



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: SEP 26 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. We will withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, we will remand the petition for further action and consideration.

The petitioner is a church. It seeks classification of 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 music director. The director determined that the petitioner failed to establish that the beneficiary will be employed in a qualifying religious occupation.

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 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)(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 March 5, 2013, the petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, seeking to employ the beneficiary as a full-time music director. The petitioner described itself as a [REDACTED] with 80 members and one current employee, identified as a pastor. The petitioner provided the following description of the beneficiary's proposed daily duties:

[R]esponsible for overseeing entire music ministry of our church, provide leadership to worship services and accompaniment to vocalists, plan traditional & contemporary worship music selection approved by pastor, organize our growing music library, schedule & supervise music rehearsals, recruit new members to the music ministry, select & coordinate congregational songs corresponding to sermon topics and seasonal themes.

In describing the beneficiary's qualifications for the proffered position, the petitioner stated that he previously served as music director at the [REDACTED] and that he also performed as a guitarist and vocalist in a Christian musical group, [REDACTED] which was affiliated with the [REDACTED]

On March 21, 2013, the director issued a Request for Evidence (RFE), in part requesting additional information regarding the proffered position, including a detailed description of the work to be performed and a daily and weekly schedule for the position. The director also instructed the petitioner to submit evidence to establish that the proffered position is recognized as a religious occupation related to a traditional function within the denomination, and that the duties are primarily related to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

In response to the RFE, the petitioner submitted a March 5, 2013 employment contract with attached job description, signed by the petitioner and beneficiary, for the position of "Co-Director of Music/Assistant." The job description listed the principal function of the position as "developing and promoting the music ministry of the church." On a list of its current staff, the petitioner indicated that its current music director is a volunteer and that the beneficiary currently serves as a volunteer music co-director. In a May 15, 2013 letter responding to the RFE, the petitioner stated that it is a "young" church and has relied heavily on volunteers in the past, but that it has grown and is now in need of permanent paid staff. The petitioner further stated:

[REDACTED] is a vital part of everyday operation and most certainly for worship, education and discipleship for our membership. It is also a form of expression, just like our prayers, religious communication is done through music.

The petitioner submitted a December 30, 2012 letter from [REDACTED] stating that it employed the beneficiary as the musical director of its prayer group. The petitioner also submitted a February 7, 2013 letter from the [REDACTED], stating that the beneficiary was a paid member of its musical group, [REDACTED]. In addition, the petitioner submitted certificates relating to the beneficiary's training in music and digital audio production.

The director denied the petition on March 19, 2014, finding that the petitioner failed to establish that the proffered position meets the regulatory definition of a religious occupation. The director noted that, according to the submitted evidence, volunteers currently fill the roles of music director, music co-director, and music leaders. The director therefore found that the petitioner failed to establish that the

proffered position is traditionally recognized as a paid religious occupation within the denomination. The director also stated that the duties “are not necessarily dependent on any religious background or prescribed theological education.”

On appeal, the petitioner contends that the proposed duties are primarily religious rather than secular in nature. The petitioner further contends that the director was incorrect to find that the petitioner must have previously employed a paid music director in order to establish that the position is a traditionally recognized religious occupation. The petitioner again asserts that as a young church, it had to rely on volunteers, but that it has since grown and therefore decided to hire the beneficiary as a full-time salaried music director.

The regulation at 8 C.F.R. § 214.2(r)(3) does not require that the proffered position must have previously existed as a compensated role at the organization filing a petition, nor does it state that the position must require a religious background or prescribed theological education. Rather, the regulation provides that the position must “be recognized as a religious occupation within the denomination,” and that the duties must primarily relate to and involve inculcating or carrying out the religious creed and beliefs of the denomination. The submitted employment letter from [REDACTED] supports the assertion that music direction is recognized as a compensated occupation within the Pentecostal denomination. Further, the petitioner’s descriptions of the proposed duties, on the petition and in the submitted job description, support the petitioner’s assertion that the duties are primarily religious in nature rather than secular. Accordingly, we will withdraw the director’s decision.

However, review of the record shows additional obstacles to approval of the petition. 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 petitioner has not established how it intends to compensate the beneficiary.

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.

* * * *

On the Form I-129 petition, the petitioner stated that the beneficiary would receive salaried compensation of \$15,000 per year. The petitioner indicated that it had one paid employee, identified as a pastor, and listed its gross annual income as \$110,000 and its net annual income as \$40,000. The petitioner submitted a membership list, including the names of 61 individuals. The director's March 21, 2013 RFE instructed the petitioner to submit additional evidence of how the petitioner intends to compensate the alien, including IRS documentation if available, or an explanation for its absence along with comparable, verifiable documentation.

In response, the petitioner submitted unaudited accounting records for the months of February 2013 through April 2013, purportedly indicating net monthly income of \$17,382.42, \$13,496.55, and -\$9,099.04, respectively. However, no documentary evidence was submitted to support the figures asserted in the documents. 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)). Further, the expense records did not appear to include the salary of the petitioner's pastor, [REDACTED]. The submitted staff list included two paid employees, a "Deacon, Teacher" and a "Teacher, Leader," earning \$30,000 and \$4,800, respectively.

The regulation at 8 C.F.R. § 214.2(r)(11) requires IRS documentation or an explanation for its absence along with comparable, verifiable evidence. The petitioner has not submitted IRS documentation nor has it provided an explanation for its absence. The submitted documentation is not verifiable evidence, as it consists only of the assertions of management. Further, the amounts of monthly income from "tithes and offerings" reported on the February 2013 and March 2013 records, \$67,677.60 and \$30,935.87, respectively, do not seem consistent with the size of the petitioner's congregation at the time of filing the petition. In addition, these amounts are significantly more than the tithes and offerings reported for April 2013 in the amount of \$8,598.93. 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).

Finally, the USCIS 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 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 director shall determine whether or not the petitioner has satisfied the regulatory requirements at 8 C.F.R. § 214.2(r)(16).

On remand, the director may request any additional evidence deemed warranted and should 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). Here, that burden has not been met.

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 Administrative Appeals Office for review.