U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-F-J-S-D-A-C-M-

DATE: SEPT. 10, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a church, seeks to classify the Beneficiary as a nonimmigrant religious worker to perform services as a "Religious Bible Worker." *See* 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, initially approved the employment-based nonimmigrant visa petition on November 29, 2011. On further review, the Director determined that the Beneficiary was not eligible for the visa preference classification. Accordingly, the Director served the Petitioner with a notice of intent to revoke (NOIR) the approval of the preference visa petition stating the reasons therefore and subsequently exercised her discretion to revoke the approval of the petition on December 9, 2014. The matter is now before us on appeal. We will dismiss the appeal.

I. THE LAW

Section 205 of the Act, 8 U.S.C. § 1155, states that the Secretary of the Department of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

The regulation at 8 C.F.R. § 214.2(r)(18)(iii)(3) provides that an approved petition under section 101(a)(15)(R) of the Act may be revoked if the petitioner violated the terms and conditions of the approved petition.

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
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> (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
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> (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;
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> (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
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> (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:

> *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:
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> (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.
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> (ii) *Self support.*
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> (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.
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> (B) An established program for temporary, uncompensated work is defined to be a missionary program in which:
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> (1) Foreign workers, whether compensated or uncompensated, have previously participated in R-1 status;
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> (2) Missionary workers are traditionally uncompensated;
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> (3) The organization provides formal training for missionaries; and
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> (4) Participation in such missionary work is an established element of religious development in that denomination.
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> (C) The petitioner must submit evidence demonstrating:
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> (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.

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Form I-129, filed on June 30, 2011, reflects that the Beneficiary was currently in R-1 status and the Petitioner sought a change in employers. The Form I-129 also indicates that the Beneficiary would receive a salary of $475.00 per week ($24,700 per year), to be paid in cash with the Beneficiary acknowledging receipt of payment by signing an "official receipt book." The Petitioner stated that it currently employed one other individual, a pianist, but did not indicate any gross or net income in blocks 14 and 15 of Part 5 of the Form I-129. The Petitioner's pastor stated in an undated letter submitted with the petition that the Beneficiary will be paid $1,900 per month ($22,800 per year) plus reimbursement for any expenses incurred in the performance of her duties.[1] The Petitioner submitted with the petition copies of its bank statements covering the time period February 1, 2011, through April 29, 2011. The bank statements show monthly checking account balances ranging from $5,236.64 to $11,337.52. Monthly savings account balances ranged from $3,180.33 to $4,680.20.

The Director issued a request for evidence (RFE) on September 15, 2011, asking, in part, that the Petitioner provide evidence of how it intended to compensate the Beneficiary. In response to the RFE, the Petitioner provided copies of pay receipts that it issued to its part-time pianist but did not submit any similar evidence for wages paid to the Beneficiary. The Director approved the petition on November 29, 2011, for the period October 1, 2011, until September 30, 2013.

On October 17, 2014, the Director issued a NOIR stating, in part, that Schedule C of the Beneficiary's 2011 federal tax return transcript shows the Beneficiary received $3,600 in self-employment income as a Bible Worker, but the tax transcript does not indicate what portion, if

[1] While the Petitioner did not explain the inconsistency between the two stated salaries for the Beneficiary, it would appear that the pastor simply multiplied the $475.00 per week salary by four weeks in a month to yield the $1,900 per month figure stated in his letter. This appears to be a miscalculation rather than a discrepancy in the record.

any, of that income was paid by the Petitioner. The NOIR indicates that the Beneficiary's 2012 IRS tax return transcript shows that the Beneficiary received $13,800 in self-employment income as a Bible Worker. The Director noted that this sum is $10,900 less than the compensation to be paid to the Beneficiary according to the terms of the Form I-129, and $9,000 less than the income stated by the Petitioner in its accompanying letter.

In response to the NOIR, the Petitioner stated that it could not provide the Director with IRS documentation, such as a Form W-2 or Form 1099-MISC, verifying wages paid to the Beneficiary at any time because it does not create such records. According to the Petitioner, the Beneficiary signed a receipt for the cash wages that she received and was responsible for reporting her own taxes and making appropriate tax payments. The petitioning organization also asserted that it provided the Beneficiary with copies of the receipts, and that any shortage noted on the Beneficiary's tax returns must have occurred through error, and that the church "will amend any error found" and provide USCIS with "documentation as proof of correction." The Petitioner did not provide any receipts for wages it paid to the Beneficiary in response to the NOIR.

