U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-H-B-C-

DATE: FEB. 19, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a Baptist church, seeks to classify the Beneficiary as a nonimmigrant religious worker to perform services as a pastor. *See* section 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. 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 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 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.

II. PERTINENT FACTS AND PROCEDURAL HISTORY

On November 17, 2014, the Petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking to classify the Beneficiary as a nonimmigrant religious worker. The classification the Petitioner seeks on behalf of the Beneficiary makes visas available to foreign national ministers and non-ministers in religious vocations and occupations seeking to temporarily perform religious work in the United States in a compensated position. The Director issued a request for evidence (RFE), seeking information showing how the Petitioner intends to compensate the Beneficiary in addition to other material. After considering the Petitioner's response, the Director found that the Petitioner did not demonstrate how it intends to compensate the Beneficiary and denied the petition. On appeal, the Petitioner offers a brief with additional documentation.

III. ANALYSIS

A. Compensation

The Petitioner is required to submit evidence to establish how it intends to compensate the Beneficiary. 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.

(B) An established program for temporary, uncompensated work is defined to be a missionary program in which:

(1) Foreign workers, whether compensated or uncompensated, have previously participated in R-1 status;

(2) Missionary workers are traditionally uncompensated;

(3) The organization provides formal training for missionaries; and

(4) Participation in such missionary work is an established element of religious development in that denomination.

(C) The petitioner must submit evidence demonstrating:

(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.

The Petitioner indicated on the Form I-129 that it intends to pay the Beneficiary $36,000 per year for a three-year period. It also explained that it filed a petition on behalf of the Beneficiary's spouse. Initially, the Petitioner supplied a statement that it will compensate the Beneficiary, but did not include any objective, verifiable evidence. In response to the Director's RFE, the Petitioner confirmed that the Beneficiary's position was newly created and that he was currently living in a house provided by the church, which was also appropriating funds for gasoline. In addition, the Petitioner referenced contributions from friends and church members. It also submitted an email containing the same details as appear on the petition. The Petitioner did not attach any Internal Revenue Service (IRS) documentation, nor did it offer other verifiable evidence of how it intends to compensate the Beneficiary. The items furnished before the Director did not meet the Petitioner's burden of proof. Going on record without supporting proof is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

On appeal the Petitioner indicates that as a nonprofit organization it does not file taxes with the IRS. The Petitioner also provides its payroll records summary for April through June 2015, its Form 941, Employer's Quarterly Federal Tax Return for 2015, and its checking account statement reflecting the account balance for June 2015. While the payroll and quarterly return confirm payments to employees who may hold similar positions, the Petitioner affirmed that it had newly created the Beneficiary's position and has not suggested the Beneficiary will replace any of the employees on the payroll in April through June of 2015. While the funds in the account demonstrate how the Petitioner can compensate the Beneficiary for June 2015, the regulation at 8 C.F.R. § 214.2(r)(11) requires "verifiable evidence" of how the Petitioner intends to compensate the Beneficiary. Without accompanying verifiable documentation, bank records representing funds available in one account on a single date, do not constitute verifiable evidence of how the Petitioner intends to compensate the Beneficiary in addition to paying for its ongoing expenses. This bank statement does not show an availability of sufficient funds to cover the Beneficiary's wages over a sustained period of time. The Petitioner has not provided a budget or financial statements that would reveal the Petitioner's liabilities or other commitments.

IV. CONCLUSION

For the reasons discussed above, the Petitioner has not established how it intends to compensate the Beneficiary in accordance with the regulation.

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.

ORDER: The appeal is dismissed.

Cite as *Matter of S-H-B-C-*, ID# 15761 (AAO Feb. 19, 2016)