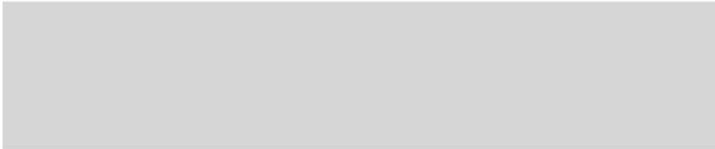


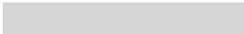


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUL 22 2015

PETITION RECEIPT #: 

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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to 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 nondenominational church. The petitioner filed the Form I-129, Petition for Nonimmigrant Worker (Form I-129), on August 27, 2014. 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 Pastoral Intern. The director determined that the petitioner had not submitted the required evidence to establish how it will compensate the beneficiary. On appeal, the petitioner submits a statement and additional evidence.

I. 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.

A. Compensation

At issue is whether the petitioner has submitted sufficient 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.

(ii) *Self support.*

- (A) If the alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.
- (B) An established program for temporary, uncompensated work is defined to be a missionary program in which:
 - (1) Foreign workers, whether compensated or uncompensated, have previously participated in R-1 status;
 - (2) Missionary workers are traditionally uncompensated;
 - (3) The organization provides formal training for missionaries; and
 - (4) Participation in such missionary work is an established element of religious development in that denomination.
- (C) The petitioner must submit evidence demonstrating:
 - (1) That the organization has an established program for temporary, uncompensated missionary work;
 - (2) That the denomination maintains missionary programs both in the United States and abroad;
 - (3) The religious worker's acceptance into the missionary program;

- (4) The religious duties and responsibilities associated with the traditionally uncompensated missionary work; and
- (5) Copies of the alien's bank records, budgets documenting the sources of self-support (including personal or family savings, room and board with host families in the United States, donations from the denomination's churches), or other verifiable evidence acceptable to USCIS.

Within the petition, the petitioner indicated that the beneficiary will receive \$1,350 monthly. In response to the director's request for evidence (RFE) dated September 17, 2014, the petitioner indicated the beneficiary would receive the previously stated \$1,350 "with housing and food paid for." The director noted a lack of evidence relating to the third party providing housing and food for the beneficiary, but also indicated within the decision that even if the petitioner provided such an agreement, it is the petitioner that must provide the compensation to the beneficiary.

On appeal, the petitioner indicates it has set aside \$16,200 that it commits to paying to the beneficiary during the seven months he will be working for the petitioner. The petitioner indicates it has set these funds aside and that the funds are represented in the balance sheet it provides on appeal within the Deferred Revenue line item. This line item contains more than the amount the petitioner states it will pay to the beneficiary at a total of \$58,980. In support of the financial statements, the petitioner also provided bank statements dated December 31, 2014 and an asset management account statement for the month of November 2014.

The petitioner's balance sheet on record is not audited and does not identify the person or entity that prepared the financial document. Without supporting evidence, the petitioner's unaudited financial statements do not constitute verifiable evidence explaining how the petitioner will compensate the beneficiary. Further, the bank statements and the management account statement, which the petitioner submitted as support of the financial statements, demonstrate that on a particular date, or during a particular month, the petitioner possessed the necessary funds needed to pay the beneficiary. However, the petitioner did not provide evidence that during the period in which it will employ the beneficiary, it will possess the necessary funds to compensate the beneficiary. Bank or financial statements representing funds available in two accounts on a single date for each account, as in the present case, do not constitute verifiable evidence of how the petitioner will compensate the beneficiary in addition to paying for its ongoing expenses.

On appeal, the petitioner also provides a housing agreement between a third party and the petitioning entity signed on January 14, 2015. The document reflects that housing, utilities, and food will be provided for the beneficiary and his two family members for a period of seven consecutive months. The agreement only stipulates that the petitioner will compensate the third party for overages on utility bills. The petitioner's appellate statement reflects that "this is a normal means of defraying costs for churches bringing others from the outside." While the beneficiary is not precluded from receiving support from a third party, the petitioner must first demonstrate its intent and ability to compensate the beneficiary with verifiable evidence. As the petitioner is not paying the third party for the housing and

food costs relating to the beneficiary and his family members, it may not factor such amenities into its salaried and non-salaried compensation calculations.

For the reasons discussed above, the submitted evidence does not establish how the petitioner intends to compensate the beneficiary as required by the regulation at 8 C.F.R. § 214.2(r)(11).

II. ADDITIONAL INELIGIBILITY GROUNDS

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). Below are additional unresolved issues the director did not include in the decision.

A. Denominational Membership

The regulation at 8 C.F.R. § 214.2(r)(3) provides the following definitions:

Denominational membership means membership during at least the two-year period immediately preceding the filing date of the petition, in the same type of religious denomination as the United States religious organization where the alien will work.

