



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

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

MATTER OF M-M-A-C-

DATE: SEPT. 8, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a church, seeks to employ the Beneficiary as a nonimmigrant religious worker to perform services as a pastor. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R). The Director, California Service Center, denied the petition, concluding that the Petitioner did not establish how it intends to compensate the Beneficiary. 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 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.

The regulation at 8 C.F.R. § 214.2(r)(11) provides, in pertinent part:

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. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, on May 8, 2014, seeking to classify the Beneficiary as its Pastor in an R-1 temporary, nonimmigrant religious worker status for three years, from July 11, 2014, until July 10, 2017. In Part 5 of the Form I-129, The Petitioner

(b)(6)

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indicated that it would provide the Beneficiary with a yearly salary of \$25,000 plus room, board, and medical insurance. However, on the Employer Attestation form submitted with the Form I-129, the Petitioner indicated it would pay the Beneficiary \$24,000 and pay his rent. A letter submitted by the church's Presiding Prelate, Rev. [REDACTED], indicated that the church would compensate the Beneficiary \$24,000 per year and provide housing, utilities, and insurance. In Block 14 of Part 5 of the Form I-129, which requested the Petitioner's gross annual income, the Petitioner entered "annual budget: \$80,000." In Block 15, which asked about the Petitioner's net annual income, the Petitioner entered "non-profit." The Petitioner submitted no other documentation to establish how it intended to compensate the Beneficiary.

On August 21, 2014, the Director issued a request for evidence (RFE) asking for documentation of the petitioning organization's intent to compensate the Beneficiary, such as proof of past compensation for a similar position, audited financial statements, cancelled checks, and IRS documentation if available. The Director specified the documentation must include verifiable evidence of how the Petitioner intends to compensate the Beneficiary. In response, the Petitioner submitted copies of two quarterly reports to its presiding conference.

The Director found the documentation insufficient to establish the Petitioner's eligibility, concluding that the Petitioner did not submit evidence that was verifiable and did not submit IRS documentation or an explanation for its absence. The Director denied the petition accordingly. On appeal, the Petitioner submits additional financial documents.

III. ANALYSIS

We conduct 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). Upon a full review of all of the evidence submitted below and on appeal, we will dismiss the appeal.

Compensation

The record does not contain sufficient, verifiable documentation of the petitioning organization's intent to compensate the Beneficiary. As an initial matter, it is unclear whether the petitioning organization claims it will pay the Beneficiary \$24,000 or \$25,000 per year, whether it will provide physical housing to the Beneficiary or pay for his rent, and whether it will also provide meals, utilities, and insurance.

With respect to the documents the church submitted in response to the RFE, the petitioning organization submitted copies of two of its quarterly reports to the church's district headquarters in [REDACTED] Ohio. The first report indicated the time period from November 2013 through January 2014, stating it was for the second quarter of the 2013-2014 conference year. The second report indicated the time period from February 2014 through April 2014, stating it was the third quarter of the 2014-2015 conference year. Although the reports were for consecutive time periods (i.e. November 2013 through January 2014, and then February 2014 through April 2014), the quarters

listed on the cover page for the conference years are not consecutive. Rather, the reports reflect they were for the second quarter of the 2013-2014 conference year, and the third quarter of the following 2014-2015 conference year, respectively. Therefore, it appears that one of the reports listed an erroneous conference year.

Even assuming a typographical error, the reports are incomplete. For instance, both reports contained in the record did not answer question number 31, "How much money has been collected for the General Budget Fund?" Similarly, the first report included a budget that showed total expenses for the year to be \$85,489; however, there was no indication of the total amount of income for the year. The second report did not contain a budget. In addition, for question number 27 of both reports, which asked for monies raised to pay the Pastor and Presiding Elder, the Petitioner listed the Pastor's salary as \$500 per week, but left blank the space for housing. There is no indication in either report to show that the Beneficiary intends to pay for the Beneficiary's housing and the record does not indicate that the church itself has accommodations for the Beneficiary. Likewise, neither report mentioned providing for the Beneficiary's meals or paying for his health insurance. Furthermore, the second report showed that during the three-month time period, the Petitioner's disbursements of \$22,652 were greater than the \$18,277 raised during the quarter.

On appeal, the Petitioner submits an additional quarterly report for August 2014 through October 2014. This quarterly report also indicates total disbursements of \$24,473 exceeded the total amount of money raised of \$21,205. The other documents submitted on appeal do not overcome the deficiencies in the financial documentation in the record. The 2014 Official Conference Summary Sheet submitted on appeal indicates that the total amount of funds raised was \$76,100 and total expenditures was \$75,512, leaving a balance of only \$2,200. This summary sheet also lists the Pastor's salary and support package as \$22,900, which are lower than the stated salary of \$24,000 or \$25,000, plus room, board, utilities, and insurance. Similarly, a copy of the Pastor's Report submitted on appeal states that the church's balance was \$2,200, and that the Pastor's compensation was \$22,900. The Pastor's Report specifically indicated "0" for the line items for the Pastor's "Housing Allowance" and "Requisites (Health Ins, Auto etc.)." None of the provided financial documents have been audited, and there is no other documentation in the record to corroborate any of the figures reported. Similarly, to the extent the Petitioner submitted financial statements for January and February of 2014 indicating it paid the Beneficiary eight times for a total of \$3,700, as well as what appears to be handwritten receipts of payments for a total of \$3,500, there is no evidence in the record, such as copies of cashed checks or bank account statements, to verify these documents.

Considering the record in its totality, the Petitioner has not met its burden of establishing by a preponderance of the evidence its intent to compensate the Beneficiary as stated.

IV. CONCLUSION

The Petitioner has not established how it intends to compensate the Beneficiary. The appeal is, therefore, dismissed.

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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.

Cite as *Matter of M-M-A-C-*, ID# 13334 (AAO Sept. 8, 2015)