



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

(b)(6)



DATE: **JUN 08 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 an [REDACTED] Churches. The petitioner filed the Form I-129, Petition for Nonimmigrant Worker (Form I-129), on November 25, 2013. 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 head priest, or as a minister. The director determined that the petitioner had not submitted required evidence to establish the beneficiary qualifies as a minister. On appeal, the petitioner submits additional evidence relating to the beneficiary's qualifications and a brief as discussed below.

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.

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.

A. Qualifying position

The petitioner must establish that the beneficiary will be working as a minister. The regulation at 8 C.F.R. § 214.2(r)(3) includes the following definition:

Minister means an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and
- (D) Works solely as a minister in the United States which may include administrative duties incidental to the duties of a minister.

The regulation at 8 C.F.R. § 214.2(r)(10) requires the petitioner to submit the following documentation if the alien will work as a minister:

- (i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and

(ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological education is accredited by the denomination, or

(iii) For denominations that do not require a prescribed theological education, evidence of:

(A) The denomination's requirements for ordination to minister;

(B) The duties allowed to be performed by virtue of ordination;

(C) The denomination's levels of ordination, if any; and

(D) The alien's completion of the denomination's requirements for ordination.

Religious vocation means a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life. The religious denomination must have a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. Examples of vocations include nuns, monks, and religious brothers and sisters.

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.

When it filed the petition, the petitioner indicated that it will employ the beneficiary as a head priest of the church. The petitioner did not submit sufficient evidence within the initial petition filing to demonstrate the beneficiary qualifies under this regulation. Within the response to the director's request for evidence (RFE), the petitioner did not address the director's concerns relating to the beneficiary's qualifications as a minister or as a head priest of the church, nor did it provide evidence of the denomination's requirements for one to occupy this position.

The regulation at 8 C.F.R. § 214.2(r)(10) requires the petitioner to submit the beneficiary's "certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination." [REDACTED] the Deacon of the petitioning entity, asserts within the October 7, 2014 affidavit that the beneficiary is an ordained high priest of the [REDACTED] denomination. The record does not contain evidence of the petitioner's required qualifications for a minister or a priest. Regarding Deacon [REDACTED] affidavit, the regulation at 8 C.F.R. § 103.2(b)(2) provides:

Submitting secondary evidence and affidavits. (i) General. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

Where the regulations require specific, objective evidence of achievements, such as an ordination certification, the primary evidence of such a certification would be copies of the certificate. An example of secondary evidence might be media reports. Affidavits attesting to the beneficiary's ordination, therefore, would need to "overcome the unavailability of both primary and secondary evidence." The petitioner has not demonstrated that the required evidence is unavailable or cannot be obtained, and therefore the affidavit is insufficient evidence pursuant to 8 C.F.R. § 103.2(b)(2).

The regulation also allows "similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination." On appeal the petitioner submits an affidavit relating to the beneficiary's religious background and qualifications, and a letter addressed to the beneficiary from the petitioning church's administrator, [REDACTED]. This letter indicates the church board was satisfied with the beneficiary's qualifications and his religious education, to become the church's head priest. Such assertions within a letter, addressed to the beneficiary, are not evidence of the [REDACTED]; "acceptance of the [beneficiary's] qualifications as a minister in the religious denomination," and "[d]ocuments reflecting acceptance of the alien's qualifications as a minister in the religious denomination." 8 C.F.R. § 214.2(r)(10)(i) and (ii). 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 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). This evidence does not demonstrate that the beneficiary has met the definition of a minister pursuant to 8 C.F.R. § 214.2(r)(3).

For the reasons discussed above, the submitted evidence does not establish that the beneficiary will be employed in a qualifying position.

B. Additional Eligibility Concerns

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). For the reasons outlined below, a review of the record of proceeding does not reflect that the petitioner submitted sufficient documentary evidence establishing that the petitioner

is a tax-exempt organization or that it has sufficiently demonstrated its intent to compensate the beneficiary.

The regulation at 8 C.F.R. § 214.2(r)(9) requires the petitioner to provide 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 [Internal Revenue Service] 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.

The instructions on the Form I-129 also list these evidentiary requirements. The director's RFE instructed the petitioner to provide evidence of its bona fides as a non-profit religious organization as required by the regulation. In response, the petitioner submitted an IRS letter dated December 19, 2005. Within this letter, the IRS notified the petitioner that it had not submitted all of the required evidence to establish that it qualifies for tax exempt status. The petitioner also provided an August 28, 2013 letter from the State of Nevada. This evidence does not comply with the regulatory requirements as the IRS

did not issue the letter. As stated above, the regulation at 8 C.F.R. § 214.2(r)(9) requires the petitioner to submit a currently valid letter from the IRS establishing its tax-exempt status. Consequently, the record lacks sufficient evidence to approve the petition.

The regulation at 8 C.F.R. § 214.2(r)(11) states:

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. IRS documentation, such as IRS Form W-2 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.

Regarding the petitioner's stated intent to provide the beneficiary's compensation, the regulation at 8 C.F.R. § 214.2(r)(11) and the employer attestation require the petitioner to "state how the petitioner intends to compensate the alien" or how the alien will be self-supporting, and to "submit verifiable evidence explaining how the petitioner will compensate the alien." Within the Form I-129, the petitioner indicated that the church exists based on the parishioners' donations and implies that it will be from these donations that the beneficiary's salary will derive. Within the Form I-129 Part 9, Explanation Page, the petitioner states: "During his stay here the Parishioners through their donations will cover whatever expenses [the beneficiary] will incur and make sure that [the beneficiary] is no burden to the Government." In response to the RFE, the petitioner provided balances for multiple bank accounts, financial statements, checks in the petitioner's name made out to [REDACTED] the church administrator, that are listed as "Allowances for Church Services."

In reference to the bank statements, in response to the RFE the petitioner provided a bank statement relating to three different bank accounts with [REDACTED] all dated April 2, 2014. The bulk of the funds rest in the account ending in ***** [REDACTED] and reflects a then current balance of \$544,109. However, on appeal the petitioner submitted a bank statement dated October 1, 2014 for this same account that reflects a current balance of \$6,259.74 in addition to evidence relating to the grand opening of the petitioner's new location. The bank statements on record are not sufficient evidence explaining how the petitioner will compensate the beneficiary in accordance with the regulation at 8 C.F.R. § 214.2(r)(11). Such bank statements only demonstrate the church's financials on hand at one point in time and do not establish the funds are available to compensate the beneficiary. The financial statements on record are not audited and do not identify the person or entity that prepared them. Without supporting evidence, the petitioner's unaudited financial statements do not constitute verifiable

(b)(6)

[REDACTED]

NON-PRECEDENT DECISION

Page 8

evidence. Regarding the allowances for church services the petitioner paid to [REDACTED] the petitioner did not state why this evidence is relevant. The record contains no evidence the beneficiary will replace Mr. [REDACTED] or that the funds paid to him will be otherwise available to pay the beneficiary.

As a result, the record lacks evidence demonstrating how the petitioner will compensate the beneficiary.

II. CONCLUSION

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 appeal is dismissed.