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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 and Immigration Services

[redacted]

D13

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 13 2011

IN RE: Petitioner: [redacted]
Beneficiary:

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

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 AAO will dismiss the appeal.

We note that the AAO sent correspondence to the petitioner's address of record, as stated on the Form I-129 petition, on October 13, 2010. The U.S. Postal Service returned the correspondence, marked "Attempted / Not Known." Counsel successfully received a copy of the same correspondence, and responded to it. Therefore, the AAO will issue this decision to the petitioner in care of counsel, but we will consider the petitioner's previously stated address to be invalid.

The petitioner is [redacted] It seeks to classify the beneficiary 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 a "pastor assistant and worship pastor." The director determined that the petitioner had failed to establish the beneficiary's required membership in the petitioner's religious denomination for at least two years immediately preceding the filing of the petition. The director also determined that the petitioner had submitted insufficient documentation regarding the beneficiary's compensation.

On appeal, the petitioner submits arguments from counsel, a letter from a church official, and documentation including what purports to be a copy of the petitioner's constitution.

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)(I) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(I), pertains to a nonimmigrant who seeks to enter the United States "solely for the purpose of carrying on the vocation of a minister of that religious denomination."

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.

Section 101(a)(15)(R)(i) of the Act and the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(3) require that the beneficiary must have belonged to the petitioner's religious denomination for at least two years immediately preceding the filing of the petition. In this instance, the petitioner filed the Form I-129 petition on May 8, 2009, and therefore the petitioner must establish the beneficiary's denominational membership since May 8, 2007.

Asked to describe the denominational relationship between the petitioner and "the organization abroad of which the alien is a member," the petitioner stated: "The two organizations share the same faith and belong to the same Pent[e]costal religion and belief that the Father and the Son and the Holy Spirit are our creator." The petitioner did not identify "the organization abroad." On an accompanying religious denomination certification, asked for the name of its denomination, the petitioner stated its own name.

The record shows that the beneficiary previously obtained R-1 nonimmigrant status through a petition filed by [redacted]. The petitioner's initial submission contained no other information about that church.

On October 19, 2009, the director issued a request for evidence (RFE), instructing the petitioner to submit evidence of the beneficiary's past denominational membership, and to submit evidence to show denominational affiliation between the petitioner and [redacted]. In response, the petitioner submitted a statement in both English and Spanish, which the petitioner identified as the creed of [redacted]. Counsel stated: "note the similarities in the Creeds of both the former employer and Current Petitioner."

The source of the creed document, however, is unclear. The creed shows the name "[redacted]" at the top of the page, but there is no supplementary documentation to verify the origin of this document. We note that this creed consists of five sentences, in contrast to the seven-page declaration that opens the petitioner's thirty-plus page constitution.

The petitioner submitted a document with the heading [redacted]" which indicates that the petitioner "has operated as an affiliate of the [redacted] There are several distinct denominations that each use the name [redacted] including major organizations based in Cleveland, Tennessee and Anderson, Indiana. The [redacted] document did not specify which [redacted] is affiliated with the petitioner.

The petitioner's aforementioned constitution, meanwhile, contains repeated references to the [redacted] which is its own denomination, not affiliated with any denomination using the name [redacted] We will revisit this issue in the context of the appeal.

The director denied the petition on December 29, 2009, in part because the petitioner had not submitted sufficient evidence to show that the petitioner and [redacted] belong to the same denomination. On appeal, counsel states: "Petitioner is offering an additional statement of the Doctrine of the Beneficiary's former employer, [redacted]. Certain doctrines are highlighted and can be compared to the highli[g]hted sections of the Petitioner's previously submitted Constitution."

The petitioner submitted an unsigned one-page document, entitled "What We Believe," on the letterhead of [redacted] The document consists of a list of 15 items, such as "We believe the Triune God, Father, Son, and Holy Spirit," and "We believe in the second coming of Jesus Christ beginning with the rapture of the church." The petitioner or counsel has highlighted 10 of the 15 doctrinal items, but has not accounted for the other five items. The unsigned document does not identify its author.

The petitioner also submitted excerpts of a multi-page "Constitution," including a section marked "Statement of Fundamental Truths." Again, the petitioner highlighted many, but not all, of these "fundamental truths." Distinct doctrines that only partially overlap do not establish denominational affiliation between two groups, because the remaining areas of difference may be significant or even central to one or both groups.

The document identified as the petitioner's constitution refers to the petitioner not as a single church or congregation, but rather as "a cooperative fellowship of Pentecostal, Spirit-baptized saints from local bilingual or Hispanic churches of like precious faith throughout the United States." The document refers to the entity's "districts," "district offices" and "National Ministries."

As we have noted previously, the "Constitution" contains references to the AG. The AAO consulted the AG's web site, and found its constitution at http://ministers.ag.org/pdf/2007ConstitutionBylaws.pdf. The submitted excerpts from the petitioner's constitution are virtually identical to the corresponding parts of the AG's constitution, the only difference being that the petitioner has replaced most (but not all) of the instances of the name [redacted] with the petitioner's own name.

