U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-T-C-S-

DATE: OCT. 7, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner is a Tibetan Buddhist religious organization that seeks to continue employing the Beneficiary as a "Co-Facilitator of Youth Program." This nonimmigrant religious worker 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. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R).

The Director of the California Service Center denied the petition, finding that the Petitioner did not establish how it will provide the Beneficiary with the non-salaried compensation it indicated it would provide.

The matter is now before us on appeal. The Petitioner argues that this petition is merely to extend the Beneficiary's status and that it did not realize it needed to include documentation submitted with the initial petition that was approved. It submits copies of tax returns, receipts, and photographs in support of its contention that it will provide the Beneficiary with a stipend, food, and housing.

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 for up to five years to perform religious work as ministers, in religious vocations, or in other religious occupations. The petitioning organization must establish, among other things, that the foreign national beneficiary has been a member of a religious denomination for at least the two-year period before the date the petition is filed. *See generally* section 101(a)(15)(R) of the Act, 8 U.S.C. § 1101(a)(15)(R).

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:

(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 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. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

On the religious worker petition, the Petitioner indicated its gross annual income was $1,420,679 and its net annual income was $569,973. In its letter submitted with the petition, the Petitioner specified that $919,702 was derived from contributions and $459,177 from program fees. It stated that it sought to extend the Beneficiary's status as a nonimmigrant religious worker, continuing to provide her with free housing, food, transportation, and money for "incidentals" such as medical and dental care. It submitted a remuneration agreement and a copy of an approval notice granting the Beneficiary R-1 status to work at the petitioning organization from July 1, 2015, to June 30, 2016.

The Director issued a request for evidence (RFE) seeking, in part, additional documentation of the Beneficiary's compensation as an R-1 religious worker. The Petitioner responded that it provides all of its monks and nuns with everything they need, including food, housing, and a stipend. It explained that they all live in a community and share a house together. It submitted a copy of its IRS tax-exempt determination letter, a printout of [redacted] receipts for household expenses, a copy of a bill,[1] and two photos of what it states are the Beneficiary's living quarters. It stated that "[b]ecause of the nature of the support provided, there [was] no IRS documentation."[2]

The Director denied the petition. She found that the Petitioner did not articulate which portion of the four receipts submitted in response to the RFE related to the Beneficiary. She also noted that the two photos the Petitioner submitted were too dark to show any images. Accordingly, the Director concluded that the Petitioner did not establish how it will compensate the Beneficiary.

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[1] In her decision, the Director erroneously described this document as a "bank statement dated September 10, 2015." The document is actually a copy of the Petitioner's internet and phone bill from [redacted] dated September 10, 2015. There are no bank statements in the record.

[2] The Director issued a second RFE requesting clarification of the Petitioner's address. The Petitioner responded to this RFE confirming that it has not moved locations.

On appeal, the Petitioner explains that it did not know it needed to submit all of the information that it submitted with the original petition. It submits copies of its 2013 and 2014 tax returns, signed statements from the Beneficiary certifying she received a $500 stipend for five months in 2015, and copies of photographs.

III. ANALYSIS

We find that the record remains insufficient to establish how the Petitioner intends to provide the non-salaried compensation to the Beneficiary it claims it would. The petition was filed in March of 2016; however, the Petitioner submits its 2013 and 2014 tax returns which are uncertified, unsigned, and undated. Moreover, the 2014 tax return is stamped "draft" on each page. The Petitioner has not submitted a more recent, certified tax return or explained the reason for its absence, as required by 8 C.F.R. § 214.2(r)(11)(i).

Regarding the stipend, aside from different dates, the Petitioner submits five identical statements certifying that the Beneficiary "received $500.00 in cash as a stipend for [her] personal expenses while at [the petitioning organization], a 501(c)(3) non-profit organization." The statements are signed by the Beneficiary and dated August 1, September 1, October 1, November 1, and December 1 of 2015, before the petition was filed. Nonetheless, the Petitioner submits them for the first time on appeal. Considering the statements appear to have been created solely in response to the petition's denial, we find they are 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, although the Petitioner contends it supports all of its monks and nuns with everything they need, including a stipend, the Petitioner has not submitted evidence that it has paid stipends for other similar positions in the past.

Moreover, there is no deed or lease in the record showing that the Petitioner owns or rents the property where it would house the Beneficiary. There is no evidence that the petitioning organization owns a car such that it could provide the Beneficiary with the transportation it maintains it would provide. There is no budget in the record showing monies set aside for stipends or other expenses, no bank account statements, and no evidence of any income or revenue the Petitioner receives.

The Act places the burden of proving eligibility for entry or admission to the United States on the Petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Considering the record in its entirety, we find that the Petitioner has not established its intent to compensate the Beneficiary the non-salaried compensation it claims it would pay.

IV. CONCLUSION

The Petitioner has not established how it will compensate the Beneficiary, as required under 8 C.F.R. § 214.2(r)(11)(i).

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, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of S-T-C-S-*, ID# 10944 (AAO Oct. 7, 2016)