



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **APR 29 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:

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 congregation that 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 rabbi's assistant. The director determined that the petitioner did not establish that the proffered position qualifies as a religious occupation or that the beneficiary is qualified for the position. The director also found that the petitioner did not establish how it intends to compensate the beneficiary and did not satisfactorily complete the site inspection. On appeal, the petitioner submits a brief and additional evidence.

RELEVANT LAW AND REGULATIONS

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 definition:

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.

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.

The regulation at 8 C.F.R. § 214.2(r)(16) states:

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.

PERTINENT FACTS AND PROCEDURAL HISTORY

The petitioner filed a Petition for a Nonimmigrant Worker (Form I-129), on February 28, 2013, seeking to classify the beneficiary as an R-1 temporary, nonimmigrant religious worker for thirty months, from February 2013 until August 2015. On May 1, 2013, and December 18, 2013, the director issued a Request for Evidence (RFE) and a Notice of Intent to Deny the petition (NOID), respectively, providing the petitioner the opportunity to address and submit evidence regarding, among other things: the job duties of the proffered position; how the petitioner intends to compensate the beneficiary; and the petitioner's failed site visit. The petitioner responded to the RFE and the NOID with additional evidence including, but not limited to, a bank statement, the petitioner's application for tax-exempt status, and affidavits describing the site visit. The director found the documentation insufficient to establish the petitioner's eligibility. The director denied the

petition, concluding that the petitioner did not establish that: the proffered position qualifies as a religious occupation; the beneficiary is qualified for the proffered position; the petitioner has the ability to compensate the beneficiary; and the site inspection was successfully completed. On appeal, the petitioner submits a brief and additional evidence including, but not limited to, statements from three rabbis, a list of congregants, a letter from the petitioner's Board of Trustees, and a bank account statement.

ANALYSIS

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 (3^d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n.9 (2^d Cir. 1989). Upon a full review of all of the evidence submitted below and on appeal, we find that the petitioner has established that the duties of the proffered position primarily relate to a traditional religious function, the beneficiary is qualified to perform these duties, and the petitioner has overcome the findings of the failed site visit. Nonetheless, the petition cannot be sustained because, as explained below, the petitioner has not established that the proffered position meets the regulatory definition of a religious occupation as there is no evidence in the record that the proffered position is recognized as a religious occupation within the denomination. In addition, the petitioner has not overcome the director's finding that it did not establish how it intends to compensate the beneficiary.

I. Religious Occupation

The regulation at 8 C.F.R. § 214.2(r)(3) defines religious occupation and sets forth several requirements. Subsection (A) contains two parts and specifies that: 1) the duties of the proposed position must primarily relate to a traditional religious function, and 2) the position must be recognized as a religious occupation within the denomination. In this case, the director addressed only the first part of 8 C.F.R. § 214.2(r)(3)(A). The director found that the petitioner did not provide sufficient evidence detailing the duties of the rabbi's assistant within its organization. The director stated that the specific job duties of the position were vague and that, although a schedule was submitted outlining specific activities, it was unclear what the rabbi's assistant would be doing during those activities. The director also noted that it was unclear why the proffered position was needed for a congregation of 29 members, as indicated on the employer attestation, and the petitioner did not provide evidence of its claimed growth such that it needed a full-time assistant. Moreover, the director found that there was no evidence the Board of Trustees supported hiring the beneficiary and there was insufficient evidence in the record that the beneficiary was qualified for the position.

On appeal, the petitioner submits a detailed letter from Rabbi [REDACTED], dated July 30, 2014. This letter, in conjunction with the evidence submitted before the director, establishes that the duties of the proposed occupation of rabbi's assistant primarily relate to a traditional religious function. For example, Rabbi [REDACTED] provides an hour-by-hour account of the rabbi's assistant's day, describing the job duties to include, but not limited to: leading the morning, afternoon, and evening prayers, leading a morning class related to Judaism with excerpts from the Torah, saying a specific

