

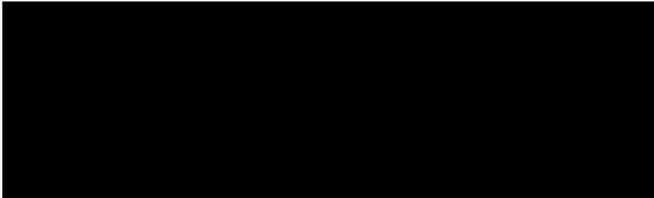
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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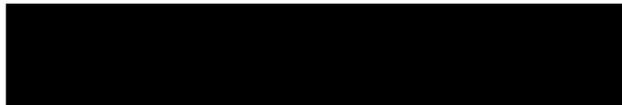
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DATE: **MAY 31 2011** Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE:

Petitioner:
Beneficiary:



PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The director granted a subsequent motion to reopen and reconsider and again denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to extend the beneficiary's status as a nonimmigrant religious worker under section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1), to perform services as its senior pastor. The director determined that the petitioner had not established that a bona fide job offer exists.

On appeal, counsel asserts that the petitioner is a valid non-profit religious organization and that, while the beneficiary no longer works for the petitioning organization, approval of the petition is sought to keep the beneficiary in a lawful immigration status.

Section 101(a)(15)(R) of the Act pertains to an alien 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) . . . 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) . . . 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 issue presented is whether a bona fide job offer exists.

The director based her denial of the petition on two factors. First, the director found that the individual who signed the Form I-129, Petition for a Nonimmigrant Worker, did not have the authority to sign the petition on behalf of the organization. Second, the beneficiary no longer works for the petitioner.

The director cited the regulation at 8 C.F.R. § 214.2(r)(7), which provides:

Jurisdiction and procedures for obtaining R-1 status. An employer in the United States seeking to employ a religious worker, by initial petition or by change of status, shall file a petition in accordance with the applicable form instructions.

The petition, filed on November 13, 2006, was signed by [REDACTED] (alternatively spelled [REDACTED] throughout the record) Ilioi, who identified himself as an associate pastor and treasurer of the petitioning organization. The director determined that Mr. [REDACTED] had no authority to sign the petition on behalf of the organization and therefore the petition was not properly filed.

A review of the record reveals that Mr. [REDACTED] has signed numerous other documents on behalf of the petitioner such as checks from the church's accounts and leases binding the church. Further, he is recognized by the national Church of God organization. Accordingly, the AAO finds there is sufficient evidence that Mr. [REDACTED] had the authority to sign the petition.

As it relates to the director's remaining ground for denial, in a June 1, 2009 affidavit, the beneficiary stated that he worked for the petitioning organization from November 2003 until November 2007 as a full-time senior pastor until he left Colorado. On appeal, counsel does not deny that the beneficiary no longer works for the petitioning organization but states that the "Beneficiary still seeks approval of the instant I-129 petition for immigration purposes . . . to show that he has maintained legal status in the United States through the time he requested extension."

U.S. Citizenship and Immigration Services (USCIS) records reflect that the beneficiary was approved for R-1 status as a nonimmigrant religious worker to work for the petitioning organization for the period November 20, 2003 to November 20, 2006, and again from November 21, 2006 to July 13, 2008. According to the beneficiary, he left the petitioner's employ in November 2007 and moved to the state of Washington to work for another employer.

The regulation at 8 C.F.R. § 214.2(r)(13) provides:

Change or addition of employers. An R-1 alien may not be compensated for work for any religious organization other than the one for which a petition has been approved or the alien will be out of status. A different or additional employer seeking to employ the alien may obtain prior approval of such employment through the filing of a separate petition and appropriate supplement, supporting documents, and fee.

Regardless of whether the beneficiary was in status as an R-1 when the petition was filed, he clearly became out of status in November 2007 when he left the petitioner's employ. The regulation at 8 C.F.R. § 214.1(e) states that a nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status within the meaning of

section 241(a)(1)(C)(i) of the Act. Under 8 C.F.R. § 214.2(r)(5), extension of status is available only to aliens who maintain R-1 status.

