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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

PUBLIC COPY



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Date: **NOV 23 2011** Office: CALIFORNIA SERVICE CENTER

FILE:

IN RE: Petitioner:
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:



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,

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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 withdraw the director's decision and will remand the petition for further action and consideration.

The petitioner is a church. It seeks to extend the beneficiary's status as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as a minister. The director determined that the petitioner had not established that the beneficiary will be employed on a full time basis, that the beneficiary is qualified for the proffered position, and that it has extended a qualifying job offer to the beneficiary.

On appeal, counsel asserts that the petitioner "patently denies any allegations of wrong-doing." Counsel submits a letter and copies of previously submitted 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,
- (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 AAO notes that the director's decision offers a confusing mixture of governing citations. It first cites to the regulation applicable to R-1 nonimmigrant religious worker visas at 8 C.F.R. § 214.2(r). However, beginning on page 3 of the decision, the director cites to the regulation governing immigrant religious worker petitions at 8 C.F.R. § 204.5(m) and an inapplicable regulation at 8 C.F.R. § 204.5(k). Further, the decision references both the current immigrant regulations as well as the regulations that they replaced on November 26, 2008.

The director determined that the petitioner had not established that the beneficiary will work in a full time capacity. However, the regulation at 8 C.F.R. § 214.2(r)(1) provides that to be approved for temporary admission to the United States for the purpose of conducting the activities of a religious worker, an alien must “[b]e coming to the United States to work at least in a part time position (average of at least 20 hours per week).”

According to the job offer submitted with the petition, the duties of the proffered position will entail 44 hours per week, including preaching Sunday services and serving sacraments and Holy Communion (10 hours); teaching catechism and biblical doctrines, water baptism, Holy Communion and weddings (8 hours); establishment of home cell churches and weekly prayer meetings (8 hours); preparing and ministering cross-cultural, multi ethnic literature and church worship music (8 hours); provide chaplaincy services to businesses, discipleship instruction classes, home visits, officiating at weddings, house dedications, christening and funerals (10 hours). The offer indicates that the beneficiary would receive an annual compensation package of \$30,212 including clergy benefits.

In a January 5, 2011 Notice of Intent to Deny (NOID) the petition, the director notified the petitioner that:

[A] reliable source of information indicated that [the petitioner] is selling nonimmigrant and immigrant religious worker visa[s]. In exchange for a fee ranging from \$6,000 to \$8,000, this church fraudulently sponsors predominantly Indian workers to perform full-time religious duties for the church when, in fact they are working illegally at Indian-run businesses throughout the community and paid cash “under the table”.

The director instructed the petitioner to submit, *inter alia*, a list of all employees that had worked for the organization since 2007, a copy of its occupancy permit, certificate of incorporation, lease agreements or mortgage statements, and to:

Provide a detailed description of the work to be done, including the name of the employer, specific job duties, level of responsibility, number of hours per week performing the work duties and the minimum education, training, and experience necessary to do the job.[Emphasis omitted.]

In response, the petitioner submitted a copy of a January 25, 2011 “certificate of existence, non-profit corporation” from the South Carolina Secretary of State indicating that the petitioner has been incorporated in the State of South Carolina since 1992, a copy of a March 9, 2000 lease with an option to purchase for the property located at [REDACTED] (the petitioner’s current mailing address), copies of 2 church programs dated in 2006 and 2008, and a list of 27 immigrant and nonimmigrant petitions that it had filed on behalf of 17 different individuals from 2006 to 2010. The petitioner also submitted a job description for the beneficiary indicating that he would be pastor in charge of the [REDACTED] with the following schedule:

Worship (3 hours daily, 12 hours weekly) to include preaching and teaching the word of god, administering the sacraments, planning worship with other pastors, officiating at special services, and working with the minister of music.

Administration (5 hours daily, 10 hours weekly) to include personal prayer and bible study, overseeing the administration and management of the ministry, supporting and assisting ministers and staff, staff meetings.

