(b)(6)

Non-Precedent Decision of the Administrative Appeals Office

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

DATE: MAY 12, 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 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 did not establish its intent to compensate the Beneficiary as claimed.

The matter is now before us on appeal. In its appeal, the Petitioner submits a statement and additional evidence.

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

I. RELEVANT LAW AND REGULATIONS

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
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> (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 regulation at 8 C.F.R. § 214.2(r)(11) addresses the specific evidence required to establish the petitioner's intent to compensate the beneficiary and provides, in part:

> *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. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, on June 12, 2015. It stated that it would compensate the Beneficiary $800 per month and provide room, board, utilities, telephone costs, other necessities. It submitted, among other things, copies of its bank account statements, bills, and financial statements for 2010 through 2012. The Director issued a request for evidence (RFE) seeking, in part, additional documentation pertaining to compensation. The Director noted that the bank statements and unaudited financial statements that the Petitioner initially submitted were outdated and that the Petitioner 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 evidence must show that the Petitioner 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-2 for two former employees; and copies of photographs of the temple.

The Director denied the petition. She found that 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 stated 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 stated that the 2013 Form W-2 for another former beneficiary, indicated 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 indicated 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 concluded that photographs in the record did not show any sleeping quarters. The Director concluded that the Petitioner did not sufficiently establish its intent to compensate the Beneficiary, especially considering the petitioning organization had pending petitions for two other individuals. The Director denied the petition accordingly.

Currently, on appeal, the Petitioner submits additional financial documents and a statement addressing the inconsistencies noted in the Director's decision. According to the Petitioner, it thought it was required to provide some, but not all, of the checks it paid to previous beneficiaries in similar positions. It submits additional copies of paychecks, entries from its check register, and bank account statements. It also submits copies of 19 checks it describes as "Donation Checks made on the name of 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, 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 submits new photographs of the proposed sleeping quarters.

III. ANALYSIS

After considering all of the evidence, including the documents submitted on appeal, we find that the record does not contain sufficient, verifiable documentation of the Petitioner's intent to compensate the Beneficiary as claimed. The Petitioner submits a new "Statement of Financial Position" on appeal that conflicts with its earlier version of this document. The Petitioner's financial statement, which was submitted in response to the RFE and dated June 30, 2015, showed $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 submits a letter from an accountant explaining the reasons for the changes, including that members of the temple who had loaned money to the temple in 2014 "wished to change the loans to

contributions." According to the accountant, she "recently received documentation signed by the members and . . . reclassified the loans accordingly." Not only does the record not include the referenced documentation from members of the temple to corroborate the contention that any loans have been satisfied or forgiven, but also the accountant's letter was written four weeks after the Director's denial of the petition. Considering the new financial statement appears to have been created for the sole purpose of establishing that its current assets exceed its current liabilities, we find it is of limited probative value. *Cf. Baldwin Dairy, Inc. v. United States*, 122 F.Supp.3d 809, 816 (W.D. Wis. 2015) ("the AAO was justifiably skeptical about [the Petitioner's] motives and whether the company simply 'amend[ed] its tax return for the sole purpose of establishing its ability to pay the proffered wage.'").

In addition, the record continues to contain insufficient documentation and unexplained inconsistencies with respect to past evidence of compensation for similar positions. Beginning with in response to the RFE, the Petitioner submitted copies of five of his paychecks. On appeal, the Petitioner submits two additional paychecks in response to the Director's concern that it had not provided all relevant paychecks. Although it claims to have compensated continuously from June of 2013 until March of 2015, the seven paychecks in the record indicate he was paid a total of just $5,290 during the entire 22 months he was employed. In addition, none of the paychecks have corresponding entries in any of the Petitioner's bank account statements in the record. Moreover, although the record includes Form W-2 for the two other prior beneficiaries, there are no IRS documents for in the record. To the extent the Petitioner submitted copies of its check register entries, only three of checks have corresponding entries in the record.[1]

Regarding the Petitioner states it employed him for the same 22-month time period, from June of 2013 until March of 2015. The record includes a Form W-2 showing that the Petitioner paid him $14,296 in wages in 2013, almost triple the amount the Petitioner claims it compensated him. The record includes copies of six paychecks for from 2013, totaling $6,345.[2] None of these paychecks have corresponding entries in the Petitioner's check register or bank account statements.

Similarly, for his 2013 Form W-2 in the record also shows $14,296 in wages, almost triple the amount the Petitioner claims it paid him during the seven months he worked that year. However, the record includes only three paychecks issued from the Petitioner to in 2013, totaling just $2,100.[3] None of these paychecks have corresponding entries in the check register or bank account statements contained in the record.

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[1] Copies of check numbers 5253, 5270, and 5397 have corresponding check register entries in the record. However, check numbers 5197, 5210, 5214, and 5233 do not.

[2] *See* paycheck numbers 5164, 5179, 5195, 5208, 5220, and 5231. Check numbers 5164 and 5179, written in the amount of $1,850 and $2,100 respectively, include a notation that they are the June and July 2013 salary for the three employees.

[3] *See* paycheck numbers 5196, 5209, and 5221.

On appeal, for the first time, the Petitioner contends 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 resolve the deficiencies or inconsistencies described above. For the record would still show he was paid less than the Petitioner maintains he was paid. For and the record continues to show they were paid significantly more than the Petitioner contends they were paid. Therefore, the record continues to contain insufficient evidence and unexplained inconsistencies with respect to compensation of the Petitioner's three previous employees.

Finally, the record shows that the Petitioner filed three petitions for three different beneficiaries. In the instant petition before us, the Petitioner states it will compensate the Beneficiary $800 per month, plus room, board, and other necessities. However, it does not address what it proposed to pay the two other beneficiaries. Without additional information regarding what the Petitioner offered to pay the other beneficiaries, considering the record in its totality, the record before us does not contain sufficient information to establish the petitioning organization's intent to compensate the Beneficiary as claimed.

IV. CONCLUSION

For the reasons discussed above, the Petitioner has not submitted verifiable evidence explaining how it will compensate the Beneficiary, as required under 8 C.F.R. § 214.2(r)(11).

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# 16359 (AAO May 12, 2016)