



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **APR 03 2015** 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Appeals Office (AAO) on appeal.¹ As footnoted below, the director's decision dated October 27, 2014 shall be withdrawn and a decision issued on the petitioner's appeal to the director's decision dated September 8, 2012. That appeal shall be dismissed.

The petitioner is a 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 "Director of Children's Church." The director determined that the petitioner failed to establish that the beneficiary will be employed in a qualifying 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,

¹ The petition was initially denied by the director on September 8, 2012. The petitioner appealed that decision to the AAO. U.S. Citizenship and Immigration Services (USCIS) records indicate that, subsequent to the filing of the appeal, it reopened the petition on its own motion on December 13, 2012 and ordered a Request for Evidence (RFE). USCIS records do not indicate, however, that a RFE was sent to the petitioner on December 13, 2012 or thereafter. Nor does the record of proceeding contain a copy of a RFE issued on December 13, 2012 or thereafter. On October 17, 2013, USCIS administratively closed the proceeding because no response was received to the RFE ordered on December 13, 2012. The matter was again reopened by USCIS on its own motion on October 23, 2014. USCIS reissued the director's September 8, 2012 decision with a new date of October 27, 2014. The new decision was then forwarded to the AAO along with the initial Form I-290B, Notice of Appeal or Motion, and documentation supporting the appeal.

In this instance, the director erred in administratively closing the proceeding on October 17, 2013 for failure to respond to a RFE that was ordered on December 13, 2012, as the record does not establish that any RFE was actually issued on that date or thereafter. The decision of the director issued on October 27, 2014, therefore, shall be withdrawn. The petitioner's appeal to the director's decision of September 8, 2012 shall be treated as a timely appeal and a decision by the AAO made on the merits of the appeal.

(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.

I. QUALIFYING POSITION

The issue to be discussed is whether the petitioner has established that the beneficiary will be employed in a qualifying position.

A. THE LAW

The 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.

B. FACTS AND ANALYSIS

The Form I-129, Petition for a Nonimmigrant Worker, states that the beneficiary would be employed as a "Director of Children's Church," and would perform the duties of a Sunday School director and teacher of children under 19 years of age. The petitioner submitted with the petition a May 24, 2012 letter from its pastor, [REDACTED], stating that the beneficiary is being offered employment as a "minister and leader in charge of our children's program." The petitioner submitted no additional evidence concerning the specific duties the beneficiary would perform as children's church director.

The director issued a RFE on July 16, 2012 requesting, in part, that the petitioner submit evidence about the proffered position. The petitioner was asked to provide evidence that the beneficiary had been a member of a religious denomination having a bona fide nonprofit religious organization in the United States for at least two years preceding the filing of the petition, and that the beneficiary was coming to work for that organization in a religious occupation. The director also requested evidence to establish that religious activity took place at the petitioner's stated address and evidence of the beneficiary's tax exempt status.

The petitioner submitted the following evidence in response to the RFE:

- August 15, 2012 letter from the petitioner's pastor stating that he was the only paid employee of the church;
- The petitioner's membership roster;
- A letter from [REDACTED] Texas assigning the petitioner a new address to be used only for emergency calls and all public utility connections;

- Contract For Deed dated March 12, 2009 conveying to the petitioner its current premises located at [REDACTED], Texas;
- August 15, 2012 letter from the [REDACTED] Volunteer Fire Department stating that a preliminary fire inspection was conducted on the petitioner's premises on August 10, 2012;
- Picture in the [REDACTED] newspaper dated [REDACTED] 2012 showing children attending the petitioner's Bible Youth Camp;
- Church literature printed in Spanish with no English translation;²
- August 14, 2012 letter from Pastor [REDACTED] stating that the petitioner is affiliated with that organization and that the petitioner's pastor is licensed under its ministry;
- Audit history from the [REDACTED] showing water charges paid by the petitioner in May, June, July and August of 2012;
- [REDACTED] printout showing payments for electricity by the petitioner for the months of March, April, May, June, July and August of 2012; and
- Pictures of worship services at the petitioner's facility.

