



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

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

In Re: 21319888

Date: AUG. 23, 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 an R-1 nonimmigrant religious worker to perform services as a “licensed local 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 R-1 nonimmigrant religious worker petition, finding that the Petitioner did not satisfy the “compensation standards for religious workers.” The Director cited 8 C.F.R. § 214.2(r)(12) (2021) in the decision. The Director also concluded that the Petitioner did not establish that the Beneficiary would work at least 20 hours a week on average, as required under 8 C.F.R. § 214.2(r)(1)(ii). The Petitioner appeals, maintaining that it has shown eligibility to classify the Beneficiary as an R-1 nonimmigrant religious worker.

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*Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).¹ Upon *de novo* review, the decision of the Director is withdrawn. The matter is remanded to the Director for the entry of a new decision consistent with the foregoing analysis.

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 religious occupations. The petitioning organization must establish, among other requirements, that the foreign national beneficiary has been a member of a religious denomination for at least the two-year period

¹ 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.

before the date the petition is filed. *See generally* Section 101(a)(15)(R) of the Act; 8 C.F.R. § 214.2(r).

The regulation at 8 C.F.R. § 214.2(r)(11) provides the following guidance on the types of evidence a petitioner must present to satisfy the compensation requirements:

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.
- (ii) Self support

In addition, the regulation specifies that a petitioner must demonstrate that a beneficiary is “coming to the United States to work at least in a part time position (average of at least 20 hours per week)” as a qualifying religious worker. 8 C.F.R. § 214.2(r)(1)(ii).

II. ANALYSIS

While the Director determined that the Petitioner did not satisfy the compensation requirements, the Director did not analyze the evidence under the applicable provision of the regulation, which is 8 C.F.R. § 214.2(r)(11). Instead, the Director relied on 8 C.F.R. § 214.2(r)(12), Evidence of Previous R-1 Employment, to find that the Petitioner did not satisfy the compensation requirements. That regulation applies to an application for an extension of stay as an R-1 nonimmigrant religious worker. *See* 8 C.F.R. § 214.2(r)(12). An application for extension of stay is concurrent with, but separate from, the R-1 nonimmigrant petition. The regulation at 8 C.F.R. § 214.1(c)(5) (2021) makes clear that there is no appeal from a denial of an application for extension of stay. We therefore lack jurisdiction to review a denial of an application for extension of stay.

We do have jurisdiction to review the Director’s denial of the Petitioner’s R-1 nonimmigrant religious worker petition. As the Director did not analyze the evidence under the applicable provision of the regulation, which is 8 C.F.R. § 214.2(r)(11), not 8 C.F.R. § 214.2(r)(12), we will remand the matter to the Director to consider whether the Petitioner has satisfied the compensation requirements specified under 8 C.F.R. § 214.2(r)(11) to classify the Beneficiary as an R-1 nonimmigrant religious worker. Additionally, on appeal, the Petitioner offers additional compensation related evidence – including

letters from church leaders, copies of processed checks, IRS documents as well as the Petitioner's financial and bank records – that the Director did not have an opportunity to review.

As noted, the Director also denied the R-1 nonimmigrant petition based on a finding that the Petitioner failed to establish that the Beneficiary would likely work at least 20 hours a week on average as a religious worker. *See* 8 C.F.R. § 214.2(r)(1)(ii). The Director's finding, however, is premised upon the adverse compensation related determination. Specifically, the Director stated that the Petitioner failed to show "the [B]eneficiary has been compensated for services rendered [as a religious worker] in at least a part-time capacity." As the Director's requisite work hour finding relied on the compensation finding, and the Director did not analyze the compensation requirements under the applicable provision of the regulation, we will similarly remand this issue to the Director.

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