On October 13, 2010, the AAO instructed the petitioner to "submit evidence from an identified official of Templo Cristo Rey de Gloria, with contact information, attesting to the creed [the petitioner]

submitted previously." The AAO also informed the petitioner of the great similarity between its purported constitution and that of the AG. The AAO stated:

> The use of a copied constitution is not, by itself, necessarily a disqualifying factor, if the information in the constitution is true as it applies to your organization. If this is not the case, however, then your submission of another denomination's constitution, with your name substituted for the original denomination, raises very grave questions about the credibility, reliability, and authenticity of your claims and documentation, especially when other materials name a different denomination [redacted]
>
> . . . Please submit verifiable documentary evidence that your church is (or is part of) a national organization with districts, district offices, and national ministries. Verifiable evidence can include, but is not limited to, a published directory containing names, addresses, and contact information for officials in various districts. If there is no cooperative fellowship with districts, district offices, and national ministries, the AAO will dismiss your appeal based, in part, on your submission of an alleged governing document that contains false claims about the nature of your religious organization.

In response to this notice, the petitioner submitted a complete copy of its purported constitution, along with a complete copy of its Internal Revenue Service (IRS) Form 1023 Application for Recognition of Exemption. These documents do not address the AAO's concerns. The AAO had asked the petitioner for evidence to corroborate the claim that the petitioner "is (or is part of) a national organization with districts, district offices, and national ministries." Rather than submit any new evidence to support such claims, the petitioner simply submitted a new copy of the same document that contained those claims.

It is clear that the petitioner took the existing AG constitution, and inserted its own name in place of that of the AG. Furthermore, this was not simply a matter of automatically replacing one phrase with another. The final paragraph of the preamble of the AG constitution includes a reference to "local Pentecostal assemblies." In the petitioner's supposed constitution, this phrase became "local bilingual or Hispanic churches," clearly a deliberate substitution. Nevertheless, the petitioner left intact numerous references to a national, hierarchical organization, but has been either unwilling or unable to submit any evidence at all that such a national organization actually exists. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. at 582, 591-92 (BIA 1988). On a more practical level, a corporate constitution so grossly inaccurate in its description of the scope and structure of the corporation is, to say the least, of deeply questionable value as an instrument of corporate governance.

Documents included in this new submission repeat, more than once, the claim that the petitioner "has operated as an affiliate of the [redacted] which contradicts the constitution's repeated references to the [redacted]. The petitioner's latest submission does not resolve the AAO's concerns.

Instead, it compounds them. The petitioner has claimed affiliation with two different religious denominations, but produced no credible evidence regarding either denomination.

The petitioner, in its latest submission, completely disregarded the AAO's instruction to submit documentation from [redacted]. The petitioner neither submitted such documentation nor offered any attempt to explain its absence. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. 8 C.F.R. § 103.2(b)(14).

The petitioner's submission in answer to the AAO's October 2010 notice is substantial in size, but not in relevant content. The petitioner's essentially unresponsive submission leads us to conclude that its claims of affiliation with the [redacted] are unsubstantiated and lacking in credibility.

For the reasons discussed above, we agree with the director's finding that the petitioner has not sufficiently established the beneficiary's required two years in the petitioner's denomination.

The second and final issue that the director cited in the denial notice concerns the beneficiary's intended compensation. On Form I-129, the petitioner stated that the beneficiary would receive an "[i]nitial salary of $1200.00 per month, plus paid vacation, mileage and medical insurance." The USCIS regulation at 8 C.F.R. § 214.2(r)(11)(i) requires the petitioner to submit verifiable evidence of how the beneficiary will be compensated:

> 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.

The petitioner's initial submission included, on a single page, "Financial Reports" for 2006, 2007 and 2008, containing the following figures:

Year	2006	2007	2008
Balance brought forward	$668.51	$132.24	$11,399.17
Income	29,317.61	61,795.93	56,456.08
Expenses	29,853.88	58,353.45	58,353.45
Saving[s]	[not stated]	7,824.45	2,404.12
Total ending balance	132.24	11,399.17	5,727.78

Elsewhere, the petitioner listed its 2006 expenses in greater detail, indicating that it paid $8,000 in salaries that year. The petitioner did not provide a similar breakdown of its expenses in later years.

In the RFE, the director instructed the petitioner to submit the financial documentation described in the above regulation, and to "explain how you will be able to pay the beneficiary's yearly salary of $14,400.00 plus medical insurance" given the figures in the petitioner's financial reports. In response, counsel stated that the beneficiary "experienced difficulties obtaining certified tax returns for the last 3 years." Counsel requested "an opportunity to further supplement the record by requesting USCIS to extend the time in which to submit documentation." Additional time to respond to a request for evidence or notice of intent to deny may not be granted. 8 C.F.R. § 103.2(b)(8)(iv).

The petitioner submitted materials relating to the beneficiary's claimed 2006-2008 compensation from [redacted], including IRS documents and uncertified copies of tax returns. These documents do not reflect compensation from the petitioning entity. The beneficiary's past compensation by a different church has no relevance to this petitioner's financial status.

In denying the petition, the director observed that the petitioner's claimed end-of-year fund balances for 2006 through 2008 were each lower than the beneficiary's proposed salary of $14,400 per year. The director concluded: "Based on the petitioner's financial records for the last three years, the petitioner will not be able to support the proposed salary offered to the beneficiary."

On appeal, [redacted], president of the petitioning entity, claims that the petitioner's "congregation has pledged a minimum of $1500 monthly in donations to supplement the Church's current savings in order to maintain the [beneficiary's] employment." Given the petitioner's general lack of credibility, as discussed earlier in this decision, we give little weight to the petitioner's claim that its members will donate more money than they have in the past in order to cover the beneficiary's salary. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591. We agree with the director's finding that the petitioner has not submitted sufficient evidence regarding the beneficiary's intended future compensation.

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.