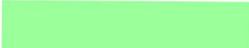


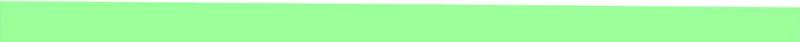


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JAN 16 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. We will dismiss the appeal.

The petitioner is a [REDACTED] temple. It seeks to extend the beneficiary's stay as a nonimmigrant religious worker under 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 temple paricharaka (chef). The director determined that the petitioner had not established how it intends to compensate the beneficiary.

On appeal, the petitioner submits additional documentation.

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.

I. COMPENSATION

The issue to be discussed is whether the petitioner has submitted sufficient evidence to establish how it intends to compensate the beneficiary.

A. 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. Analysis

The petitioner filed the Form I-129, Petition for Nonimmigrant Worker, on March 3, 2014. According to the petition and accompanying evidence, the beneficiary entered the United States on March 29, 2011 in R-1 nonimmigrant status authorizing his employment with the petitioner until March 27, 2014. On the instant petition, the petitioner indicated that the beneficiary would receive wages of \$325 per week (equivalent to \$16,900 per year). In a February 25, 2014, letter

accompanying the petition, the petitioner stated that the beneficiary “will be paid \$1,300.00 per month, with free board (value of \$200.00 per month), [and] provided health care and travel expenses from [REDACTED].” The petitioner also submitted a February 25, 2014, job description, describing the proposed remuneration as:

1. Salary of \$1,300.00 per month less charge for accommodations
2. 50% of travel expenses from India to [REDACTED] (if staying less than six (6) months[]); and from [REDACTED] back to India (if staying more than six (6) months[])
3. Medical and Health care

In addition, the petitioner submitted a February 25, 2014, job offer letter, describing the proffered compensation as:

1. Monthly salary \$1,300.00
2. Local transportation valued at \$150.00/month
3. Medical and health care valued at \$200.00
4. 5% [sic] of travel expenses to [REDACTED] provided you stay with us at least six (6) months valued at \$100.00/month

The petitioner stated on the petition that it had six current employees, gross annual income of \$190,000.00 and net annual income of \$30,500.00. The petitioner submitted an uncertified copy of its 2012 Form 990, Return of Organization Exempt From Income Tax, listing total revenue of \$188,493 for the year, and “Revenue less expenses” of \$19,898. The petitioner also submitted an uncertified copy of its 2013 Form 1096, Annual Summary and Transmittal of U.S. Information Returns, indicating that it transmitted six Forms 1099-MISC, Miscellaneous Income, totaling \$57,802.80. In addition, the petitioner submitted a copy of the beneficiary’s 2013 Form 1099-MISC, indicating that the petitioner paid him \$6,600 in nonemployee compensation and \$6,000 in “Rents.”

On April 8, 2014, the director issued a Request for Evidence (RFE), in part requesting additional evidence of the beneficiary’s compensation for the past two years. The director instructed the petitioner to submit IRS documentation of any salaried compensation, IRS documentation or other verifiable evidence of any non-salaried compensation, and an itemized record of the beneficiary’s earnings from the Social Security Administration. In response, the petitioner submitted copies of the beneficiary’s Forms 1099-MISC for 2011 and 2012. The 2011 Form 1099-MISC listed \$5,070 in nonemployee compensation and \$4,050 in “Rents” from the petitioner, while the 2012 Form 1099-MISC listed \$6,350 in nonemployee compensation and \$6,000 in “Rents.”

The director denied the petition on June 6, 2014 finding that the proffered position “does not meet the compensation standards for religious workers.”¹ The director noted that the petitioner made

¹ The director cited the regulation at 8 C.F.R. § 214.2(r)(12), which sets forth the required evidence of previous R-1 employment to accompany any request for an extension of stay. An application for extension is concurrent with, but separate from, the nonimmigrant petition, and 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). As cited above, the regulation governing compensation in petitions for nonimmigrant religious workers is 8 C.F.R. § 214.2(r)(11).

conflicting statements about the form and amount of proposed compensation. Further, the director stated that the petitioner failed to submit certified IRS documentation, and that the submitted evidence of past compensation was not verifiable.

On appeal, the petitioner resubmits a copy of the beneficiary's 2013 Form 1099-MISC and states the following regarding the beneficiary's compensation:

Attached [is] the copy of [the beneficiary's] employment, besides the \$1,300/month & other non salaried compensation details as follow. He is furnished with boarding estimated at \$250.00 a month, medical care estimated at \$200.00 a month, local transportation facilities estimated at \$150.00 month, phone facilities estimated at \$40.00 a month, 50% of air fare from India to USA & 50% of air from USA to India estimated at \$2,400 or, at \$100.00 month provided he stays minimum 2 years. Other required facilities with lodging [the beneficiary] stays at our facility [redacted] fully safe with overall employee package of \$2,040.00/month to provide 32 hours per week of services – translated to \$15.93/hour.

The petitioner also asserts that USCIS approved petitions that it filed on behalf of two other beneficiaries with the same documentation. The record does not include any information or documentation regarding these purported approvals. Regardless, USCIS is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). USCIS need not treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director approved other nonimmigrant petitions based on the same documentation, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Regarding the evidence submitted in the instant matter, the petitioner submitted Forms 1099-MISC which indicate past compensation at a rate below the proffered rate of compensation. Accordingly, these forms are insufficient, on their own, to establish how the petitioner intends to provide the proffered salary. As the only additional evidence regarding compensation, the petitioner submitted uncertified copies of an IRS Form 990 and an IRS Form 1096. These forms do not constitute verifiable evidence and are insufficient to establish the petitioner's ability to provide the proffered compensation. Further, when the petitioner filed its previous Form I-129 petition on behalf of the beneficiary [redacted] it indicated its intent to pay the beneficiary \$1,200 per month (\$14,400 per year) "with free board (value of \$200.00 per month), provided health care and travel expenses from [redacted]." The evidence indicates that the beneficiary was paid less than this amount, therefore calling into question the petitioner's intent to pay the proffered wage as outlined in the instant petition. 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. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a

reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

II. CONCLUSION

For the reasons discussed above, the submitted evidence does not establish how the petitioner intends to compensate the beneficiary. Accordingly, we will dismiss the appeal.

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).

ORDER: The appeal is dismissed.