



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

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

In Re: 20329745

Date: MAR. 11, 2022

Appeal of California Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (Religious Worker – R-1)

The Petitioner, a religious organization, seeks to classify the Beneficiary as a nonimmigrant religious worker to perform services as a “minister/senior pastor.” *See* Immigration and Nationality Act (the Act) Section 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R). This nonimmigrant R-1 classification allows non-profit religious organizations, or their affiliates, to temporarily employ foreign nationals as ministers, in religious vocations, or in religious occupations in the United States.

The Director of the California Service Center denied the petition, concluding that the Petitioner did not submit verifiable evidence explaining how it would compensate the Beneficiary, as required under 8 C.F.R. § 214.2(r)(11) (2019). The regulation provides, in pertinent part:

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.

. . . .

8 C.F.R. § 214.2(r)(11).

According to page 5 of the instant petition, the Petitioner intends to pay the Beneficiary an annual wage of \$28,000 as well as “room and board – daily meals.” In the decision denying the petition, the Director explained that the Petitioner had in 2017 submitted another petition to classify the Beneficiary as a nonimmigrant religious worker, which USCIS approved with validity dates between December 2017 and September 2019. According to the previous petition, the Petitioner would also pay the Beneficiary a salary as well as room and board benefits. The Beneficiary’s tax filings for 2018 and 2019, however, indicated that he was self-employed and his sole earnings derived from his business income.¹ The Director therefore concluded that the Beneficiary “[was] in the United States as a businessperson,” and that because the Petitioner had not compensated the Beneficiary according to the previous petition, it had not met the regulatory compensation requirements as relating to the instant petition.

In these proceedings, it is the Petitioner’s burden to establish, by a preponderance of the evidence, eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).² Upon *de novo* review, we will withdraw the Director’s decision, and remand the matter for the entry of a new decision.

On appeal, the Petitioner’s presiding bishop maintains that “there was a misunderstanding with the [t]ax [s]ervice responsible to file the taxes for the [B]eneficiary” and that the tax service “filed the wrong information . . . for years 2018 [and] 2019.” He states that the Beneficiary has been “an Ordained Minister for our organization . . . for more than 6 years” and “will continue to carry out his religious [work] as an Ordained Minister and Senior Pastor.” The Petitioner offers additional compensation-related evidence on appeal that is relevant to issues raised in the Director’s decision. The evidence includes: (1) the Beneficiary’s amended federal and New York State tax filings for 2018 and 2019; (2) his Forms W-2 for 2018 through 2020, showing he received from the Petitioner approximately \$28,000 a year in “[w]ages, tips, other compensation”; (3) his 2020 tax filing, indicating that he received “[w]ages, salaries, tips” and “housing allowance”; and (4) 2018 through 2020 lease agreements between the Petitioner and the Beneficiary. As the Director has not had an opportunity to examine these documents, which are relevant to the Petitioner’s eligibility to classify the Beneficiary as a nonimmigrant religious worker, we will remand the matter for the Director’s consideration and entry of a new decision.

Upon remand, the Director should consider whether the Petitioner has established eligibility to classify the Beneficiary as a nonimmigrant religious worker. Specifically, whether the Petitioner has satisfied the requirements under 8 C.F.R. § 214.2(r)(11). In addition, the Director should consider whether an on-site inspection of the petitioning organization, including the Beneficiary’s place of work, is appropriate. *See* 8 C.F.R. § 214.2(r)(16). According to pages 3 and 5 of the instant petition, the Beneficiary lives and works at a location on [REDACTED] Place in [REDACTED] New York. However, the Petitioner’s presiding bishop states in his September 2021 letter, which has been offered on appeal,

¹ The Beneficiary’s initial tax filings for 2018 and 2019 noted that his occupation was “minister,” his business’s name was the name of the petitioning entity, and his business location was the location where the petition specified he would work as a religious worker.

² If a petitioner submits relevant, probative, and credible evidence that leads us to believe that the claim is “more likely than not” or “probably” true, it has satisfied the preponderance of the evidence standard. *Chawathe*, 25 I&N Dec. at 375-76.

that the Beneficiary is “working as a full-time minister for our organization in one of our congregations . . . located [on] [] Avenue [in] [] NY.” There appears to be an inconsistency concerning the Beneficiary’s work location. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (requiring resolution of inconsistencies in the record with independent, objective evidence pointing to where the truth lies).

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.