000. Thus, to receive full compensation for the year 2012, the beneficiary should have been paid nonmonetary compensation of \$18,000 (\$24,000 total compensation minus \$6,000 monetary compensation equals \$18,000). The lease for the beneficiary's apartment, however, was not signed until July 1, 2012, and was effective beginning with the month of July 2012. Total rent is listed as \$800 per month. Thus the beneficiary would have received nonmonetary rent compensation for 2012 for the months of July through December, which would total \$4,800. This sum combined with the \$6,000 monetary compensation the petitioner states it paid the beneficiary would equal \$10,800 total compensation for 2012, and is \$13,200 less than the compensation which the petitioner pledged to pay in the Form I-129.² The petitioner has failed to submit any evidence of additional nonmonetary compensation provided to the beneficiary such as food or transportation. 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 does not establish the petitioner's intent to compensate the beneficiary according to the terms of the Form I-129. Doubt cast on any aspect of the petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

Accordingly, the petitioner has not credibly established its intent to compensate the beneficiary according to the terms of the Form I-129. The petition, therefore, may not be approved.

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.

² Even if the petitioner had paid the beneficiary's rent for the entire year in 2012, total nonmonetary compensation would have been \$9,600 (12 month's rent at \$800 per month). This sum added to the \$6,000 monetary compensation paid to the beneficiary in 2012 would total \$15,600, \$8,400 less than the full proffered monetary compensation of \$24,000.