U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-D-L-F-C-D-, INC.

DATE: APR. 28, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner identified on the petition, a nondenominational church, seeks to classify the Beneficiary as a nonimmigrant religious worker to perform services as a music minister. *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 that the record lacked sufficient evidence to demonstrate how the Petitioner intended to compensate the Beneficiary. The Petitioner filed a motion addressing the compensation issue. Upon review of the motion, the Director determined that the Beneficiary signed the Form I-129, Petition for a Nonimmigrant Worker, under Part 7, and the Employer Attestation supplement. Ultimately, the Director issued a denial due to the Beneficiary's signature in locations that require the prospective employer's signature.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional exhibits and maintains that the Director erred by not presenting the signature issue in her request for evidence (RFE).

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

I. LAW

Beneficiaries of this nonimmigrant classification are foreign nationals who will perform compensated work for a qualifying religious organization, or its affiliate, as a minister or in another religious occupation or vocation.

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,
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> (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
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> (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;
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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);
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> (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);
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> (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.

Regarding the procedure for obtaining this status, the regulation at 8 C.F.R § 214.2(r)(7) provides:

> An employer in the United States seeking to employ a religious worker, by initial petition or by change of status, shall file a petition in accordance with the applicable form instructions.

The Adjudicator's Field Manual (AFM) Chapter 34.5(a) mirrors this language, explaining:

> Only a U.S. employer may file a Form I-129, Petition for Nonimmigrant Worker, on behalf of an alien requesting R-1 religious worker nonimmigrant classification; an alien cannot self-petition for R-1 religious worker nonimmigrant classification.

Agency policy pertaining to RFEs states:

> If the totality of the evidence submitted does not meet the applicable standard of proof, and the adjudicator determines that there is no possibility that additional information or explanation will cure the deficiency, then the adjudicator shall issue a denial.
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> RFEs. If not all of the required initial evidence has been submitted or the officer determines that the totality of the evidence submitted does not meet the applicable standard of proof, the officer should issue an RFE unless he or she determines there is no possibility that additional evidence available to the individual might cure the deficiency.

USCIS Policy Memorandum PM-602-0085, Requests for Evidence and Notices of Intent to Deny (June 3, 2013), https://www.uscis.gov/laws/policy-memoranda (RFE Policy Memo).

With respect to compensation, 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.

II. ANALYSIS

The sole issue in the Director's initial denial was the Petitioner's intent to compensate the Beneficiary. The Petitioner then filed a motion to reopen and a motion to reconsider. Upon review, the Director determined that the Beneficiary, not the Petitioner, signed the petition, and denied the reopened petition on that basis. 8 C.F.R § 214.2(r)(7).

On appeal, the Petitioner maintains that the Director erred because the documentation on record represents its desire to hire the Beneficiary, and that the signature issue should have been presented within an RFE allowing it to remedy the issue. For the reasons discussed below, we agree that the Petitioner did not properly file a signed petition and, regardless, has not demonstrated its intent to compensate the Beneficiary.

A. Signature

Only a United States employer may file a Form I-129 for a religious worker; a beneficiary is not permitted to self-petition. 8 C.F.R § 214.2(r)(7); AFM Chapter 34.5(a). The Director identified this issue in the decision before us on appeal. The Petitioner avers that it could have remedied the signature issue in response to an RFE and supplies a new Form I-129 on appeal bearing the signature of a representative of the prospective employer. The RFE Policy Memo states that officers should not issue RFEs if he or she determines that additional evidence cannot cure the deficiency. The only remedy for a petition that is not signed by the proper party, however, is to correct the deficiency and resubmit the petition as a new benefit request. 8 C.F.R § 103.2(a)(1), (2); *see also* the Form I-129 Instructions under Processing Information within the Acceptance section. We therefore conclude that the Director acted appropriately in denying the petition without first offering an opportunity to amend the petition.

B. Compensation

Even if we allowed the Petitioner to cure the signature issue, it has not established its intent to compensate the Beneficiary. The regulation at 8 C.F.R. § 214.2(r)(11) and the employer attestation require the Petitioner to "state how the [P]etitioner intends to compensate" the Beneficiary or how the Beneficiary will be self-supporting, and to "submit verifiable evidence explaining how the [P]etitioner will compensate" the Beneficiary. The Petitioner initially affirmed on the Form I-129 that it would compensate the Beneficiary at a rate of $250 per week and other compensation would consist of room and board. In response to the RFE, the Petitioner's October 29, 2014, letter maintained that it had "made the necessary arrangements for him to be provided with room and board. During the time his migratory status is defined and until He [*sic*] is fully able to provide for himself, we are prepared to offer him and assist in every way we can, including room and board." There was no indication of who would furnish such room and board within the RFE response, and the Petitioner did not discuss the formerly referenced $250 weekly wages, which annualizes to $13,000. The Petitioner also proved a letter from its accountant specifying the organization's gross

revenues, a Form 1099-MISC, Miscellaneous Income for 2012 for a former employee the Petitioner confirms was its music minister reflecting $4,405 in nonemployee compensation, a second partial Form 1099 with no date represented, and a list of the organization's employees.

Within the motion filing, the Petitioner submitted a portion of a financial report. The Petitioner also offered bank statements covering approximately a three month timeframe in early 2015. The final item on motion was a March 10, 2015, letter from a member of the Petitioner's church, who will provide room and board to the Beneficiary. Regarding the financial report, it contains references to the accountant's compilation report, but the record lacks proof indicating the level of review associated with the financial report to ensure it is verifiable as required by the regulation. 8 C.F.R. § 214.2(r)(11). The bank documents representing funds available in two accounts over a brief period does not constitute verifiable evidence of how the Petitioner intends to compensate the Beneficiary in addition to paying for its ongoing expenses over a sustained period of time. In reference to the room and board from to the extent that the Beneficiary will receive funds from a third party, this arrangement does not constitute compensation from the Petitioner. Finally, payments of $4,405 to an individual holding the same position do not exhibit the Petitioner's intent to pay the Beneficiary the proffered $13,000. Accordingly, the record does not establish how the Petitioner intends to compensate the Beneficiary. Based on the foregoing, the Petitioner has not shown how it intends to compensate the Beneficiary at a rate of $250 per week in addition to covering his room and board.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established that it can remedy the deficient signature issue by providing a supplemental Form I-129, nor has it shown how it intends to compensate the Beneficiary.

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-D-L-F-C-D-, Inc.*, ID# 16224 (AAO Apr. 28, 2016)