



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

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

MATTER OF C-C-C-

DATE: APR. 6, 2016

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 Connection and Research Resident. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R). This classification allows non-profit religious organizations, or their affiliates, to temporarily employ foreign nationals as ministers or in other religious occupations or vocations in the United States.

The Director, California Service Center, denied the petition. The Director concluded the Petitioner had not demonstrated how it intends to compensate the Beneficiary.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and maintains that the Director erred by misapplying the regulatory language at 8 C.F.R. § 214.2(r)(11)(i).

Upon *de novo* review, we will dismiss the appeal.

I. LAW

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, 2016, 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, 2016, 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 implementing 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.

In addition, the compensation regulation at 8 C.F.R. § 214.2(r)(11) provides:

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

[Internal Revenue Service] 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.

Finally, the regulation at 8 C.F.R. § 214.2(r)(3) states that any religious worker must be, “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.” The same regulation defines a religious occupation as:

[A]n occupation that meets all of the following requirements:

(A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.

(B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

(C) The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible.

(D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

II. ANALYSIS

The Director issued a request for evidence (RFE) listing several concerns, including the Petitioner’s intent to compensate the Beneficiary, to which the Petitioner responded. The Director denied the petition, finding that the Petitioner did not demonstrate how it intends to compensate the Beneficiary. The Director discussed the exhibits submitted throughout the proceeding beginning with the budget reflecting a deficit of more than \$10,000. The Director also reviewed the items contained in the RFE response, ultimately concluding the record contained insufficient documentation relating to compensation.

On appeal, the Petitioner indicates that the Director erred by applying a strict reading of the regulatory requirements relating to how the Petitioner will compensate the Beneficiary through verifiable evidence. Within the appeal brief the Petitioner states: “the R-1 visa, although an employment based visa, is not subject to the stringent requirements of other employment based categories such as the H-1B which requires the employer to provide proof of ability to pay the

(b)(6)

Matter of C-C-C-

proffered wage.” The Petitioner maintains that the officer misapplied the wording of the regulation and did not understand the position in which the Petitioner finds itself as a non-profit organization whose income derives from its membership, counseling, and tithing. As part of our *de novo* authority, we have reviewed the entire record of proceedings before us. For the reasons discussed below, we agree with the Director that the Petitioner has not established its intent to compensate the Beneficiary, and further conclude that the record does not confirm that the position is a religious occupation or that the Beneficiary will work at least 20 hours per week in qualifying duties.

A. Intent to Compensate

The Petitioner relies on the examples contained in 8 C.F.R. § 214.2(r)(11)(i) as affording it the opportunity to offer the listed items without mandating the submission of any of them. As the Petitioner notes, the regulation states: “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.” The next sentence, however, requires the Petitioner to either supply filings with the IRS, or an explanation for their absence and a form of comparable material that is verifiable.

Within the proceedings before the Director, the Petitioner did not include IRS documents or an explanation for the absence of such evidence. On appeal, the Petitioner clarifies the absence of an information return and provides IRS Forms W-2 for its employees. Specifically, the appeal includes a September 10, 2015, letter from [REDACTED] indicating that the Petitioner is exempt from filing an annual information return with the IRS. Accordingly, we now look at whether the Petitioner has offered sufficient verifiable documentation.

Initially and in response to the RFE, the Petitioner offered a church budget in addition to receipts for church expenditures. On appeal, the Petitioner presents the following relating to how it intends to compensate the Beneficiary: (1) a compiled statement of financial position, also known as a balance sheet,¹ as of July 31, 2015, from [REDACTED] (2) information to show that the Beneficiary does not require lodging or healthcare; and (3) an organizational chart of the church’s staff with accompanying IRS Form W-2 Wage and Tax Statement for 2014 (Employee Reference Copy).

While a budget is an example of evidence that may contribute to a showing of intent to compensate, the undated budget in the record reflects that the Petitioner projected a deficit of more than \$10,000 in the unspecified year. The statement of financial position submitted on appeal is compiled rather than reviewed or audited. The cover letter accompanying the report indicates the accounting firm cannot provide any assurances about whether adjustments would be necessary if prepared by the United States’ generally accepted accounting principles. According to the balance sheet, the total of the Petitioner’s various funds was \$173,867 at the beginning of the fiscal year and \$168,675 as of July 31, 2015. The Petitioner has not offered proof demonstrating it is in possession of these assets.

¹ Barron’s Dictionary of Accounting Terms 441 (5th ed. 2010).

(b)(6)

Matter of C-C-C-

For example, the Petitioner did not supply bank statements for the accounts holding these funds. While the regulation at 8 C.F.R § 214.2(r)(11) does not require audited financial reports that are prepared in accordance with generally accepted accounting principles, it does require the Petitioner's evidence to be verifiable. Without corroboration, the Petitioner's unaudited financial statements do not constitute verifiable documentation explaining how the Petitioner intends to compensate the Beneficiary.

