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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: WAC 08 034 50925 Office: CALIFORNIA SERVICE CENTER Date: APR 2 9 2010

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner describes itself as "a non-denominational religious organization" within the Protestant Christian tradition. It seeks to change the beneficiary's status to that of 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 a minister. The director denied the petition based on information obtained during attempts to verify the petitioner's claims.

On appeal, the petitioner, through counsel, does not dispute the director's finding, but asserts that the law permits such activity.

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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(1) states that, to be approved for temporary admission to the United States, or extension and maintenance of status, for the purpose of conducting the activities of a religious worker for a period not to exceed five years, an alien must:

> (i) Be a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least two years immediately preceding the time of application for admission;
>
> (ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);
>
> (iii) Be coming solely as a minister or to perform a religious vocation or occupation as defined in paragraph (r)(3) of this section (in either a professional or nonprofessional capacity);
>
> (iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and
>
> (v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

An alien may work for more than one qualifying employer as long as each qualifying employer submits a petition plus all additional required documentation as prescribed by USCIS regulations. 8 C.F.R. § 214.2(r)(2).

The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition. 8 C.F.R. § 214.2(r)(16).

On the Form I-129 petition, the petitioner indicated that it currently had three employees, and that it intended to employ the beneficiary full time. Rev. Promise Y. Lee, the petitioner's senior pastor, stated:

> [The beneficiary] is the presiding [redacted] a non denominational religious organization that has a working relationship with [the petitioner], which is also a non-denominational religious organization. [redacted] in Nigeria ordained him a Bishop in May 2001. [The beneficiary] has a television Ministry in Nigeria. . . .
>
> [The beneficiary] first ministered in [the petitioning] Ministry in 2006. He has now been offered the position of a Minister in the petitioner's church. Reverend Promise Lee

> has also ministered in [redacted] in Nigeria on a number of occasions pursuant to the working relationship. . . .
>
> [The beneficiary] will undertake these specific duties:
>
> 1. Preach the Gospel of Jesus Christ
> 2. Teach and Train Workers in the church
> 3. Teach and Counsel members using the word of God
> 4. Lay hands and pray for the sick
> 5. Consecrate Children
> 6. Bury the dead

An unsigned letter attributed to [redacted] indicated that the church "is affiliated" with the petitioning church. A photocopied certificate from the [redacted] attested to the beneficiary's 2001 ordination.

On December 19, 2008, the director instructed the petitioner to submit evidence to meet new regulatory requirements published on November 26, 2008. The director also advised the petitioner of the findings from a July 20, 2008 USCIS site visit to the petitioning church. The director stated:

> The petitioner/signatory reported that he employs a paid full-time minister at his church and he wanted to hire two additional paid full-time ministers.
>
> A request [for a] report of wages from the proper authority did not yield a positive employment record [of] the claimed minister being employed. USCIS record[s] did not reveal any direct affiliation between the petitioning religious organization and the beneficiary's previous religious membership.

The director instructed the petitioner to submit, among other evidence, Internal Revenue Service (IRS) documentation of past compensation paid to employees, and evidence of "a verifiable direct affiliation between the religious organizations involved."

In response, [redacted] stated that the petitioner had filed "about four (4) special immigrant worker and nonimmigrant religious worker petitions . . . in the past five years," but only one of those aliens, [redacted] remained at the petitioning church. [redacted] was on an In-House transfer on a few occasions, to our Sister Ministries – [redacted] also asserted that "we are directly affiliated with [redacted] sharing the same doctrines and Statement of Faith."

In a new letter, [redacted] stated: "Both Ministries are identical in doctrines and articles of faith. . . . [redacted] has been a regular speaker in all our annual Conventions since 2005."

USCIS records show that the petitioner filed a Form I-129 petition, receipt number LIN 03 259 52976, to classify [redacted] as an R-1 nonimmigrant on September 3, 2003. Under the regulations then in effect, [redacted] R-1 status authorized him only to work at the petitioning church. Employment at a different or additional organizational unit of the denomination would have required the filing of a new petition. Such employment without a new petition would have constituted a failure to maintain status. *See* former 8 C.F.R. § 214.2(r)(6).

IRS documents in the record show that [redacted] received wages from the [redacted] in 2004-2006, and from the [redacted] in 2007. USCIS records do not show that those entities filed petitions on [redacted] behalf. Copies of [redacted] income tax returns, submitted by the petitioner, list his occupation as "Minister/Accountant" (2004) and "Clerk" (2005 through 2007). Work as an accountant or as a clerk would have violated [redacted] status, because section 101(a)(27)(C)(ii)(I) of the Act and former 8 C.F.R. § 214.2(r)(1) required him to work solely as a minister. (If [redacted] was neither an accountant nor a clerk, then his tax returns necessarily contain false statements.)

On February 19, 2009, the director denied the petition, stating:

> Pay records show that the petitioner's other religious worker [redacted] has enormously performed religious services outside of its [*sic*] approved work authorization with the sister ministries. . . . [T]he petitioner has not established that the beneficiary will provide religious worker services within the confines of the petitioner's premises. . . . Therefore the beneficiary is not "coming to or remaining in the United States at the request of the petitioner to work for the petitioner."

The director found that attempts to verify the petitioner's claims had not yielded satisfactory results. Because 8 C.F.R. § 214.2(r)(16) does not permit approval of a petition without satisfactory completion of such efforts, the director found that the petition could not be approved.

