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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

A13

[redacted]

SEP 22 2010

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

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the application for change of status. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will remand the petition for a decision on its merits.

The petitioner is a Baptist 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. The beneficiary is currently in the United States in H-1B nonimmigrant status. The petitioner seeks to change the beneficiary's status from H-1B to R-1. The director determined that the beneficiary is not eligible for the classification because he has already spent five years in the United States as an R-1 nonimmigrant religious worker, without spending the required year outside the United States.

The director denied the petition based on the U.S. Citizenship and Immigration Service (USCIS) regulation at 8 C.F.R. § 214.2(r)(6), which reads, in part:

> *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 beneficiary has worked in the United States, either in R-1 or H-1B nonimmigrant status, since July 18, 2003. The petitioner filed the Form I-129 petition (and change of status application) on February 26, 2009, more than five and a half years after the beneficiary's initial entry.

The director issued two denial notices on December 8, 2009. The first notice denied the petitioner's application for change of status. In that notice, the director correctly notified the petitioner that, under the USCIS regulation at 8 C.F.R. § 248.3(g), there is no appeal from the denial of an application for change of status. In the second notice, the director denied the nonimmigrant petition, based solely on the finding that "the beneficiary has been in R1 status since July 18, 2003. The given status expired on July 17, 2008. . . . The beneficiary has reached the five-year limit; therefore, no more extensions may be granted."

The five-year limitation on an alien's R-1 nonimmigrant status is, strictly speaking, not a petition issue; it is an extension of stay issue, and as such it lies outside the AAO's appellate jurisdiction. *See* 8 C.F.R. §§ 248.3(g), 214.1(c)(5). Therefore, we will not consider the merits of the petitioner's assertion that the beneficiary held R-1 status for only four years and ten months, and is therefore eligible for an additional two months under that status.

The director, in the denial notice, found only that the beneficiary is not eligible for change of status. The director must issue a decision on the merits of the R-1 petition. We hereby remand the matter to the director for that purpose. We note that, even if the director were to approve the petition, this would not require the director to approve the concurrent request for change of status, because the two proceedings address different issues.

When reviewing the merits of the decision, the director must consider regulatory requirements such as those at 8 C.F.R. § 214.2(r)(11)(i), which requires the petitioner to submit Internal Revenue Service documentation of salaries paid, if available, or to explain why such documentation is not available, and at 8 C.F.R. § 214.2(r)(16), which states: "If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition."

USCIS records indicate an attempted compliance review at [redacted] which is the address on documentation from 2003. The Form I-129 petition and other materials from 2009 (including the petitioner's printed letterhead) show the petitioner's address as [redacted]. Therefore, the director cannot properly deny the petition based on a failed site inspection at an outdated address. The director, of course, retains discretion to initiate a new compliance review and/or site inspection at the petitioner's more recent address.

ORDER: The director's decision denying the R-1 petition is withdrawn. (The denial of the change of status application remains in effect.) The matter is remanded to the director for the purpose of a decision on the merits of the R-1 petition. If the director's R-1 decision is unfavorable to the petitioner, the director must certify that decision to the Administrative Appeals Office for review.