



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

(b)(6)



DATE: JUN 18 2015

PETITION RECEIPT #: [REDACTED]

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:



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

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based nonimmigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. We will sustain the appeal; the petition is approved.

The petitioner is a nondenominational Christian church. The petitioner filed the Form I-129, Petition for Nonimmigrant Worker (Form I-129), on July 10, 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 minister. The director determined that the petitioner had not submitted the required evidence to establish: (1) the beneficiary's membership in a qualifying religious denomination for at least two years before filing the petition; (2) how the petitioner will compensate the beneficiary; (3) whether the beneficiary qualifies as a minister; and in the alternative, (4) whether the offered position qualifies as a religious occupation. On appeal, the petitioner submits evidence addressing each of the grounds cited within the director's decision.

For the reasons discussed below, the petitioner has demonstrated: (1) both it and the church in which the beneficiary attained his two years of denominational membership share a common type of ecclesiastical government; (2) the beneficiary meets the qualifications of a minister; and (3) how it intends to compensate the beneficiary. Consequently, we will sustain the appeal.

## 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. Denominational Membership

At issue is whether the petitioner established the beneficiary's denominational membership, in the same type of religious denomination as the United States religious organization where the alien will work, during the two years immediately preceding the filing of the petition in accord with 8 C.F.R. § 204.5(r)(1). 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.

At the time it filed the Form I-129, and in the accompanying evidence, the petitioner identified itself as a nondenominational Christian church. The regulation at 8 C.F.R. § 214.2(r)(3) defines “religious denomination” as a religious group that is administered under a “common type” of religious government, in addition to having one or more of the listed characteristics quoted above in subparagraphs (A) – (F). Further, the definition of “denominational membership” includes membership in the “same type of religious denomination” during the two-year period immediately preceding the filing of the petition. The record contains a May 13, 2014 letter from [REDACTED] Senior Pastor of [REDACTED] [REDACTED]), the Baptist denominational church in which the petitioner indicates the beneficiary attained his two year membership in the Baptist denomination. The director indicated in her decision that the record lacked documentary evidence that the petitioning entity and the [REDACTED] are governed or administered under a common type of ecclesiastical government as described in the regulation. The petitioner must establish this common type of ecclesiastical government, as the petitioner asserts that it was with [REDACTED] that the beneficiary attained his two years of membership in a religious denomination having a bona fide non-profit religious organization in the United States immediately prior to filing the petition.<sup>1</sup>

The petitioner asserts that [REDACTED] and the petitioning entity “belong to the same denomination because they share ministerial resources, accept each other’s members, work together in growing members and have common beliefs and creed.” The petitioner submits new evidence on appeal relating to whether the beneficiary was a denominational member, in the same type of religious denomination as the petitioner. The following evidence supports the petitioner’s position that the two entities share commonalities sufficient to meet the regulatory requirements:

1. The petitioner’s bylaws;
2. The statement of faith for both [REDACTED] and the petitioner; and
3. Examples of shared commonalities between the two entities.

The petitioner’s bylaws document the church’s organizational structure, which also establishes it is governed by a board of elders and deacons similar to that of [REDACTED]. This information, in addition to several other similar aspects between the governing of the two entities, sufficiently establishes 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.

---

<sup>1</sup> The beneficiary graduated from the [REDACTED] in November 2011, which also speaks to his membership in the Baptist denomination.

The petitioner's statement of faith establishes that the petitioning entity's and the [REDACTED], shared core beliefs are nearly identical. This commonality between the two entities is exhibited in the following actions. Regarding the shared commonalities, the petitioner provides its Sunday church bulletin listing [REDACTED] as the petitioner's senior pastor (now former Senior Pastor), and a Sunday bulletin from [REDACTED] reflecting Senior Pastor [REDACTED] spoke at [REDACTED] events. The record also contains evidence of various documents reflecting that Reverend [REDACTED] the current pastor at [REDACTED] was formerly the pastor at the petitioner's sister church at [REDACTED]. The record includes evidence that [REDACTED] baptized the beneficiary and subsequently accepted him as a minister in its congregation, and the petitioner also accepted him as a minister in its congregation. The petitioner also submitted evidence that the two churches regularly share congregants at both church services and at religious related functions outside of the regular service. Finally, the senior pastor of the petitioner's nondenominational church graduated from the [REDACTED]

For the reasons discussed above and based on the evidence submitted on appeal, the combination of all the present elements establishes by a preponderance of the evidence 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 pursuant to 8 C.F.R. § 204.5(h)(1).

#### B. Qualifying Position

At issue is whether the petitioner has established that the beneficiary meets the qualifications of a minister. If it has not, we will determine if the position offered to the beneficiary qualifies as a religious occupation. 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.

At the time the petitioner filed the Form I-129, it indicated that it will employ the beneficiary as a minister. The evidence accompanying the initial filing, and provided in response to the director's July 21, 2014 Request for Evidence (RFE), consisted of letters from the petitioner's clergy, and the beneficiary's theological degrees. On appeal, the petitioner provides the church's bylaws that specify the requirements for a minister within the congregation. The evidence on record, including the petitioner's bylaws, demonstrates that the beneficiary meets the regulatory definition of a minister found at 8 C.F.R. § 214.2(r)(3). As the petitioning entity does not require a specific theological education, it must demonstrate it satisfies the requirements listed at 8 C.F.R. § 214.2(r)(10)(iii)(A) – (D). The petitioner has submitted evidence, primarily its bylaws, that sufficiently satisfy these regulatory requirements. Consequently, the appellate evidence demonstrates the petitioner has overcome the director's adverse decision as it relates to the beneficiary's qualifications as a minister for the petitioner.

After the director determined that the petitioner had not demonstrated that the beneficiary qualifies as a minister, she subsequently analyzed whether the position offered to the beneficiary qualifies as a religious occupation. However, as the petitioner has demonstrated the beneficiary meets the qualifications of a minister, whether the position offered to the beneficiary qualifies as a religious occupation is moot pursuant to 8 C.F.R. § 214.2(r)(1)(iii).

### C. 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.

Accompanying the petition, the petitioner submitted a letter indicating the beneficiary will receive an annual salary of \$48,000, consisting of a \$3,500 monthly base salary, \$500 monthly supplement, and dental and medical insurance. The information contained within the Form I-129 corresponded with the assertions within the letter, in addition to the petitioner indicating the church has five current employees, a gross annual income of \$600,000, and a net annual income of \$50,000. The director's decision discussed the lack of documentary evidence to corroborate the petitioner's assertions within the letter and on the Form I-129. On appeal, the petitioner indicates that it provided evidence in response to the director's RFE, which consisted of a single check it issued to the beneficiary.

On appeal the petitioner provides the beneficiary's pay stubs covering the period from February 2014 through December 2014, his 2014 Form W-2, Wage and Tax Statement reflecting his wages for the year were \$48,500, and the petitioner's budget statements for the period from 2007 through 2015. Therefore, the petitioner has provided sufficient evidence that demonstrates how it intends to compensate the beneficiary in accordance with the regulation.

## II. CONCLUSION

For the reasons discussed above, the petitioner has established: (1) 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; (2) that the beneficiary meets the qualifications of a minister; and (3) how it intends to compensate the beneficiary in accordance with the regulation. Accordingly, we will sustain the appeal.

(b)(6)



*NON-PRECEDENT DECISION*

Page 8

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 met that burden.

**ORDER:** The director's adverse decision is withdrawn. The appeal is sustained, and the petition is approved.