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

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

MATTER OF WECl-USA

DATE: NOV. 3, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a Christian missionary organization, seeks to classify the Beneficiary as a nonimmigrant religious worker to perform services as a [REDACTED]. 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, revoked 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

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Revenue Code of 1986) at the request of the organization in a religious vocation or occupation.¹

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 September 25, 2012, the Petitioner filed a Form I-129, Petition for a Nonimmigrant Worker (Form I-129) seeking to extend the stay of the Beneficiary as a nonimmigrant religious worker. The Director approved the extension request petition on September 27, 2012. However, on May 9, 2013, the Director issued a notice of intent to revoke (NOIR) the petition's approval after U.S. Citizenship and Immigration Services (USCIS) performed a site inspection in accordance with 8 C.F.R. § 214.2(r)(16). The Petitioner responded to the NOIR on June 6, 2013.

The Director found that the Petitioner did not present evidence demonstrating the Beneficiary's eligibility for the benefit sought because the Beneficiary would not be working for the Petitioner. The Director based this determination on two signed agreements between [REDACTED] UK, the Petitioner, and the Beneficiary. The Director also based her decision on an on-site inspection of [REDACTED] in which a USCIS officer elicited statements from certain [REDACTED] employees. These statements revealed that the Beneficiary's compensation derived from

¹ 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.

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█ The Director subsequently revoked the petition pursuant to 8 C.F.R. § 214.2(r)(18)(iii). On appeal, the Petitioner submits a brief and additional documentary evidence.

III. ANALYSIS

A. General Discussion

The Petitioner indicates within the appeal brief that the Director quoted from, but gave little attention to the response to the NOIR. We will discuss that evidence below. The Petitioner also makes reference to USCIS Policy Memorandum HQ 70/6.2.8, *Determining Employer-Employee Relationship for Adjudication of H-1B Petitions, Including Third-Party Site Placements* (Jan. 8, 2010), <http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2010/H1B%20Employer-Employee%20Memo010810.pdf>. However, the elements discussed in the memorandum were not included within the Director's decision to revoke the petition, and the Petitioner has not identified how the regulatory requirements for an H-1B nonimmigrant petition are applicable to a nonimmigrant religious worker revocation based primarily on the issue of compensation. Regardless, the issue is not entirely whether the Petitioner has demonstrated which entity is the employer; it is also who is compensating the Beneficiary. The appeal brief further points out that the regulations do not require the Beneficiary to work at the Petitioner's location. Although the Director did include a discussion of where the Beneficiary was working in her decision, she focused on who was the employer and who was providing the compensation.

The Petitioner additionally expresses concern over the Director's remarks involving the Petitioner's potential motivation. The Petitioner references the Director's assertion that the Beneficiary would have to start the process over if █ petitioned for him instead of the Petitioner. This observational statement, however, is not one of the bases for the revocation. The Petitioner next takes issue with the Director's implications that the parties involved attempted to circumvent the immigration laws and process. The Petitioner correctly notes that the financial arrangements on which the Director based her revocation were clearly stated within the petition filing. Regardless it has not demonstrated the Beneficiary's eligibility for the classification sought as it has not established that it has complied with the regulations as noted within this decision.

B. Compensation

1. Regulatory Authority

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]. . . .

(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

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(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.

2. Analysis

Within the appellate brief, the Petitioner asserts that the Director did not raise whether the funds were coming from a source other than the Petitioner in the NOIR, but that she did in the notice of revocation (NOR). Within the NOIR, however, the Director does take issue with the Beneficiary's salary coming from [REDACTED] and not from the Petitioner. Further, the NOR contains essentially identical language as the NOIR with respect to the source of the Beneficiary's salary being [REDACTED] and not the Petitioner.

The Petitioner also indicates that the salary arrangement between [REDACTED] and the Beneficiary was stated within the documentary evidence included with the petition, which USCIS approved. The Petitioner therefore concludes that if the financial arrangements alone were sufficient to revoke the petition, USCIS would not have found it necessary to perform a site visit. The USCIS site visit, however, highlighted a disqualifying factor that served as a valid basis for the revocation.

On appeal, the Petitioner asserts that the regulation at 8 C.F.R. § 214.2(r)(11) only requires that the Petitioner provide an explanation of the source of the compensation and that the regulation does not require that the compensation come directly from the petitioning entity. The language in that regulation that the initial evidence must state "how the petitioner intends to compensate" the Beneficiary confirms a requirement that the petitioning entity is the source of the compensation, unless the Beneficiary will be self-supporting. The regulation continues: "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." This language also supports a conclusion that the compensation must originate from the Petitioner. Consequently, the Petitioner must demonstrate how it will compensate the Beneficiary, which it has not established.

The Petitioner indicates on appeal that because ministers can be self-supporting, the compensation does not need to come from the Petitioner. *See* 8 C.F.R. § 214.2(r)(11)(ii). The regulation relating to a beneficiary's self-support, however, is limited to scenarios in which the position a beneficiary will occupy "is part of an established program for temporary, uncompensated missionary work." As the Beneficiary's position is not uncompensated missionary work, this regulation pertains to beneficiaries that are in positions dissimilar to the [REDACTED] job offered. Therefore, the cited regulation is not pertinent to the Beneficiary's situation.

The Petitioner's response to the NOIR included an agreement whereby [REDACTED] agreed to be the sole provider of funding to the Beneficiary as of the start date; a letter from [REDACTED] Executive Pastor of [REDACTED] explaining why [REDACTED] was interested in the Beneficiary's services; a check from [REDACTED] to the Beneficiary; and a 2012 IRS Form W-2, Wage and Tax Statement, that [REDACTED] issued to the

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Beneficiary. For the reasons discussed above, the Petitioner must demonstrate that it intends to compensate the Beneficiary. The evidence the Petitioner provided in response to the NOIR all confirms that it is [REDACTED] that intends to continue compensating the Beneficiary. For the reasons herein, the Petitioner has not demonstrated that it will compensate the Beneficiary.

IV. CONCLUSION

For the reasons discussed above, the Petitioner has not established that it is compensating the Beneficiary in accordance with the regulation at 8 C.F.R. § 214.2(r)(11), or that it complied with the regulation at 8 C.F.R. § 214.2(r)(iii)(B) – (D) relating to a bona fide organization that is affiliated with the religious 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.

Cite as *Matter of WECI-USA*, ID# 14373 (AAO Nov. 3, 2015)