

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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
and Immigration
Services

13

[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER

Date: DEC 28 2010

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

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, with a fee of \$630. 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 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 special immigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as a minister. The director determined that beneficiary has reached the statutory maximum period for which he can qualify as an R-1 nonimmigrant religious worker.

On appeal, counsel asserts that the beneficiary is eligible for an extension of status under U.S. Citizenship and Immigration (USCIS) policy that provided temporary relief to those affected by the Chilean earthquake of February 2010.

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 regulation at 8 C.F.R. § 214.2(r)(6) provides:

Limitation on total stay. An alien who has spent five years in the United States in R-1 status may not be readmitted to or receive an extension of stay in the United States under the R visa classification unless the alien has resided abroad and has been physically present outside the United States for the immediate prior year. The limitations in this paragraph shall not apply to R-1 aliens who did not reside continually in the United States and whose employment in the United States was

seasonal or intermittent or was for an aggregate of six months or less per year. In addition, the limitations shall not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. To qualify for this exception, the petitioner and the alien must provide clear and convincing proof that the alien qualifies for such an exception. Such proof shall consist of evidence such as arrival and departure records, transcripts of processed income tax returns, and records of employment abroad.

The petition was filed on June 9, 2010. The petitioner provided a copy of the beneficiary's R-1 nonimmigrant religious worker visa issued on March 7, 2002 in Santiago, Chile. The record indicates that the petitioner entered the United States on March 8, 2002 pursuant to that visa. In its May 12, 2010 letter submitted in support of the petition, the petitioner stated that the beneficiary had worked as a minister with the petitioning organization since July 2002.

In a May 18, 2010 affidavit, the beneficiary stated that he has worked for the petitioning organization since May 2002 and that his R-1 visa expired on March 7, 2007. He stated further that the petitioner filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on his behalf which was approved on August 14, 2008. However, he had failed to "keep [his] R-1 current in order to apply for Adjust[ment] of Status." The beneficiary further stated that he could not leave the United States to apply for his immigrant status because he was committed to the petitioner and because he would be barred from reentering for ten years.

In his June 7, 2010 letter, counsel stated that the request to extend the beneficiary's R-1 status was made pursuant to two USCIS notices of March and May 2010. The first notice advised Chilean nationals that they may be eligible for temporary immigration benefits because of the natural catastrophe that had occurred in the country. The March 2010 notice advised that temporary benefits include the grant of an extension of status "even in cases where the request is submitted after the individual's authorized period of admission has expired." The May 2010 questions and answers document advised individuals: "If you wish to change or extend your nonimmigrant status, you may request an extension if you meet the existing criteria for your specific nonimmigrant category."

The director denied the petition because the petitioner exceeded the statutory five-year period of admission and his R-1 status could not be further extended. On appeal, counsel again asserts that the director did not address the beneficiary's extension of stay pursuant to the temporary benefits provided as a result of the earthquake.

The USCIS notices state that an alien may extend his or her status if he or she meets "the existing criteria" for the nonimmigrant status category. Section 101(a)(15)(R)(ii) of the Act places a limit of five years on the authorized stay for an alien seeking to enter the United States as a nonimmigrant religious worker. The regulation at 8 C.F.R. § 214.2(r)(6) states that the five-year limitation does not apply to R-1 aliens who did not reside continually in the United States and whose employment in the United States was seasonal or intermittent or was for an aggregate of six

months or less per year. In addition, the limitations do not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment.

The petitioner does not allege, and submits no documentation, that the beneficiary qualifies for the regulatory exception. Accordingly, as the beneficiary has exceeded the statutory five-year limitation, he does not meet the existing criteria for approval for an extension of stay and the petition will be denied.

ORDER: The appeal is dismissed.