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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



D13

Date: **SEP 28 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.

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, initially approved the employment-based nonimmigrant visa petition. On further review, the director determined that the petitioner was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the preference visa petition and her reasons for doing so, and subsequently exercised her discretion to revoke the approval of the petition on January 12, 2011. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Catholic church and school. 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 its director of Latino outreach and education. The director determined that the beneficiary had engaged in unauthorized employment in violation of the terms of his R-1 nonimmigrant religious worker visa.

On appeal, counsel argues that the beneficiary's "activities with [REDACTED] do not fall under the description of 'employment' in 8 C.F.R. § 214.1." Counsel submits a letter and copies of previously submitted documentation in support of the appeal.

The regulation at 8 C.F.R. § 214.2(r)(18) provides that the director may revoke a petition at any time, even after the expiration of the petition, for the following reasons:

1. The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;
2. The statement of facts contained in the petition was not true and correct;
3. The petitioner violated terms and conditions of the approved petition;
4. The petitioner violated requirements of section 101(a)(15)(R) of the Act or paragraph (r) of this section; or
5. The approval of the petition violated paragraph (r) of this section or involved gross error.

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 issue presented is whether the beneficiary engaged in unauthorized employment.

The regulation at 8 C.F.R. § 214.1(e) provides, in pertinent part, “A nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status within the meaning of section 241(a)(1)(C)(i).”

The record reflects that the beneficiary was approved to work for the petitioning organization for the period January 11, 2008 to January 10, 2011. In her NOIR of November 17, 2010, the director advised the petitioner that:

Records show that the beneficiary received from [REDACTED] \$2,880 dollars in 2008 and \$720 in 2009. Because the beneficiary has worked for [REDACTED] without USCIS authorization, the beneficiary has not complied with his visa admission.

In response, the beneficiary stated in a December 16, 2010 affidavit:

In October of 2008, I was approached by a parishioner, who proposed that I partner with a local construction company . . . to teach its management Latin American cultural and religious sensitivity issues and Spanish language classes so that they may better communicate with their employees.

The beneficiary further stated that he did not “suspect that there was anything at all wrong with teaching the classes” until the petitioner received the NOIR. [REDACTED] the executive vice president of corporate development for [REDACTED] stated in a December 16, 2010 affidavit that he coordinated the classes taught by the beneficiary and at no time did the company consider the beneficiary an employee “but instead a consultant providing educational opportunities to our staff.” In a December 17, 2010 affidavit, [REDACTED] pastor of the petitioning organization, attested that the beneficiary “did not believe that he was violating the terms of his R status” when he taught the classes.

In denying the petition, the director stated that the petitioner had not provided specific details about the beneficiary’s outside employment, such as the starting and ending dates, the location of the classes, class enrollment, and student information.” The director determined that the beneficiary engaged in employment without prior approval of the U.S. Citizenship and Immigration Services (USCIS).

Counsel states, without providing any supporting argument, that the beneficiary’s work with [REDACTED] does not constitute employment as that term is described in 8 C.F.R. § 214.1. She asserts that [REDACTED] did not consider the beneficiary an employee and the beneficiary did not consider himself an employee of the company. Counsel further states that the beneficiary “fulfilled the duties as outlined in his approved R-1 petition.” Counsel does not explain how either of these events negates the beneficiary’s work outside the approved terms of his petition. The regulation at 8 C.F.R. § 214.1(e) does not distinguish

between self-employment and employment as an employee. Additionally, neither the regulation at 8 C.F.R. § 214.1(e) nor 8 C.F.R. § 214.2(r)(18) provide that intent is a factor in determining whether the beneficiary has violated the terms of his approved petition.

Counsel argues that as the beneficiary “received less than \$3,000 for his activities with [REDACTED] [REDACTED]” believed that his activities were permitted under the terms of his R-1 visa, and the amount he earned was “negligible,” he and his family should not “be forced to leave the United States.” Again, however, the regulations do not provide that a violation of the terms of an approved R-1 visa is not disqualifying if it is “negligible.”

The record establishes that the beneficiary engaged in unauthorized employment and therefore violated the terms and conditions of his R-1 nonimmigrant religious worker petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.