Religious denomination means a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes one or more of the following:

- (A) A recognized common creed or statement of faith shared among the denomination's members;
- (B) A common form of worship;
- (C) A common formal code of doctrine and discipline;
- (D) Common religious services and ceremonies;
- (E) Common established places of religious worship or religious congregations; or
- (F) Comparable indicia of a bona fide religious denomination.

As the regulation at 8 C.F.R. § 214.2(r)(3) provides that denominational membership in a religious denomination “means a religious group or community of believers that is governed or administered under a common type of ecclesiastical government,” the petitioner must submit evidence demonstrating the commonalities between the governing structure of the entity in which the beneficiary attained the two years of membership, and its own governing structure. The governing structure may include, but is

not limited to the religious organizational structure and decision making process of the church. After demonstrating this commonality between the two churches, the petitioner must also submit evidence demonstrating the two churches share one or more of the criteria listed at 8 C.F.R. § 214.2(r)(3)(A) – (F) (definition of religious denomination).

The petitioner submitted evidence indicating that the beneficiary was a member of [REDACTED] [REDACTED] during the two year period before it filed the Form I-129. The petitioner identifies itself as a nondenominational church and asserts within the supplement to the Form I-129 that the beneficiary will be joining the petitioner from a “sister church.” The petitioner submitted its “Amended and Restated Articles of Incorporation” statement of faith within the RFE response. The record also contains email correspondence between the petitioner and individuals in [REDACTED] one of whom is [REDACTED] who also provided a letter confirming the beneficiary’s experience at [REDACTED]. While this correspondence suggests a relationship between the petitioner and [REDACTED] it does not address [REDACTED] ecclesiastical government or the elements set forth at 8 C.F.R. § 214.2(r)(3)(A)-(F). The petitioner has not provided evidence of the bylaws or similar documentation demonstrating the ecclesiastical government of [REDACTED] and has not provided [REDACTED] statement of faith. Therefore, the petitioner has not demonstrated that it has a common type of ecclesiastical government as that of [REDACTED] or documented elements such as [REDACTED] creed and form of worship as required by the regulation.

For the reasons discussed above, the current record does not establish that the beneficiary was a member of the same type of religious denomination as the petitioning organization during the two years immediately preceding the filing of the petition.

B. Religious Occupation Duties

At issue is whether the petitioner has established that the beneficiary will be working at least 20 hours per week in a religious occupation. The regulation at 8 C.F.R. § 214.2(r)(1) provides that the beneficiary must:

- (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);

The regulation at 8 C.F.R. § 214.2(r)(3) states that any religious worker must be, “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.” The same regulation defines a religious occupation as:

[A]n 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 that 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.

(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.

Therefore, the duties of any religious occupation must primarily relate to a traditional religious function and to carrying out the religious creed and beliefs of the denomination. Further, administrative or secular duties are not qualifying elements, and as such, cannot be factored into the part-time employment calculations.

Within the petition, the petitioner listed the beneficiary's proposed job title as a Pastoral Intern. The petitioner further indicated on the Form I-129, that the beneficiary would study and learn various aspects of teaching and policies of the petitioner's church, and that he would be encouraged to interact with families within the church and partake in all church meetings and events. The director requested additional evidence relating to the beneficiary's weekly work schedule showing the specific hourly duties within the RFE. The petitioner responded within a cover letter only stating the beneficiary will work 40 – 50 hours per week, primarily from 9:00 am to 5:00 pm. The petitioner indicated the beneficiary will perform the following duties:

- Translate church materials into Spanish;
- Attend elders meetings where he will be given duties such as counseling;
- Teaching and training in various areas; and
- Building relationships to help identify Hispanic leaders in the church.

The petitioner did not detail the total hours per week that the beneficiary will spend performing each duty or information about each duty, such as the type of materials the beneficiary will translate, his role at the meetings, and information about duties that might be assigned at those meetings beyond counseling.

Accordingly, the petitioner has not provided sufficient information to establish that the beneficiary will spend at least 20 hours per week on duties that primarily relate to a traditional religious function.



III. CONCLUSION

For the reasons discussed above, the petitioner has not established: (1) how the petitioner intends to compensate the beneficiary; (2) that the beneficiary was a member of the same type of religious denomination as the petitioning organization during the two years immediately preceding the filing of the petition; (3) that the beneficiary will be performing the duties of a minister for at least 20 hours per week; (4) that the beneficiary possesses the qualifications to perform the work of a Pastoral Intern; and (5) that the proposed position meets the definition of a religious occupation within the petitioner's denomination.

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 has not met that burden.

ORDER: The appeal is dismissed.