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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
*Office of Administrative Appeals* MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 09 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:

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 $585. 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 classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as a pastor. As the result of an onsite inspection, the director determined that the petitioner had not established that it is operating as a bona fide nonprofit religious organization.

On appeal, counsel asserts that the only employee of the organization was out of the country at the time the immigration officer (IO) conducted the inspection. The petitioner submits additional documentation in support of the appeal.

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,
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> (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
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> (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 is whether the petitioner has established that it operates as a bona fide nonprofit tax-exempt religious organization.

In an attempt to verify the claims on the Form I-129, Petition for a Nonimmigrant Worker, an IO visited the petitioner's premises on March 6, 2009, March 16, 2009 and March 30, 2009. On each occasion, the IO found the building locked and no one from the petitioning organization present. The IO reported that phone calls placed to Bishop [redacted] the petitioner's senior pastor and the official who signed the Form I-129 on behalf of the petitioner, were

answered with the message that he was "not available or has traveled outside of the area." The IO reported that she called the attorney of record on March 17, 2009 to notify him of the attempts to conduct an onsite inspection of the petitioner's premises. However, the attorney did not return the IO's call. The petitioner did not pass the onsite verification visit because the IO was unable to complete the inspection.

The regulation at 8 C.F.R. § 214.2(r)(16) provides:

> *Inspections, evaluations, verifications, and compliance reviews.* The supporting evidence submitted may be verified by USCIS [U.S. Citizenship and Immigration Services] 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 [U.S. Citizenship and Immigration Services] 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.

On appeal, counsel states:

> The service should remember that petitioner is a church that is seeking to employ the beneficiary. As of now the only employee is the senior pastor . . . who was supposed to be at the church putting in at least 40 hours. [redacted] was in Nigeria on a preaching assignment. . . . We believe that the service should have either called or visited the church on Sunday or during one of the service time. . . . The beneficiary is not yet an employee until his application is approved and as such was not obligated to put in 40 hours.

Counsel's argument is without merit. First, counsel appears to assume that the IO attempted to conduct the onsite inspection at a time that [redacted] was not scheduled to be present at the church. However, nothing in the record supports counsel's assertion. Although the IO did not state the specific times of her visits, she did report that she attempted to call both the petitioner and counsel but was unable to reach either party. The petitioner's contact number provided no useful information and counsel failed to return the IO's phone call.

Further, on appeal, the petitioner states that [redacted] was out of the country during the time the IO attempted to conduct the onsite inspection. Thus, regardless of the time the IO may have attempted to conduct the inspection, she would have been unsuccessful. The petitioner provided no contact number of anyone other than [redacted] and did not make USCIS

aware prior to the visit to the petitioner's premises that no one would be available in the event additional documentation or evidence was required to process the petition.

Additionally, while counsel asserts that the beneficiary "is not yet an employee" and that he is "not obligated to put in 40 hours," section 2, part 3 of the Form I-129 indicates that the beneficiary has been working for the petitioner as an ordained minister and pastor since 2007. Further, the Form I-129 Supplement dated February 16, 2009 that the petitioner submitted in response to the RFE indicates that the beneficiary "works at least 40 hours a week at the church office and in [sic] some [occasions] he is required to work extra hours."

Accordingly, because the petitioner has not satisfactorily completed an onsite inspection as required by the regulation at 8 C.F.R. § 214.2(r)(16), it has not established that it operates as a bona fide nonprofit religious organization.

Beyond the director's decision, the petitioner has not established how it intends to compensate the beneficiary. 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 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:
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> > (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 [Internal Revenue Service] 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.

The petitioner stated that the beneficiary would be compensated at the rate of $30,000 per year which would include a basic salary of $14,000, a housing allowance of $9,500, and transportation allowance of $6,500. The petitioner submitted a copy of an unaudited "Statement of Activities for

the Year Ended December 31, 2007." However, as this document has not been audited, no reliance can be placed on the validity of the facts presented in the financial statements. The petitioner submitted no further verifiable documentation to support the assertions contained within the unaudited financial statements

The petitioner has submitted none of the documentation outlined in the above-cited regulation. It has not established that it has compensated the beneficiary or anyone in a position similar to that offered to the beneficiary, and has not provided documentation of monies set aside to compensate the proffered position. Accordingly, the petitioner has failed to establish how it intends to compensate the beneficiary.

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.