Beyond the Petitioner's assets, the record documents that the Beneficiary and his family own the property where he resides and that he has been a patient at [REDACTED] however, this information does not factor into how the Petitioner intends to compensate him \$400 per week as specified on the Form I-129. As the Petitioner has not suggested that the Beneficiary will participate in an established program for temporary, uncompensated missionary work that is part of a broader international program, the Beneficiary's ability to provide self-support is not sufficient in this matter. *See* 8 C.F.R § 214.2(r)(11)(ii).

Finally, regarding the church's payroll, within the appeal brief the Petitioner states:

However, when you consider that the Church has already met its payroll for existing staff from January 1st to July 31st, in the amount of \$65,919.94, you can see that based on the Church's financials they can afford to pay all their employees. That's because the sum of current assets in the amount of \$168,675 is their balance after paying one-half year's salary to the listed employees below. And, since the Beneficiary isn't work authorized, there is \$20,800 available to pay his annual salary.

(Emphasis in original).

The Petitioner's conclusions in this quote rely on the "Total Fund Balances" figure within the compiled financial report. As noted above, the Petitioner has not verified the \$168,675 specified as available funds in the compiled balance sheet through bank statements. Finally, while the organizational chart and IRS Forms W-2 are verifiable, as the Petitioner points out in the appeal brief, the positions the other church employees occupy are not similar positions, and therefore, do not constitute "past evidence of compensation for similar positions" as outlined in the regulation. Even when considered together, the above documentation does not meet the preponderance of the evidence standard that the Petitioner intends to compensate the Beneficiary in accordance with the regulation at 8 C.F.R. § 214.2(r)(11).

B. Religious Occupation

As an additional issue, the Petitioner must demonstrate that the position of a Connection and Research Resident meets the regulatory definition of a religious occupation. *See* 8 C.F.R. § 214.2(r)(3). Initially, the Petitioner offered the following duties associated with this position:

- Assist with connection and assimilation (pertains to new visitors and current congregants);

- Assist with research (pertains to reading and summarizing books as assigned by church leadership such as commentaries, church leadership books, etc.);
- Assist Director of Operations and Community in parish leadership;
- Assist with Sunday worship gatherings (involves setting up and tearing down for services and ensuring standards are maintained in this process);
- Administrative tasks; and
- Attend weekly staff meetings and assist staff with projects as needed.

The Petitioner added the following duties to this description in response to the RFE: (1) provide suggestions for church ministry based on assigned readings; and (2) provide suggestions for sermons based on assigned readings. However, the Petitioner has not submitted evidence that this position is recognized as a religious occupation within the denomination. Further, although the Petitioner's RFE response added aspects of the position that possibly meet the definition of a religious occupation, the Petitioner has not established that the majority of the duties are religious rather than administrative or secular in nature. As a result, the Petitioner has not shown: (1) that the Beneficiary's duties primarily relate to a traditional religious function and are recognized as a religious occupation within the denomination; or (2) that the duties primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination. 8 C.F.R. § 214.2(r)(3)(A) and (B) under the definition of a religious occupation.

The definition at 8 C.F.R. § 214.2(r)(3)(C) (definition of religious occupation) states: "The duties do not include positions which are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible" Without further explanation of how the Beneficiary will spend the majority of his employment hours, the Petitioner has not shown that a Connection and Research Resident is a religious occupation as defined in the regulation at 8 C.F.R. § 214.2(r)(3).

C. Hours per Week

As a final issue, the regulation requires that a Beneficiary will be employed for at least 20 hours per week. 8 C.F.R. § 214.2(r)(1)(ii). The regulation at 8 C.F.R. § 214.2(r)(8)(ix) also requires the Petitioner to attest to this requirement within the Form I-129. The regulation at 8 C.F.R. § 214.2(r)(3) states that any religious worker must be, "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."

Throughout the proceedings, the Petitioner has not offered the Beneficiary's work schedule showing the anticipated number of hours he will perform his duties each week to demonstrate he will be working at least 20 hours per week. Such work must be spent performing duties that primarily relate to a traditional religious function, and are primarily related to, and clearly involve inculcating or carrying out the religious creed and beliefs of the denomination. 8 C.F.R. § 214.2(r)(3) (definition

Matter of C-C-C-

of a religious occupation). Without such evidence, the Petitioner has not documented that the petitioned position satisfies the regulation at 8 C.F.R. § 214.2(r)(1) relating to part time work.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established how it will compensate the Beneficiary, that the offered position qualifies as a religious occupation, or that the Beneficiary will work at least 20 hours per week performing duties that meet the definition of such an occupation.

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, the Petitioner has not met that burden. Accordingly, we will dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of C-C-C-*, ID# 16061 (AAO Apr. 6, 2016)