prayer (Misheberach L'cholim) during meal times for individuals who are ill, supervising the soup kitchen in order to maintain a kosher kitchen, and teaching students about their upcoming Bar Mitzvahs. He specified that the position entails working from 6:00 a.m. until 10:30 p.m. Mondays through Thursdays (including a break from 11:00 a.m. until 3:30 p.m.), and 6:00 a.m. until 10:30 a.m. on Fridays. He also stated that the congregation currently has 150 families and submitted a list of the families' names. A previous letter from Rabbi (), dated February 14, 2013, explained that the congregation was founded five years ago and that its growth requires a full-time assistant. He stated that Orthodox Jews may only eat food that is kosher and the rabbi's assistant would oversee the demanding and detailed laws of kosher food, and assist in leading prayer services and reading from the Torah. Moreover, a letter from the Board of Trustees submitted on appeal explains that the congregation is in "great need" to hire an individual who can assist or replace Rabbi () in order to ensure the congregation's smooth operation because Rabbi () is extensively involved in outreach activities in the community. Considering the evidence submitted on appeal, in conjunction with the evidence previously submitted, the petitioner has established that maintaining a kosher kitchen for the congregation's soup kitchen involves carrying out the religious creed and beliefs of the denomination and that the duties of the proffered position of rabbi's assistant involves duties primarily related to the inculcation of the Jewish faith.

Regarding the beneficiary's qualifications to be a rabbi's assistant, the petitioner did not submit a job description or outline specific requirements for the job. However, it has indicated that the beneficiary's certificate, showing that he completed a 12-year course of study in Israel that included Torah classes, makes him qualified for the position. In addition, a letter from the congregation's Board of Trustees describes the beneficiary's qualifications for the proffered position, including his religious activities, multilingual abilities, and multicultural background, and concludes that the beneficiary is the person who best fits the job. The record also includes two letters from rabbis in Israel attesting to the beneficiary growing up in a Jewish Orthodox home, his "religious leadership" in the religious schools he attended, his volunteer work "spreading the Torah" in the community, and describing the beneficiary's father's expertise in the Hebrew language and Judaism. A letter from Rabbi () asserts that the beneficiary's education, lifelong commitment to the principles of Orthodox Judaism, and training make the beneficiary fully qualified to be his assistant. Consequently, the petitioner has established that the beneficiary is qualified for the proffered position.

Nonetheless, the record contains no evidence, and the petitioner does not contend, that the proposed position is recognized as a religious occupation within the denomination pursuant to 8 C.F.R. § 214.2(r)(3)(A). According to the petitioner, the position of rabbi's assistant is a new position that previously did not exist within its organization. There is no evidence that any other congregation employs a rabbi assistant or is otherwise recognized as a religious occupation within the petitioner's denomination. Therefore, the petitioner has not established that the proffered position is a religious occupation as defined in 8 C.F.R. § 214.2(r)(3).

II. On-Site Inspection

In the NOID, the director stated that “[t]he main issue for the failure of the petitioner’s site inspection was the fact that the beneficiary had indicated to the [site inspector] that the proffered position was created to allow him to be with his autistic children as they attend a special needs school.” In her decision denying the petition, the director found that the petitioner did not overcome the “credibility” issues in the case and that the site inspector’s report included “too many details” to be unjustified or fabricated. The director concluded that the petitioner did not satisfactorily complete the site inspection as required under 8 C.F.R. § 214.2(r)(16).

On appeal, the petitioner “take[s] offense” at the implication that the proffered position was created for the beneficiary because his children have special needs. In response to the NOID, the petitioner stated that “the beneficiary mentioned, in passing, that his children are autistic,” but that this fact should have no bearing on the petition. Affidavits from Rabbi [REDACTED] and the beneficiary submitted in response to the NOID both attested to the fact that the site inspector did not ask any questions about the reason the proffered position was created. They asserted that the proffered position was created due to the congregation’s growing needs and insufficient staffing. The beneficiary further asserted that his children have been attending a special education school since 2011. He explained that it is a “call of duty” to join the congregation as a rabbi’s assistant.

We acknowledge the petitioner’s assertion that whether the beneficiary’s children attend a special needs school is irrelevant to the petitioner’s eligibility. The statute and regulations contain numerous, specific eligibility requirements; they do not, however, preclude the possibility that other factors may influence a petitioner’s decision to file a petition on behalf of a particular beneficiary. In her decision, the director did not specifically address Rabbi [REDACTED]’s and the beneficiary’s affidavits describing the site visit. The record shows the congregation has 150 families and one rabbi who is extensively involved in community outreach activities. The record also shows the beneficiary told the site inspector he has children with autism. Rabbi [REDACTED]’s and the beneficiary’s affidavits are not inherently inconsistent with the site inspector’s report. We find that the petitioner has overcome any credibility issues and has overcome the basis for the failed site visit.

