



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

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

MATTER OF G-R-D-S-C-O-V-A-P-

DATE: MAY 11, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a Sikh temple, seeks to classify the Beneficiary as a nonimmigrant religious worker to perform services as a Religious Minister [REDACTED]. See Immigration and Nationality Act (the Act) section 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R). This nonimmigrant classification allows non-profit religious organizations, or their affiliates, to temporarily employ foreign nationals as ministers, in religious vocations, or in other religious occupations in the United States.

The Director, California Service Center, denied the petition. The Director concluded that the Petitioner did not establish how it intended to compensate the Beneficiary, as well as noting other discrepancies.

The matter is now before us on appeal. In its appeal, the Petitioner offers additional evidence and a statement pertaining to how it will compensate the Beneficiary.

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

**I. LAW**

Non-profit religious organizations may petition for foreign nationals to work in the United States temporarily to perform religious work. The petitioning organizations, and the foreign nationals who are the beneficiaries of this nonimmigrant visa, must meet certain eligibility criteria.

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.

Finally, 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:

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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 issue within this appeal relates to how the Petitioner intends to compensate the Beneficiary. Within the Form I-129, Petition for Nonimmigrant Worker, the Petitioner indicated that the Beneficiary will receive \$200 per week (\$10,400 annually) and within the initial filing letter it affirmed he will receive \$800 per month (\$9,600 annually). The Petitioner also stated that it would provide the Beneficiary with room, board, utilities, telephone costs, and other necessities. It submitted copies of its bank loan and account records, bills, and financial income and expense statements for 2010 through 2012.

The Director issued a request for evidence (RFE) seeking additional information pertaining to compensation, as well as other items. The Director noted that the banking reports and unaudited financial statements that the Petitioner initially offered were outdated and that it did not submit any IRS documentation. In addition, the Director stated that since the Petitioner has also filed petitions for other nonimmigrant religious workers, the record must show that it can compensate all of the potential employees.

The Petitioner responded to the RFE with additional documents including, but not limited to: an updated financial statement; bank account statements; copies of checks; Form W-2s, Wage and Tax Statements, for two former employees; and copies of photographs of the temple.

Subsequently, the Director denied the petition. According to her decision, the updated financial statement submitted in response to the RFE showed that the Petitioner's liabilities exceeded its assets by over \$114,000. She also indicated that the record was incomplete and contained discrepancies. For instance, the Director noted that the documents relating to a past beneficiary in a similar position, ██████████ consisted of only five checks. Similarly, the Director determined that the 2013 Form W-2 for another former beneficiary, ██████████ displayed compensation of \$14,296, yet he was employed for only six months that year and copies of his paychecks totaled just \$2,495. With respect to ██████████ the Director found that his 2013 Form W-2 reflected the same amount of compensation as ██████████ even though the two former beneficiaries were employed for different amounts of time. Furthermore, regarding non-salaried compensation, the Director decided that photographs in the record did not confirm the existence of any sleeping quarters. The Director concluded that the Petitioner did not sufficiently establish its intent to compensate the Beneficiary.

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especially considering that the petitioning organization had pending petitions for two other individuals. The Director denied the petition accordingly.

Currently, on appeal, the Petitioner provides additional financial documents and a statement addressing the inconsistencies noted in the Director's decision. According to the Petitioner, it was under the impression that it was required to supply some, but not all, of the checks it paid to previous beneficiaries in similar positions. It furnishes additional copies of paychecks, pay stubs, and bank account reports. It also submits copies of 19 checks it describes as "Donation Checks made on the name of [REDACTED] but allocated to three employees equally." These checks are all dated in 2013 and total \$7,952 (or \$2,650 for each of the three previous beneficiaries, if the funds were allocated equally). With respect to non-salaried compensation, the Petitioner states that the Beneficiary, as well as the two additional individuals who have pending petitions, would live in its facility that has three bedrooms, a living room, a kitchen, and a laundry area. The Petitioner offers new photographs of the proposed sleeping quarters.

