



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

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

MATTER OF P-G-C-O-G-

DATE: MAR. 8, 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 pastor. *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 established its nonprofit status or how it intended to compensate the Beneficiary. We rejected the appeal as it was filed untimely, and on January 20, 2016, reopened the matter on our own motion for the purpose of addressing the merits. Pursuant to 8 C.F.R. § 103.5(a)(ii), we afforded the Petitioner 30 days to supplement the record. As of this date, we have received no response.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional documentation and argues that the new evidence overcomes the deficiencies noted by the Director.

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. The Beneficiary must be employed for an average of at least 20 hours per week. This program is intended for those whose lives are dedicated to religious practices and functions, but not those who are secular religious members. The Beneficiary also must have been a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least two years immediately before the petition filing date.

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.

The Petitioner must establish that it qualifies as a bona fide nonprofit religious organization. The regulation at 8 C.F.R. § 214.2(r)(3) provides the following definitions:

Bona fide non-profit religious organization in the United States means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the Internal Revenue Service (IRS) confirming such exemption.

.....

Tax-exempt organization means an organization that has received a determination letter from the IRS establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the Internal Revenue Code . . .

Regarding evidence of the Petitioner's tax-exempt status, the regulation at 8 C.F.R. § 214.2(r)(9) requires the following:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or

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.

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 issues within this appeal relate to the Petitioner’s status as a bona fide non-profit religious organization in the United States pursuant to a group exemption, and how it intends to compensate the Beneficiary. On July 23, 2014, the Petitioner filed a Form I-129, Petition for a Nonimmigrant Worker. The Director issued a request for evidence (RFE), and subsequently denied the petition, finding the Petitioner had not established its nonprofit status or how it intended to compensate the Beneficiary.

On appeal, the Petitioner indicates that it is now providing new materials to address the concerns discussed within the Director’s decision. As part of our *de novo* authority, we have reviewed the entire record of proceedings before us. While the Petitioner has now demonstrated that it is a qualifying organization, it has not overcome the Director’s concerns regarding its intent to compensate the Beneficiary. Beyond the decision of the Director, the Petitioner did not show that the Beneficiary would work at least 20 hours per week in a qualifying position.

(b)(6)

Matter of P-G-C-O-G-

A. Qualifying Organization

Initially and in response to the Director's request for evidence (RFE), the Petitioner offered letters dated April 16, 2014, and March 2, 1999, from the IRS denoting the Petitioner's employer identification number (EIN). The letters did not, however, specify if the Petitioner was exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986. The Director concluded that the Petitioner did not possess a currently valid determination letter from the IRS confirming its exemption. On appeal the Petitioner submits an IRS letter dated June 9, 2004, addressed to the [REDACTED] Indiana. This letter corroborates that the [REDACTED] is a bona fide non-profit religious organization in the United States, and also contains a group exemption number. Therefore, any religious organization that is a member of this group is also tax exempt. The Petitioner also supplies an April 8, 2015, letter from the [REDACTED] stating that the Petitioner is an approved congregation in good standing under the umbrella of [REDACTED]. Accordingly, the Petitioner has overcome the Director's concerns on this issue. The record demonstrates the Petitioner is a bona fide non-profit religious organization in the United States pursuant to a group exemption.

B. Intent to Compensate

Within the Employer Attestation, Section 1, question 5.d. of the Form I-129, the Petitioner indicated it would not pay the Beneficiary a salary or wage, but instead would provide other compensation in the form of "room, meals and all travel expenses." In response to the Director's RFE, the Petitioner supplied materials relating to its 2014 and 2015 budget, and a bank statement. The Director determined that the record was insufficient to establish that the Petitioner had shown how it would furnish non-salaried compensation to the Beneficiary. The Petitioner did not submit the regulatory required "IRS documentation, such as IRS Form W-2 or certified tax returns," or "an explanation for the absence of IRS documentation, along with comparable, verifiable documentation" if such proof is unavailable. *See* 8 C.F.R. § 214.2(r)(11)(i). Further, the Petitioner did not confirm that it has the facilities in which to offer room and board to the Beneficiary. On appeal the Petitioner files IRS records as well as exhibits reflecting it has the facilities in which to house the Beneficiary.

However, the Petitioner indicated on the Form I-129 that in addition to the Beneficiary's room and board, it would also be responsible for the Beneficiary's travel expenses. Within the Petitioner's records submitted with the petition, it declared the church would bear financial responsibility for the Beneficiary's "travel to and from." The Petitioner did not specify if these travel expenses encompass the Beneficiary's round-trip travel from [REDACTED] to the Petitioner's location in the United States, or if it meant the Beneficiary's travel expenses once in the United States. In response to the Director's RFE, the Petitioner argued the budgets and the banking items reflected it possessed the funds to cover the Beneficiary's travel, thereby verifying how it intended to provide the Beneficiary's compensation.

(b)(6)

Matter of P-G-C-O-G-

The bank statement covers the period from August 30, 2014, through September 30, 2014, and shows the Petitioner had an ending balance of approximately \$2,598. The Petitioner also furnishes a new bank statement for the same account with an ending balance of approximately \$4,743 during the period of February 28, 2015, through March 31, 2015. This balance would leave little money for other expenses if used for the \$4,525 in tithe expenses the budget sets aside for the Beneficiary. While the Petitioner also included tax filings for its pastors as exhibits reflecting their capacity to contribute, these items do not confirm the Petitioner's intention to compensate the Beneficiary. The regulation requires "verifiable evidence" of how the Petitioner intends to compensate the Beneficiary. 8 C.F.R. § 214.2(r)(11). Without accompanying verifiable documentation, two records representing funds available in an account on a single date, do not constitute verifiable proof of how the Petitioner intends to compensate the Beneficiary in addition to paying for its ongoing expenses.¹ The Petitioner has also not offered proof of the cost of the Beneficiary's travel to and from its location.

Regarding the Petitioner's budget for 2014 and 2015, the Petitioner has not offered supporting documentation showing that the information in the budget is verifiable evidence explaining how it will compensate the Beneficiary as required by the regulation. Based on the forgoing, the Petitioner has not demonstrated how it intends to compensate the Beneficiary.

C. Religious Duties

The regulation requires the Petitioner to establish and to attest that the Beneficiary will be employed for at least 20 hours per week. 8 C.F.R. § 214.2(r)(1) and (8)(ix). Throughout the proceedings, the Petitioner has not offered the Beneficiary's work schedule showing his specific hourly duties to demonstrate he will be working at least 20 hours per week. 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 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. § 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.

¹ The Petitioner has filed a second Form I-129 for another pastor from [REDACTED] an additional expense it intends to incur.

Matter of P-G-C-O-G-

ORDER: The appeal is dismissed.

Cite as *Matter of P-G-C-O-G-*, ID# 16429 (AAO Mar. 8, 2016)