On appeal, the petitioner does not contest the director's finding that the petitioner will likely send the beneficiary to other churches (and split the costs of his compensation). Counsel defends, rather than denies, such an arrangement, stating: "Affiliated religious organizations with ministers who have different gifts often temporarily interchange these ministers. Is there a law that makes this illegal?" We answer counsel's rhetorical question by citing a regulation that requires the beneficiary to work for the petitioner. 8 C.F.R. § 214.2(r)(13), the successor regulation to former 8 C.F.R. § 214.2(r)(6), reads:

> *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 prescribed in 8 CFR 103.7(b)(1).

The above regulation would, in fact, prohibit the beneficiary from working and receiving compensation from other churches, in the manner of [redacted] unless each of those other churches also filed complete petitions.

The petitioner has not disputed a central finding in the director's decision. Only the intending employer may file an R-1 nonimmigrant petition, and the intending employer must meet several requirements spelled out in the regulations. For example, as we have already discussed, the regulation at 8 C.F.R. § 214.2(r)(16) gives USCIS broad authority to verify the petitioner's claims "through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization." If the beneficiary intends to work for several entities, it is directly contrary to the spirit of the regulations (and to the underlying statute) to allow those entities to bypass regulatory scrutiny by having some other entity act as the petitioner in their stead. We cannot sanction the approval of a petition wherein the petitioner has indicated that the beneficiary intends to violate his status.

For the reasons discussed above, we agree with the director's decision to deny the petition based on the petitioner's failure to satisfactorily establish eligibility.

Beyond the above discussion, the AAO's review of the record revealed another disqualifying factor. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. §§ 214.2(r)(1)(i) and (8)(ii) require that, to be eligible for classification as a special immigrant religious worker, the alien (either abroad or in the United States) must have been a member of the prospective employer's religious denomination for at least the two years immediately preceding the filing of the petition. The USCIS regulation at 8 C.F.R. § 204.5(m)(5) defines "denominational membership" as membership during at least the two-year period immediately preceding the filing date of the petition, in the same type of religious denomination as the United States religious organization where the alien will work.

8 C.F.R. § 214.2(r)(3) defines "religious denomination" as a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes one or more of the following:

> (A) A recognized common creed or statement of faith shared among the denomination's members;
>
> (B) A common form of worship;

(C) A common formal code of doctrine and discipline;

(D) Common religious services and ceremonies;

(E) Common established places of religious worship or religious congregations; or

(F) Comparable indicia of a bona fide religious denomination.

As noted above, the petitioner has identified itself as "non-denominational." In a routine inquiry into the petitioner's claims, as permitted by 8 C.F.R. § 214.2(r)(16), the AAO learned that the petitioning church joined the [redacted] in 2003. On its web site, http://www.covchurch.org, ECC describes itself as "a rapidly growing multiethnic denomination . . . with ministries on five continents of the world."

Because the information from [redacted] contradicts the petitioner's claim to be a non-denominational church, the AAO issued a notice on February 4, 2010. The AAO advised the petitioner:

> Because the evidence shows that your church has belonged to the [redacted] since 2003, the beneficiary cannot meet the two-year denominational membership requirement until and unless you provide documentary evidence to show that [redacted] also belonged to the [redacted] denomination throughout the two years spanning from November 15, 2005 to November 14, 2007. (Given your church's membership in an actual, international religious denomination, we will not entertain the claim that the two churches are linked under a looser, less literal definition of the term "religious denomination.")

In response to the AAO's notice, the petitioner submits the 2009 and 2010 editions of [redacted] These directories list the petitioner under the heading "Non-denominational." These directories cannot carry the same evidentiary weight as documentation from an actual Christian denomination that counts the petitioner among its members.

The AAO's February 2010 notice included an October 27, 2009 printout of a page entitled "[redacted] dated June 26, 2003. The page listed "22 churches joining the denomination," and named the petitioning church as one of the "[redacted]" in 2003. The paragraph about the petitioner begins with the name of the petitioning church, followed immediately by the parenthetical phrase "(an [redacted] It is abundantly clear that [redacted] considers the petitioner to be a "member" that "join[ed] the denomination."

Rev. Lee acknowledges that the petitioner "became affiliated with the [redacted] in 2003," but asserts that "the denomination has no form of control directly or indirectly over" the petitioner. [redacted] protests that [redacted] does not own or control the petitioner's property, and that the

petitioner does not pay tithes to [redacted] but the petitioner has submitted nothing to show that these facts disqualify the petitioner from [redacted] membership. Indeed, the 2003 story reporting the petitioner's acceptance into the denomination acknowledged that the petitioner "has purchased property"; there is no indication that [redacted] demanded ownership or control over that property as a condition for [redacted] membership.

[redacted] states: "[redacted] is just one of many Christian bodies with which [the petitioner] has fellowship ties." [redacted] identifies several such organizations, but does not show that any of them are self-described religious denominations like [redacted] Furthermore, even if the petitioner had shown that it belongs to several overlapping denominations, it would still be necessary to show that it shares a denomination with the beneficiary's [redacted] It is significant that, when asked for evidence that the petitioner and the beneficiary's church belong to the denomination, the petitioner's response has been to deny that the petitioner belongs to a denomination at all. [redacted] explanation of the petitioner's motivations in joining [redacted] are irrelevant to the obvious fact that the petitioner did join [redacted] and is therefore a member of a denomination under the plain language of the statute and regulations.

Because the petitioner has not shown, or even claimed, that the beneficiary's [redacted] belongs to the [redacted] denomination as the petitioner does, we must find that the petitioner has failed to establish the beneficiary's denominational membership. This omission is, by itself, a disqualifying factor.

The AAO will dismiss the appeal 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. The petitioner has not met that burden.

ORDER: The appeal is dismissed.