



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

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

MATTER OF A-A-I-S-

DATE: FEB. 18, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an Islamic mosque, seeks to employ the Beneficiary as a nonimmigrant religious worker to perform services as a Qur'an and Islamic Studies teacher. *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, denied the petition, concluding that the Petitioner did not establish a need for the proffered position or that the Beneficiary, in particular, was needed to fill the proffered position. 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)(8) requires that an authorized official of the petitioning organization attest to several things, including:

- (iii) The number of members of the prospective employer's organization;
- (iv) The number of employees who work at the same location where the beneficiary will be employed and a summary of the type of responsibilities of those employees. USCIS may request a list of all employees, their titles, and a brief description of their duties at its discretion;
- (v) The number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past five years by the prospective employer's organization;
- (vi) The number of special immigrant religious worker and nonimmigrant religious worker petitions and applications filed by or on behalf of any aliens for employment by the prospective employer in the past five years;
- (vii) The title of the position offered to the alien and a detailed description of the alien's proposed daily duties; [and]
- (viii) Whether the alien will receive salaried or non-salaried compensation and the details of such 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:

(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) *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. . . .

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, on March 25, 2014, seeking to employ the Beneficiary in a full-time capacity as an R-1 temporary, nonimmigrant religious worker from January 2, 2014, until July 2, 2016, to perform services as a Qur'an and Islamic Studies teacher.¹ The Director issued a request for evidence (RFE) and a notice of intent to deny the petition (NOID), providing the Petitioner the opportunity to submit evidence regarding, among other things: the need for the Beneficiary's services, a daily and weekly schedule with details of the Beneficiary's duties on an hourly basis, the number of students attending the school, the number of students assigned per teacher, and the number of teachers currently employed. The RFE also requested evidence of the petitioning organization's intent to compensate the Beneficiary and noted that photographs submitted of a bedroom and bathroom did not appear to be sufficient for the Beneficiary, her spouse, and their three children.

¹ We note that the Petitioner identified a start date for employment that preceded the date the petition was filed.

In response to the RFE and the NOID, the Petitioner submitted additional evidence including, but not limited to: IRS Form W-2 for numerous employees; an organizational chart; a list of staff assignments; a list of faculty names; the school schedule; excerpts from a textbook; and letters from other employees. In addition, the Beneficiary submitted a letter stating that her husband is a physician and they have sufficient funds such that the mosque did not need to provide her or her family with room and board. In its brief, the petitioning organization asserted that there is nothing in the statute or regulations that require it to establish a need to hire a new religious worker. According to the Petitioner, whether it employs 29 or 45 employees is irrelevant with respect to the bona fides of the organization.

The Director denied the petition, concluding that the Petitioner did not establish a need for the proffered position or that the Beneficiary, in particular, was needed to fill the proffered position. On appeal, the Petitioner submits a brief and a letter from the school's principal.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. As explained below, although we question the Director's stated basis for the denial, upon a full review of all of the evidence submitted below and on appeal, we will dismiss the appeal.

The Director framed the issue as follows:

The issue to be discussed in this decision is whether the petitioner has established that there is an actual need for the beneficiary's services in the proffered position and whether the beneficiary's work is actually needed in the performance of the duties of the proffered position and whether or not the need for the beneficiary to actually work at least on a part time basis (average of at least 20 hours per week) in the proffered position with the religious organization actually exists.

The Director concluded that "[t]he petitioner ha[d] not established a need for a religious occupation or a religious worker to fill it."

The Act and regulations do not explicitly require a petitioning organization to establish its need to hire a new religious worker or that a particular beneficiary is needed to fill such a position. Therefore, to the extent the Director's decision can be interpreted as making such a requirement, we withdraw the Director's decision.

At the same time, however, the Petitioner bears the burden of establishing by a preponderance of the evidence 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). As the Preamble of the revised regulations discuss, the need for religious workers must be considered in conjunction with other factors:

The periods of admission and extension will be granted as determined by both the organization's need for the religious worker's services and the regulatory

limitations. . . . [D]ocumenting the number and positions of employees is a useful tool for verifying the existence and validity of a prospective employer.

....

The religious worker program is rooted in the regulation of labor markets. . . . The impacts of having a sufficient or insufficient supply of religious workers tend to be more qualitative for the ability of the particular religion and its members to carry on its functions, rituals, and traditions in the United States. Aside from the need for workers, many religions believe it is important for their members in the United States to intermingle with their members from outside the United States in order for an exchange of ideas to take place and for their United States members to receive the intangible benefits that are felt to inure from exposure to diverse cultures.

73 Fed.Reg. 72,276–01 at 72285, 72287 (November 26, 2008). Against this backdrop, under the totality of circumstances, we do not find that the Petitioner has submitted sufficient documentation to meet its burden of proof.