The director denied the petition on September 8, 2012, on the ground that the petitioner failed to establish that the beneficiary would be employed in a qualifying position. Specifically, the director stated that the duties of the proffered position did not relate to a traditional religious function of the church and that the beneficiary would be "involved in secular and not religious activities."

On appeal, the petitioner states that the duties of the proffered position are directly related to the petitioner's religious doctrine and that the beneficiary would be in charge of "[t]heological teaching and activities that directly affect the doctrinal teaching of our children and youth. . . ." The petitioner further submitted a letter from its pastor dated September 26, 2012 stating the petitioner's need for the beneficiary to work with the youth of the church and community.

² The regulation at 8 C.F.R. § 103.2(b)(3) states that "[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The petitioner states that the beneficiary would act as a minister and leader in charge of its children's program serving as the Sunday School director and teacher of children younger than the age of 19. The petitioner does not provide, however, a detailed listing of the specific duties the beneficiary would perform in the scope of his employment. For example, the petitioner does not state the duties the beneficiary would perform in leading its children's program or in acting as its Sunday School director. While the petitioner stated that the beneficiary will teach children ages 18 and younger, no description of the beneficiary's teaching duties has been provided. Without a detailed description of the duties to be performed, it cannot be determined that the duties are primarily religious in nature rather than secular or purely administrative.

Additionally, the petitioner has not provided any evidence showing that the proffered position is recognized as a religious occupation within its denomination. While the petitioner asserted that the duties of the proffered position are directly related to its religious doctrine and theology, its statement alone insufficient to establish that the proffered position is recognized as a religious occupation within the denomination. 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)).

As the petitioner has not established that the duties of the proffered position primarily relate to a traditional religious function of the church, that the position's duties primarily relate to and clearly involve inculcating or carrying out the religious creed and beliefs of the petitioner's denomination, and that the position is recognized as a religious occupation within the denomination, the petitioner has not established that the proffered position qualifies as a religious occupation as defined by the regulation. For this reason, the petition may not be approved.

II. COMPENSATION

Beyond the decision of the director, the petitioner has failed to establish how it would compensate the beneficiary. The AAO conducts 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).

A. THE LAW

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 [U.S. Citizenship and Immigration Services]. 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.

* * *

B. FACTS AND ANALYSIS

The petitioner submitted with the filing of the petition a letter dated May 24, 2012 from the petitioner's pastor stating that the petitioner was offering the beneficiary the full-time position of "Director of Children's Church" with an annual salary of \$28,900 per year plus housing for the beneficiary "should it be necessary." Additional initial evidence in support of the petition included a copy of the pastor's bank statements for March 7, 2012 (balance - \$1,850.57) and April 7, 2012 (balance - \$2,295.68), and the petitioner's unaudited annual church reports for 2009, 2010 and 2011 reporting year-end balances of \$2,013.31, \$457.31 and \$6,545.47 respectively.

In her July 16, 2012 RFE, the director requested, in part, that the petitioner submit a copy of its federal tax return, or an explanation as to why the petitioner had not filed a tax return with the IRS, and a list of all current paid employees with the employee job titles, duty descriptions, salary and date of hire. In its response, the petitioner did not submit a copy of its tax return or an explanation as to why it had not filed a tax return as requested by the director. The petitioner submitted an August 15, 2012 letter from the petitioner's pastor stating that he was the petitioner's only paid employee, that he had previously submitted copies of his "last three income tax returns," and that church tithes collected were reported as his self-employment wages on a yearly basis. The record of proceeding does not contain copies of the personal tax returns of the petitioner's pastor as stated in the August 15, 2012 letter, nor does the record contain any evidence of wages, such as an Internal Revenue Service (IRS) Form 1099-MISC or Form W-2 Wage and Tax Statement, being paid to the pastor by the petitioner.