However, the issues of the beneficiary's prior employment and maintenance of R-1 status are significant only insofar as they relate to the application to extend that status. An application for extension is concurrent with, but separate from, the nonimmigrant petition. There is no appeal from the denial of an application for extension of stay filed on Form I-129. 8 C.F.R. § 214.1(c)(5). Because the beneficiary's past employment and maintenance of status are extension issues, rather than petition issues, they are not within the AAO's jurisdiction and we will not discuss them in detail here.

Nonetheless, counsel's argument that because the beneficiary worked for the petitioner at the time the petition was filed constitutes "sufficient grounds" for approval of the petition would require the AAO to overlook the fact that the petitioner would not be the beneficiary's employer after the petition is approved. The result would be clearly illogical.

First, the petitioner must establish that the beneficiary seeks to enter the United States to work for the petitioning organization for at least 20 hours per week. 8 C.F.R. § 214.2(r)(1). The record establishes that the beneficiary will be in the employ of another organization in a different state. Therefore, the record does not establish that the beneficiary will be employed by the petitioner for at least 20 hours per week.

Furthermore, the statute and regulation require the petitioner to establish that the beneficiary is coming to the United States to work for an organization, at the request of that organization. Clearly, if the beneficiary works for a different organization, the petitioner cannot meet this requirement. Additionally, the petitioner must establish that the prospective employer is a bona fide nonprofit religious organization. The record does not contain the name of the beneficiary's current employer and contains no information as to whether that employer meets the requirements of the statute and regulation.

Beyond the decision of the director, we find additional grounds that preclude approval. First, counsel states that the beneficiary left the petitioner's employ because it could not afford his salary. 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:

- (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. IRS documentation, such as IRS Form W-2 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.

In its October 27, 2006 letter, the petitioner stated that the beneficiary would be compensated at the rate of \$60,000 per year. The petitioner further stated that it had the financial ability to pay the beneficiary but that it had the support of the Church of God denomination if assistance was needed. The claim that the Church of God would support the beneficiary, if necessary, does not comport with the requirements of the regulation which clearly indicate that the petitioner, must compensate the beneficiary, not a third-party. In this case, the petitioning organization filed the petition on the beneficiary's behalf, not the organization covering the denomination; therefore, the petitioner is responsible for his compensation. 8 C.F.R. § 214.2(r)(11).

Documentation submitted by the petitioner indicates that the beneficiary was paid less than the stipulated \$60,000 salary in 2004 and 2005. The petitioner submitted copies of checks made payable to the beneficiary in the amount of \$2,400 dated approximately every two weeks from January 13, 2006 to June 30, 2006 and in the amount of \$2,500 from July 14, 2006 to October 13, 2006; however, the documents are not clear on their face that they have been processed by the bank and the petitioner submitted no other documentation to reflect that the checks were presented and honored by the bank. The petitioner submitted a bank statement, signed by its personal banker, for the month of October 2006, indicating that it had a balance of \$11,161.76 in a checking account.

On motion, the petitioner provided copies of handwritten IRS Form 1099-MISC, Miscellaneous Income, reflecting that it paid the beneficiary nonemployee compensation of \$58,287 in 2006 and \$13,436.34 in 2007. Counsel admits in his June 10, 2009 letter that the petitioner was unable to compensate the beneficiary with the promised salary and that was the reason the beneficiary left the petitioning organization.

Accordingly, the record does not establish how the petitioner would compensate the beneficiary with the stated salary.

Second, the petitioner has failed to submit the attestation required by the regulation at 8 C.F.R. § 214.2(r) (8). While an attestation was submitted, information in the document indicates that it relates to the New York Conference of Seventh-day Adventists rather than the petitioning organization. Accordingly, the petitioner has failed to provide the attestation required by the regulation.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043

(E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.