III. Compensation

The petitioner has not overcome the director’s finding that it did not establish how it intends to compensate the beneficiary \$24,000 per year, as it claimed it would in the petition. The petitioner initially submitted with its petition a bank statement showing that on January 31, 2013, the congregation had a bank account balance of \$82,454. The RFE requested additional financial documentation, such as proof of past compensation for similar positions, budgets showing monies set aside for salaries, audited financial statements, and IRS documentation such as Form W-2 or certified tax returns. In response, the petitioner submitted an additional bank statement showing that on June 28, 2013, the same account’s balance was \$42,156. The petitioner also submitted a letter dated with an illegible signature stating that the petitioner’s 2006 federal tax return was enclosed, and a copy of the petitioner’s Application for Recognition of Exemption

Under Section 501(c)(3) of the Internal Revenue Code (IRS Form 1023). On appeal, the petitioner submits a bank statement showing that on July 21, 2014, the same account's balance was \$12,211.¹

The petitioner has not provided sufficient documentation to show how it intends to compensate the beneficiary. On page 5 of the petition, the petitioner did not list its gross or net annual income as requested. The three bank account statements in the record show only minimal activity, if any, and do not provide sufficient information to establish how the petitioner intends to compensate the beneficiary. For instance, the statement from January 2013 indicates that the only activity during the entire month was a single deposit in the amount of \$30,000. The statement from June 2013 indicates that from June 1, 2013, through June 28, 2013, there were no checks paid and no deposits made. The statement submitted on appeal, dated July 21, 2014, indicates an average balance during the last twelve months of \$126,678, but a current balance of only \$12,211, with no description of any banking activity. The record does not contain a budget or any other accounting records to show that the congregation's income, including from voluntary donations, exceeds its expenses such that it can compensate the beneficiary in the amount that it stated it would.

In addition, although the petitioner submitted a letter referencing its 2006 federal tax return, the tax return itself is not in the record.² Therefore, the petitioner has not submitted IRS documentation, such as Form W-2 or certified tax returns, nor has it provided an explanation for its absence as required by 8 C.F.R. § 214.2(r)(11). To the extent the petitioner submitted its Form 1023 application for tax exemption, that application shows the petitioner's total revenue from 2007, 2008, and 2009, more than four years before the instant petition was filed. Even if this information was not outdated and was current, the statement of revenues and expenses show that the petitioner's total revenue in 2007, 2008, and 2009 was \$90,000 each year, and that its total expenses per year were \$56,100. However, it claimed no salaries or wages for any employees. Therefore, there is no proof of past compensation for any similar positions including for the position of rabbi, much less for the proffered position of rabbi's assistant. The petitioner's assertion that its bank account balances prove its intention to pay the beneficiary's salary is insufficient. 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)).

¹ Although the petitioner submits a bank account statement showing that a new account was opened on December 20, 2013, in this case, the petition was filed on February 28, 2013. Because this bank account was opened after the date the petition was filed, it cannot be considered as eligibility must be established at the time of filing the nonimmigrant visa petition. See 8 C.F.R. § 103.2(b)(1); *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978) (citing *Matter of Katigbak*, 14 I&N Dec. 45 (R.C. 1971)).

² Even if the petitioner's 2006 tax return was in the record, a tax return filed seven years before the petition was filed in 2013 would not be sufficient, in and of itself, to establish the petitioner's intention or ability to compensate the beneficiary.

CONCLUSION

On appeal, the petitioner has established that the duties of the proffered position primarily relate to a traditional religious function and that the beneficiary is qualified to perform these duties. The petitioner has also overcome the findings of the failed site visit. However, the petitioner has not established that the proffered position is recognized as a religious occupation within the denomination and has not established how it intends to compensate the beneficiary. The appeal is, therefore, dismissed.

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.³

³ To the extent the petitioner requests that we issue a decision with respect to the beneficiary's spouse and children, *Appeal of Denial of Form I-129*, dated July 31, 2014, at 1 n.1, the beneficiary's spouse and children are not considered recognized parties to this petition under 8 C.F.R. § 103.2(a)(3). Nonetheless, any decision we make regarding the beneficiary's eligibility for this visa benefit is a decision on the eligibility of his dependents.