The evidence of record does not establish how the petitioner would compensate the beneficiary. The bank statements submitted are the personal bank statements of the petitioner's pastor and would have no bearing on the petitioner's financial condition or otherwise show how the petitioner would compensate the beneficiary. The unaudited church reports state:

- 2009 total receipts of \$32,894.21, total expenses of \$32,155.30, and total pastoral wages of \$5,588.80 – The difference between total receipts and total reported expenditures for the year was \$705.91;
- 2010 total receipts of \$59,823, total expenses of \$61,379, and total pastoral wages of \$16,267 – The difference between total receipts and total reported expenditures for the year was (\$1,556); and
- 2011 total receipts of \$65,593, total expenses of \$59,048, and total pastoral wages of \$20,238 – The difference between total receipts and total reported expenditures for the year was \$6,545.

The annual reports do not show sufficient funds to pay the proffered wage of the beneficiary in any of the three years. We also note that the proffered wage for the beneficiary would exceed the wages paid to the petitioner's pastor in each year. Finally, the petitioner attests in the R-1 Classification Supplement to Form I-129, Section 1, 5(d), that it will provide the beneficiary with housing "should it be necessary." The petitioner has not, however, shown that it has housing available for the beneficiary or that it has made arrangements for the provision of such housing "should it be necessary." The petitioner did not provide evidence that it had previously paid employees a salary for similar work, a church budget showing monies set aside for the beneficiary's salary or any other verifiable evidence of how it would compensate the beneficiary as required by regulation. For this additional reason, the petition must be denied.

III. BONA FIDE NONPROFIT RELIGIOUS ORGANIZATION

Beyond the decision of the director, the petitioner did not submit required evidence to establish that it qualifies as a bona fide nonprofit religious organization or a bona fide organization which is affiliated with the religious denomination.

A. THE LAW

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)(3) provides the following definitions:

Bona fide non-profit religious organization in the United States means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the Internal Revenue Service (IRS) confirming such exemption.

Bona fide organization which is affiliated with the religious denomination means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of

1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the IRS confirming such exemption.

Tax-exempt organization means an organization that has received a determination letter from the IRS establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the Internal Revenue Code . . .

Regarding evidence of the petitioner's tax-exempt status, the regulation at 8 C.F.R. § 214.2(r)(9) requires the following:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or
- (iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, as something other than a religious organization:
 - (A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;
 - (B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;
 - (C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and
 - (D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

B. FACTS AND ANALYSIS

The instructions on the Form I-129, Petition for a Nonimmigrant Worker, also list these identical evidentiary requirements. The petition was filed on June 13, 2012. The petitioner did not include a determination letter from the IRS with its initial evidence as required by the above-cited regulation. In her request for evidence, the director instructed the petitioner to provide evidence of its bona fides as a non-profit religious organization or that it is a bona fide organization which is affiliated with the religious denomination as required by the regulation.

In response, the petitioner submitted a letter from [REDACTED], which states that the petitioner is affiliated with his organization and that the petitioner's pastor is licensed under its ministry. The petitioner had previously submitted a copy of an IRS determination letter stating that [REDACTED] is exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code as a public charity and as determined by section 170(b)(1)(A)(vi).

The evidence submitted is insufficient to meet the requirements of 8 C.F.R. § 214.2(r)(9). Despite any relationship the petitioner may have with [REDACTED] that organization's IRS determination letter does not indicate that it was granted a group exemption which would apply to subordinate organizations, nor does it indicate that it is classified as a religious organization. Regardless, the issue here is whether the record established that the petitioner was a tax-exempt organization. The petitioner has submitted no evidence that it has a currently valid determination letter from the IRS establishing that it is a tax-exempt organization. The petitioner has, therefore, failed to establish that it qualifies as a bona fide nonprofit religious organization or a bona fide organization which is affiliated with the religious denomination. For this additional reason, the petition may not be approved.

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 director's decision dated October 27, 2014 is withdrawn. The appeal from the director's decision dated September 8, 2012 is dismissed.