



U.S. Citizenship
and Immigration
Services

813

Date: **DEC 18 2012** Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The director granted a subsequent motion to reopen and reconsider and again denied the 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 classification of 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 director determined that the petitioner had not successfully completed a compliance review verification and thus had not established that it is operating as a bona fide nonprofit religious organization.

The petitioner asserts on appeal that the director's decision "is based in part on irrelevant considerations." The petitioner submits a letter and 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,
- (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 is whether the petitioner has successfully completed a compliance review and therefore established that operates as a bona fide nonprofit tax-exempt religious organization.

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 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 the Form I-129, Petition for a Nonimmigrant Worker, filed on August 24, 2009, the petitioner listed its address in Part 1, question 2 as [REDACTED]. In Part 3, question 2, the petitioner stated that the beneficiary's address was [REDACTED], and in Part 5, question 5, identified that address as the location where she would work. In the certification at Section 2 of the Form I-129 Supplement Q/R, the petitioner stated that its address was [REDACTED]. At question 5 of Section 2 of the Form I-129 Supplement Q/R, the petitioner stated:

[The beneficiary] has been conducting and will be conducting Sunday worship service at [REDACTED]. She will also conduct every Wednesday Bible study and every Friday prayer meeting at [REDACTED].

On its August 29, 2009 letterhead, the petitioner identified its "church premises" as [REDACTED] and its "church office" as [REDACTED]. In an October 8, 2009 letter, the petitioner notified the director of the petitioner's change of name and address. The letter stated that effective October 1, 2009, the petitioner "had moved to a new location at [REDACTED] and that "[a]ll church programs, events and services are now held at the new church address." The petitioner submitted a copy of a one-year lease for the premises, effective from October 1, 2009 to September 30, 2010.

The director denied the petition on other grounds on May 27, 2010 but granted the petitioner's motion to reopen and reconsider on December 27, 2011. On November 7, 2011, an immigration officer (IO) visited the petitioner's premises at 24594 Sunnymead Boulevard for the purpose of verifying the petitioner's claims. The IO found the building vacant, and was advised by the leasing officer that the petitioning organization had moved out of the location at the end of its lease agreement and had disbanded.

The IO then visited the beneficiary's address at [REDACTED] no one answered the door. The IO stated that neighbors reported no religious activity at the location and that the beneficiary and her husband no longer lived at the address. The IO visited counsel, who is also the beneficiary's husband, and the co-founder and co-pastor of the petitioning organization, at his office. The IO reported that counsel stated the "church is closed down; the church has no money and could not afford to pay its bills. He stated they are still conducting church services at [their] home which is [REDACTED] [and that] there are 7 to 8 members."

In a January 6, 2012 Notice of Intent to Deny (NOID) the petition, the director informed the petitioner of the results of the IO's investigation. The director also informed the petitioner that according to a California Secretary of State database, "the petitioning organization's status was suspended as of 10/1/2010." In its February 4, 2012 response, the petitioner, though Toyin Emeseh, its publicity director, denied that it had disbanded and submitted statements from the leasing agent and counsel in which they refuted the statements allegedly made to the IO. The petitioner also stated:

The vacant commercial building used by the organization for church activities was changed, temporarily from [REDACTED] before a new, conducive [sic] and cost effective location was found. [The petitioner] is functioning and now meets at [REDACTED]

....

The petitioner also stated that the beneficiary and her husband "had relocated to the home they had acquired at [REDACTED] and had "began to live at the Ibex address as far back as April 2011." The petitioner alleged that "church activity continue [sic] at the resident until a new and conducive location was found in [REDACTED]

The petitioner provided a copy of the April 30, 2011 grant deed to the beneficiary on the [REDACTED] and a copy of a January 26, 2012 lease agreement with [REDACTED] for conference room 236 from 5:00 pm to 7:00 pm "every Sunday" for the period January 29, 2012 to December 30, 2012. The petitioner submitted copies of flyers for several church activities during the year 2012.

Regarding its suspension by the State of California, the petitioner stated:

The California Secretary of State's databases are at [sic] the process activating [sic] the organization status. The church has filed, mailed since January and submitted by hand an Exemption request but it yet to be update in their website or system. . . . The processing takes time but there is no doubt that every appropriate step has been taken.

The petitioner submitted a copy of a January 26, 2012 "Submission of Exemption Request" that it submitted to the Franchise Tax Board of Los Angeles, California on February 6, 2012.

