



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF S-O-V-M-

DATE: DEC. 4, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a church/ministerial training center, seeks to classify the Beneficiary as a nonimmigrant religious worker to perform services as a teaching pastor. *See* section 101(a)(15)(R) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R). The Director, California Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

**I. RELEVANT LAW AND REGULATIONS**

Section 101(a)(15)(R) of the Act pertains to a foreign national 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) before September 30, 2015, 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) before September 30, 2015, 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.<sup>1</sup>

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, a foreign national 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.

## II. PERTINENT FACTS AND PROCEDURAL HISTORY

On August 15, 2014, the Petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking to classify the Beneficiary as a nonimmigrant religious worker. The classification the Petitioner seeks on behalf of the Beneficiary makes visas available to foreign national ministers and non-ministers in religious vocations and occupations seeking to temporarily perform religious work in the United States in a compensated position. The Director issued a request for evidence (RFE), requesting the Petitioner provide several items of information that were omitted within the Form I-129, and information relating to the following: the Petitioner's nonprofit status; the Petitioner's intent to compensate the Beneficiary; and tax related documents for the Beneficiary.

The Director found that the Petitioner did not demonstrate how it will compensate the Beneficiary, and that the Beneficiary did not properly maintain his nonimmigrant status. The Director denied the petition accordingly. On appeal, the Petitioner submits a brief with additional evidence.

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<sup>1</sup> Continuing Appropriations Act, 2016, Pub. L. No. 114-53, §§ 106(3), 132, 129 Stat. 502 (2015) extended the applicable date of September 30, 2015 to December 11, 2015.

### III. ANALYSIS

#### A. Compensation

##### 1. Authority

The Petitioner is required to submit evidence to establish how it intends to compensate the Beneficiary. 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.

##### 2. Analysis

At the time of filing, the Petitioner indicated within the Form I-129 that it intended to compensate the Beneficiary at the monthly rate of \$1,500. The Petitioner left the field for other forms of compensation blank on all versions of the Form I-129 it provided within these proceedings. The Petitioner submitted its bank statements covering the period between June 2013 and June 2014. None of the ending balances on the bank statements met or exceeded the wage the Petitioner stated it would pay to the Beneficiary. The Director's RFE notified the Petitioner that the bank statements were not sufficient to show how it intends to compensate the Beneficiary. In response to the RFE, the Petitioner asserted that it has compensated other ministers with room and board and other compensation, but the documentation of such previous compensation was not immediately available as it was in storage.

Regarding the Petitioner's request for additional time to respond, the RFE notified the Petitioner that the deadline reflected the maximum time in which to respond to the request, and that the failure to submit all of the requested at one time may result in the petition's denial. 8 C.F.R. § 103.2(b)(8)(iv). The Director's decision discussed the evidence on record and determined it was not sufficient to meet the Petitioner's burden of proof. The Director also stated that the documentation the Petitioner

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provided was supportive material, but, by itself, could not demonstrate the Petitioner had complied with the regulation.

On appeal, the Petitioner asserts that the Director's conclusion that its bank statements were supportive evidence only is erroneous and notes it is a tax exempt entity and is not required to file income taxes with the IRS. The Petitioner further indicates that its bank statements are the simplest and clearest representation of its funds. Regarding salaried or non-salaried compensation, the regulation at 8 C.F.R. § 214.2(r)(11)(i) indicates that while other forms of evidence acceptable to USCIS "may" be offered, "IRS documentation, such as IRS Form W-2 or certified tax returns, must be submitted, if available." In the alternative, if the Petitioner establishes such IRS records are unavailable, it is required to "submit an explanation for the absence of IRS documentation, along with comparable, verifiable documentation." The Petitioner has not provided an explanation other than it is a tax exempt organization. While the Petitioner did include the Beneficiary's 2012 and 2013 Form W-2s, the religious entity that issued them was not the Petitioner, but another employer.

█ indicated that information relating to previously providing room and board was in storage, and that she anticipated obtaining it within 30 days of responding to the RFE in January 2015. As part of her appeal, the Petitioner included a request for an additional 60 days to gather more documentation from storage, which we granted. The Petitioner supplemented the record in June 2015, but has not submitted what it asserted was in storage. As the record lacks the evidence required, the Petitioner cannot demonstrate it has complied with the regulation at 8 C.F.R. § 214.2(r)(11)(i).

Other items the Petitioner offers on appeal consists of its bank statements, its proposed budget, and a petition signed by its members. The new bank statements cover the period of February 2014 through February 2015. During this thirteen month period, only three monthly bank statements reflect the Petitioner possessed sufficient funds in which to compensate the Beneficiary the offered monthly salary of \$1,500. This information does not demonstrate the Petitioner's intent to consistently compensate the Beneficiary at the proposed salary. The proposed budget does not reflect the timeframe that it encompasses. Further, it does not list a preparer and reflects only projected private donations without explaining the Petitioner's expenses. Finally, the petition signed by the Petitioner's members affirms a desire for the Beneficiary to serve the congregation, but is not probative evidence of how the Petitioner intends to compensate the Beneficiary.

#### B. Maintenance of Nonimmigrant Status

An additional ground for denial the Director cited is related to the Beneficiary's prior employment. Under the USCIS regulation at 8 C.F.R. § 248.1(a), a foreign national must maintain status in order to qualify for change of nonimmigrant status. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status. 8 C.F.R. § 214.1(e). This issue, however, lies outside our appellate jurisdiction, because it is a change of status issue rather than a petition issue. *See* 8 C.F.R. § 248.3(g).

#### IV. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated how it intends to compensate the Beneficiary at the stated monthly salary by submitting IRS documentation, or by establishing that such material is unavailable and subsequently providing other evidence acceptable to USCIS. 8 C.F.R § 214.2(r)(11)(i). 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, the Petitioner had not met that burden.

**ORDER:** The appeal is dismissed.

Cite as *Matter of S-O-V-M-*, ID# 14649 (AAO Dec, 4, 2015)