After considering all of the materials, including those submitted on appeal, we find that the record does not contain sufficient, verifiable documentation of the Petitioner's intent to compensate the Beneficiary as it maintained. The Petitioner offers a new "Statement of Financial Position" on appeal that conflicts with its earlier version. The Petitioner's June 30, 2015, financial report presented in response to the RFE reflected \$130,000 in current liabilities, \$395,307 in long-term liabilities, and \$40,138.75 in current assets. However, on appeal, the new financial statement, which is also dated June 30, 2015, shows that it has no current liabilities, \$356,412.21 in long-term liabilities, and the same \$40,138.75 in current assets. The Petitioner supplies a letter from an accountant explaining the reasons for the changes, specifically the change that members of the temple who had loaned money to the temple in 2014 "wished to change the loans to contributions." The accountant indicates that she "recently received documentation signed by the members and . . . reclassified the loans accordingly." The record lacks verifiable corroboration of the changes to the June 30, 2015, financial statement. Affirmations unsubstantiated by supporting evidence are insufficient to satisfy the Petitioner's burden of proof. *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)).<sup>1</sup>

Likewise, the accountant's letter was written four weeks after the Director's denial of the petition; and is of limited probative value. *Cf. Baldwin Dairy, Inc. v. United States*, 122 F.Supp.3d 809, 816 (W.D. Wis. 2015) (finding we were justified in questioning a petitioner's motives and whether the company simply amended its tax return for the purpose of establishing how it would pay the offered wage).

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<sup>1</sup> In addition, if the members converted their loans to donations after the filing date, that raises concerns regarding eligibility as of the date of filing. A nonimmigrant visa petition may not be approved at a future date after a petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978).

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Furthermore, while our focus remains on the Petitioner's future intent to compensate the Beneficiary, the record continues to contain insufficient proof with respect to past compensation for similar positions. For example, with respect to [REDACTED] in response to the RFE, the Petitioner provided copies of five of his paychecks. On appeal, the Petitioner explains that it is attempting to address the Director's concern that it did not previously supply all paychecks, and offers two additional paychecks for [REDACTED]. Although it claims to have compensated [REDACTED] continuously from June of 2013 until March of 2015, the seven paychecks in the record reflect that he was paid a total of just \$5,290 during the entire 22 months he was employed. Moreover, although the record includes Forms W-2 for the two other prior beneficiaries, there are no IRS documents for [REDACTED] in the record. To the extent the Petitioner submitted copies of check register recordings, only three of [REDACTED] checks have corresponding entries.<sup>3</sup> Conversely, while the Petitioner also supplied entries for sixteen additional checks, it did not supply the corresponding paychecks. These incongruent submissions are of limited value in helping the Petitioner meet its burden of proof.

For the first time, the Petitioner maintains within the appeal that its three previous employees received donations from temple members. It submits 19 checks on appeal that it describes as "donation checks . . . allocated to three employees equally," for a total of \$2,650 each. Adding an extra \$2,650 in donations from temple members does not sufficiently raise the traceable payments to the employees. For example, for [REDACTED] the record would still show he was paid less than the Petitioner affirms he was paid. Moreover, there is no evidence on record demonstrating that the donations were equally distributed.

Additionally, the record reflects that the Petitioner filed petitions for three different beneficiaries. Within the initial filing, the Petitioner offered conflicting wages for the Beneficiary that amounted to either \$10,400 or \$9,600 annually. Further, it does not address what it proposed to pay the two other beneficiaries. The number of beneficiaries and other employees is relevant to whether the available funds are indicative of the Petitioner's intent to compensate this Beneficiary.<sup>4</sup> Without this information, the Petitioner has not met its burden of proof with respect to how it intends to compensate the beneficiary on the petition.

Finally, even though the Petitioner stated it would offer the Beneficiary room and board, it has not provided proof that it owns or leases the residence where the Beneficiary will reside. As a result, the Petitioner has not established that it will provide this non-salaried compensation.

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<sup>2</sup> The regulation at 8 C.F.R. § 214.2(r)(11) addresses the evidence required relating to compensation. There is no specific requirement that evidence of prior compensation must be in the form of copies of paychecks and therefore no requirement that a specific number of copies of paychecks must be submitted.

<sup>3</sup> Copies of check numbers 5253, 5270, and 5397 have corresponding pay stubs in the record. However, check numbers 5197, 5210, 5214, and 5233 do not.

<sup>4</sup> *Cf. Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014) (upholding the denial of a petition in a different classification where a petitioner did not demonstrate how it would pay the combined offered wages of multiple beneficiaries).

### 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. 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 G-R-D-S-C-O-V-A-P-*, ID# 16360 (AAO May 11, 2016)