The petitioning organization initially indicated on the Form I-129 that it would employ the Beneficiary full time, compensate her \$17,500 per year, and provide her with airfare, ground transportation, and accommodations. The Petitioner initially included photographs of a bedroom and a bathroom as evidence of the proposed accommodations. However, after the Director noted in the RFE that the accommodations shown in the photographs did not appear to be sufficient for the Beneficiary and her family, the Petitioner modified its compensation package to exclude housing. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm. 1998).

In addition, the record shows that the Petitioner’s offer of \$17,500 per year as salary is inexplicably low, a fraction of the salary it pays to other teachers. The job description submitted in response to the RFE stated that the salary for the proffered position is between \$25,000 and \$30,000 depending on education and experience. [REDACTED] the principal of the school, submitted a letter on appeal stating that the proffered position “is a permanent position paying no less than \$30,000 yearly.” Financial documentation in the record also shows that at least three of the six Islamic Studies teachers employed by the Petitioner earned between \$24,000 and \$30,000 per year.² There is no explanation as to why the Beneficiary will be compensated significantly less than the other teachers of Islamic Studies. Although [REDACTED] the prospective employer’s manager, submitted a letter, dated December 10, 2014, stating that the Beneficiary “will be eligible for a raise,” there is

² Documents in the record, including an organizational chart, “Staff Assignments” document, “A Spectacularly Gifted Faculty, 2014-15” document, and IRS Forms W-2 show that the Petitioner paid three of its six Islamic Studies teachers [REDACTED] wages of \$24,798, \$25,305, \$29,154, respectively, in 2013. The record does not indicate the salaries of the other Islamic Studies teachers.

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no indication other new teachers had a starting salary of only \$17,500. In addition, [REDACTED] letter contradicts [REDACTED] letter which stated that the proffered position pays no less than \$30,000 annually.

Moreover, we disagree with the Petitioner's assertion that whether it employs 29 or 45 employees is irrelevant. While we acknowledge the Petitioner has submitted a plethora of documentation, the record remains deficient in basic information about the Petitioner and the proffered position, such as the total number of students who attend the school. In the RFE, the Director requested a class roster for the student classes, inquired as to the grade level the Beneficiary would teach in the proffered position, and asked how many students would be assigned to the Beneficiary. In the NOID, the Director noted that if the Petitioner already employs 25 teachers, assuming a classroom size of 20-25 students, the petitioning organization must have between 500 to 625 students on a daily basis. The Director requested evidence of the Petitioner's student population or evidence of an increase in students to necessitate the hiring of a new teacher. However, the Petitioner did not respond to these specific requests.

We further note that the organizational chart in the record specifies that the Beneficiary will "take the place of [REDACTED] [who] is a long term substitute" teacher. However, although the "Staff Assignments" document indicates [REDACTED] was hired in 2010, her name does not appear on any of the payroll documents in the record, and there is no Form W-2 for her in the record.

Additionally, the record lacks corroborating evidence establishing that the Beneficiary will work at least 20 hours per week. Although [REDACTED] letter asserts that the school's Islamic Studies teachers are responsible for teaching six periods each day from 8:30 a.m. until 3:15 p.m., the record does not support this contention. The organizational chart in the record shows that the school identifies its teachers as being either part of the regular "teaching staff" or part of its "Arabic staff." According to the organizational chart, the Staff Assignments document, "A Spectacularly Gifted Faculty" document, as well as school schedules in the record, there is only one class per grade and each class is assigned a teacher from the regular teaching staff. The school schedules show that "Quran Islamic Studies" and Arabic consist of two periods per day, presumably taught by the school's Arabic staff.³ The record does not show that any Arabic or Islamic Studies instructor teaches six periods each day or that there is sufficient work to employ the Beneficiary for at least 20 hours per week. There is no evidence the Beneficiary will be replacing any of the six current Islamic Studies teachers or the regular teaching staff. We acknowledge [REDACTED] contention that every organization has turnover and fluctuations in staff. However, considering the record does not indicate how many total students attend the school, does not show that the Beneficiary will replace any teacher (temporary or permanent, Islamic Studies or regular teaching staff), and involves a

³ For instance, the record shows that the school has one second grade class and that class is taught by [REDACTED]. On the Staff Assignments document, [REDACTED] is identified as a second grade teacher and is not one of the school's six Islamic Studies teachers. In her class, students have Quran Islamic Studies during second period and Arabic during third period, constituting less than two hours of Islamic Studies instruction per day that is, apparently, taught by one of the school's Islamic Studies teachers.

compensation package that pays only a fraction of other teachers' salaries, doubt is cast on whether the Petitioner will employ or compensate the Beneficiary as claimed. *Cf. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001) ("if the Attorney General fails to believe the facts stated in the petition are true, then he may reject it") (citing 8 U.S.C.A. § 1154(b)). Considering the totality of the evidence, we find the Petitioner has not met its burden of establishing eligibility by a preponderance of the evidence.

IV. CONCLUSION

The burden is on the Petitioner 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). The Petitioner in this case has not established that it will employ or compensate the Beneficiary as claimed. Accordingly, the appeal is dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of A-A-I-S-*, ID# 14952 (AAO Feb. 18, 2016)