Stewardship (2 hours daily, 4 hours weekly) to include working with the stewardship board, assisting the church council and treasurer, overseeing and promoting congregational benevolence and missions.

Outreach (5 hours daily, 10 hours weekly) to include working with the outreach committee, directing the assimilation of new members, encouraging others to carry out their work.

General Pastoral Responsibilities (4 hours daily, 8 hours weekly) to include pastoral care, necessary referrals, chaplaincy services to local businesses, supervising and assisting other branches of the ministry.

The petitioner also submitted a copy of an October 1, 2001¹ letter from the senior pastor of the [REDACTED] in which he certifies that the beneficiary has been conducting worship services at the church's family ministry center between 6:00 and 8:00 on Sunday. The pastor states that the facility is provided to the [REDACTED] free of charge. In an October 27, 2010 letter, the business administrator for the [REDACTED] stated that the organization has been supporting the beneficiary since 2009 with lodging, groceries, gasoline, cash and assistant for his medical needs. The petitioner also submitted a statement denying the allegations of selling religious worker visa opportunities.

In denying the petition, the director stated:

[T]he petitioner did not provide the zoning and business licensing for the organization to operate at the address provided. The petitioner did not provide any literature to show ongoing events and activities for the organization.

The evidence of record indicates the beneficiary teaches and preaches the Word of God in a weekly church service, the church members appear to be attending all other functions and services elsewhere.

It is not clear how the director arrived at the above conclusions. While the NOID instructed the petitioner to submit a certificate of occupancy, which it did not provide, the NOID did not request zoning and business licenses for the petitioner. Further, whether the congregation meets

¹ This date appears to be a typographical error.

at a location outside of the church is not dispositive of whether the beneficiary worked the number of hours indicated in the petition. In denying the petition, the director stated that it could only be confirmed that the beneficiary worked as a minister for the petitioner on a weekly service, and that the petitioner submitted no documentation to verify the beneficiary's other duties. The director concludes that the petitioner has exaggerated the hours of the beneficiary's duties in order to establish it meets federal requirements. However, the director is working under the theory that the petitioner must establish that the beneficiary will work at least 35 hours a week, which is incorrect. The regulation governing R-1 nonimmigrant religious worker visas requires that the petitioner establish only that the beneficiary will work for at least 20 hours per week. The hours and duties listed by the petitioner reasonably account for at least 20 hours per week.

The petitioner has submitted sufficient documentation to establish that the beneficiary will work for at least 20 hours per week. The director's decision that the petitioner has not established that the beneficiary will work in a full time position is therefore withdrawn.

Regarding the beneficiary's previous employment and whether or not he worked for the petitioner for at least 20 hours per week and in the capacity claimed for the previously approved R-1 visa, such issues relate to the application to extend the beneficiary's stay in the United States. For example, the petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, which it filed on April 21, 2008, that the beneficiary would receive a compensation package totaling \$30,212, which included a salary, housing allowance and clergy benefits. However, in its October 27, 2010 letter, the [REDACTED] stated that it had supported the beneficiary since 2009. Additionally, in its January 28, 2011 letter submitted in response to the director's NOID, the petitioner stated that the beneficiary "presently receives non salaried compensation," and that at its request, the [REDACTED] "presently supports" the beneficiary. An application for extension is concurrent with, but separate from, the nonimmigrant petition. The AAO has no jurisdiction over issues involving an extension of stay. 8 C.F.R. § 214.1(c)(5). Such a determination must be made in a separate decision regarding the beneficiary's eligibility for an extension of his authorized stay in the United States.

The director also determined that the petitioner failed to extend a qualifying job offer as it had not established that the beneficiary is qualified for the proffered position.