In revoking the petition, the Director noted that the Petitioner responded to the NOIR but did not submit verifiable evidence refuting the issues raised in the NOIR. The Director determined that the Petitioner did not submit any verifiable evidence of wages or self-employment income paid to the Beneficiary, noting that the Petitioner did not prepare IRS documentation for wages or self-employment income and relied on the Beneficiary to report all payments when she filed her federal income tax returns. The Director determined, therefore, that the Petitioner did not establish it paid any wages to the Beneficiary.

On appeal, the Petitioner agrees that the Beneficiary reported income on her tax return which was less than either of the proffered wages stated by the Petitioner on the Form I-129 or its undated supporting letter. The Petitioner states that it did not provide the Beneficiary with all of her income receipts through error, but has now corrected the problem and the Beneficiary has filed an amended tax return for 2012. The Petitioner asserts that it does not have the capacity to maintain a payroll department and issue associated IRS forms for the payment of wages and that it can only show income paid to the Beneficiary through signed payment receipts. Nonetheless, the Petitioner provided none of these receipts with its appeal.

The Petitioner submitted a copy of the Beneficiary's 2012 IRS Form 1040X, Amended U.S. Individual Income Tax Return, which reports in Schedule C that the Beneficiary earned $22,800 in self-employment income in a "Religious Grantmakin" business.

II. ANALYSIS AND CONCLUSION

The Director revoked approval of the petition because the Petitioner did not provide verifiable evidence that it compensated the Beneficiary in accordance with the terms of the Form I-129. The Director noted that Schedule C notations on the Beneficiary's 2011 IRS tax return transcript listed self-employment income for the Beneficiary of $3,600. While the Petitioner states that USCIS made

errors in the approval dates for the Beneficiary's religious worker visa in 2011, any such errors are not material as the Petitioner has provided no verifiable evidence of paying wages to the Beneficiary at any time. The Petitioner submitted copies of the Beneficiary's 2011 and 2012 IRS tax return transcripts. We note that the petition was approved for the Beneficiary to work for the Petitioner for the last three months of 2011; she was authorized to work for [redacted] until September 2011. It cannot be determined from the record how much the Petitioner paid the Beneficiary in 2011 and how much of her reported income was paid by [redacted] The 2012 tax return reports wages for the Beneficiary which are well below the proffered wage of either the Form I-129 or the Petitioner's supporting letter. The Petitioner did not provide a copy of any wage receipt for the Beneficiary. Although on appeal, the Petitioner submitted the Beneficiary's 2012 amended tax return, which now reflects Schedule C religious income for the Beneficiary of $22,800, the Petitioner did not submit any documentary evidence showing any compensation that it paid to the Beneficiary which could corroborate the Schedule C religious income reported. The Petitioner has not overcome the basis of the Director's revocation.

The Director also stated that the Petitioner did not reimburse the Beneficiary for work related expenses as required by the parties' compensation agreement. While the Beneficiary did take a deduction for business expenses on her 2012 federal tax return, the record does not establish that the Beneficiary's reported compensation was from the Petitioner or that she incurred expenses relating to work with the Petitioner.

The Director also determined that the Beneficiary was involved in secular employment because her spouse operated a business and reported the income on the parties' joint tax return. The Beneficiary's spouse is in R-2 status and is not authorized to work under that status. There is no evidence of record establishing that the Beneficiary's spouse is authorized to work under any other immigration status. Thus, the Director attributed the reported income on the joint tax return to the Beneficiary, who was the only individual in the marriage who was authorized to work. We cannot impute the Beneficiary's spouse's income to her for purposes of this visa petition. Without more, we cannot determine that the Beneficiary violated the terms of her R-1 visa by working with or for her husband. Therefore, the Director's decision in that regard is withdrawn.

The Petitioner has not submitted sufficient evidence to establish that it paid the Beneficiary the proffered wage listed on the Form I-129 or the wage stated on the Petitioner's undated letter submitted in support of the petition. The evidence of record warrants a denial of the petition. For this reason, the petition shall remain revoked.

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 B-F-J-S-D-A-C-M-*, ID# 12710 (AAO Sept. 10, 2015)