The regulation at 8 C.F.R. § 214.2(r)(3) defines religious worker as "an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister." The regulation also defines minister as one who "[i]s fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct religious worship and perform other duties usually performed by authorized members of the clergy of that denomination." Finally, the regulation at 8 C.F.R. § 214.2(r)(10) provides:

Evidence relating to the qualifications of a minister. If the alien is a minister, the petitioner must submit the following:

(i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and

(ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological education is accredited by the denomination, or

(iii) For denominations that do not require a prescribed theological education, evidence of:

(A) The denomination's requirements for ordination to minister;

(B) The duties to be performed by virtue of ordination;

(C) The denomination's level of ordination, if any; and

(D) The alien's completion of the denomination's requirements for ordination.

With the petition, the petitioner submitted a copy of a November 7, 1993 certificate indicating that the beneficiary received a Bachelor of Theology degree from the International Bible Academy, which is administered by the petitioning organization, and a December 11, 1994 certificate of ordination granted by the petitioner. The petitioner also submitted a copy of the beneficiary's May 5, 2001 certificate from the [REDACTED]

[REDACTED] reflecting that he received a Bachelor of Science degree, and a May 15, 2005 certificate from the [REDACTED] in Due West, South Carolina, indicating that the beneficiary received a Master of Divinity diploma.

In her NOID, the director instructed the petitioner to:

Provide a detailed explanation as to the requirements for the position offered, and how the beneficiary meets those requirements. Submit the religious denominations or organization's by-laws, manuals, brochures, or guidebooks establishing the requirements for the position. Provide detailed evidence that the beneficiary meets the denominations organization's requirements including the beneficiary's academic degree, transcripts, certificates, etc.

In response, the petitioner stated that to qualify for a religious worker, the individual must have a theological certification, ordination or license recognized by its board and a Bachelor of

Theology degree from the International Bible College “or equivalent from its Affiliates, with special emphasis on Cross-Cultural communications, Comprehensive knowledge of the scriptures, Biblical Counseling and Evangelism.” The petitioner resubmitted copies of the beneficiary’s degrees and ordination certificate. It also submitted a copy of the beneficiary’s transcript from the Erskine Theological Seminary, a copy of a May 22, 2000 certificate of ordination from the India Gospel Fellowship, Inc. in Minneapolis, Minnesota.

In denying the petition, the director stated that “to perform services in a specialty occupation,” the petitioner must establish that the beneficiary holds at least a bachelor’s degree, holds an unrestricted state license or has the education, specialized training, and/or progressive responsible experience that are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation.” The director indicated that the Form I-129 conditioned the beneficiary’s employment on his completion of a Bachelor of Theology degree and that the documentation indicates that the beneficiary “has received the required education.” The director, however, concluded that “the petitioner has failed to provide the Service with documents which would show the beneficiary is acting as a minister in full compliance with both the petitioner’s requirements and the requirements in federal regulation for a specialty occupation such as that of a minister.”

The director’s finding regarding the beneficiary’s qualifications is unclear. The regulation governing nonimmigrant religious worker petitions does not require the petitioner to establish that the beneficiary has any specific degree, only that he is fully trained according to the denomination’s standards. If the petitioner’s denomination requires a specific course of theological education, then the petitioner must submit documentation to establish that the theological education is accredited by the denomination. It is not clear what aspects of the petitioner’s requirements and those of federal regulation are lacking in the petitioner’s evidence. The director appears to be conflating the requirements of 8 C.F.R. § 204.5(k) with the requirements of the regulation 8 C.F.R. § 214.2(r)(10).

Accordingly, on remand, the director should consider whether the petitioner has established that the beneficiary is qualified for the proffered position.

The record further reflects that the petitioner has failed to meet the requirements of the regulation at 8 C.F.R. § 214.2(r)(8), which requires the petitioner to submit a detailed attestation with details regarding the petitioner, the beneficiary, the job offer, and other aspects of the petition.

Additionally, 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 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.

The record does not indicate that the petitioner has satisfactorily completed the onsite inspection. The matter is therefore remanded for the director to provide the petitioner with an opportunity to comply with the provisions of 8 C.F.R. § 214.2(r)(8) and for the director to determine whether an additional compliance review is required in the instant case.

The matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.