In denying the petition, the director stated:

The documentation submitted collectively analyzed appears to be a rush at [sic] the petitioner's attempt to portray ongoing religious activities. Evidence to prove that the petitioning organization is in fact actively functioning is nonexistent but for pieces of paper printed by a computer and advertising ministerial functions. Furthermore, the frequent moves of the Organization, the absence of documentation to establish the Organization's financial viability; the inconsistent statements made by representatives of the Organization and the suspension of the Church's business status and operations all bring doubt to the veracity of the petitioner's claims.

On appeal, the petitioner asserts that the director's denial of the petition is based "in part" on "irrelevant considerations." The petitioner states that the petitioner was denied "in part because the beneficiary was out of status" and that this is "only relevant to the issue of change of status but not adjudication of a petition." The director, however, did not base any part of her decision on the beneficiary's failure to maintain her immigration status, and the petitioner's argument on this issue is not relevant. The petitioner then asserts:

The inspection team went to [REDACTED] to conduct a site inspection even though the petition did not list those addresses as places of worship. The petitioner used a room as an office in an office suite rented by another entity at [REDACTED] when the petition was submitted. The Inspection team said that they came to the suite twice and the door was locked and there was no sign of the church on the door. There is not a single rule or statute that required a church office to have sign on the door especially where, as here, the church was using a room in the office suite rented by one of the pastors of the church for secular business. Religious activities are never conducted in the church office. They were conducted at suite M. of the commercial building located at [REDACTED] for two years. A copy of the church written lease was submitted to the USCIS before the petition was denied. The name of the church was conspicuously displaced [sic] outside the suite [REDACTED] cannot reasonably dispute that church activities were held there on a regular basis for two years. The church decided to relocate its weekly religious activities to different venues because of the economic recession that hit. It was an error to deny the petition because the church now meets at different places or because the church is small or because the beneficiary is out of status.

The petitioner's argument is without merit. First, the director did not deny the petition because the petitioner did not advertise its presence by posting church signs at any of its locations. The

petitioner's August 20, 2009 letter submitted in support of the petition indicated in its letterhead that the church office was located at [REDACTED]. The petitioner did not qualify its use at this location in any way by stating that it shared office space with another entity or that its office space was donated. Thus, when the IO visited the petitioner's premises to verify its claims, he could have reasonably expected some evidence of the petitioner's location at its stated address. Without any other information, the lack of any indication of the existence of the church at that location, such as a sign pointing to a church office, was prima facie evidence to the IO that the organization did not exist as claimed.

The petitioner's allegation that it did not list [REDACTED] as a place of worship is equally without substance. The petitioner identified the address as one at which the beneficiary would work, and stated that she would hold bible studies and prayer meetings at that address. With the petition, the petitioner submitted a copy of a December 29, 2008 contract that it signed with the Holiday Inn Express at [REDACTED] for the lease of a meeting room for "Every Sunday 2009." The petitioner submitted no documentation to establish that it ever utilized the room for church services and no evidence that it held religious services at "suite M. of the commercial building located at [REDACTED]." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

As evidence of its religious activities, the petitioner submitted several documents dated in 2012, more than two years after the filing date of the petition. It has submitted no documentation of any religious activities that it conducted prior to that date, and submitted no documentation such as phone bills or bank statements, or utility bills and lease payments on the property it rented at [REDACTED]. Furthermore, the petitioner failed to advise USCIS of its change of address from [REDACTED] and it is not clear when the petitioner actually vacated the former premises.

On appeal, the petitioner submits a copy of a May 22, 2012 letter from the State of California Franchise Tax Board indicating that the petitioner has been granted tax-exempt status by the State of California. The letter indicates that the effective date of the exemption is September 29, 2006, the same date of the tax exemption letter from the Internal Revenue Service (IRS). The petitioner stated that "As a result of that determination, the status of the petitioner corporation has been changed from that of 'suspended' to 'active.'" The petitioner submitted a page retrieved from the website of the California Secretary of State indicating that it is in an active status with the state.

These documents, however, do not establish that the petitioner actually operated as a church as claimed in its petition, and the petitioner submitted no documentation that it was operating in that capacity at the time of the visit by the IO. Accordingly, the petitioner has failed to provide sufficient documentation to establish that it existed as claimed in its petition at the time the IO visited its premises on November 7, 2011 or at any time prior to that.

Additionally, the petitioner has failed to establish how it will compensate the beneficiary.

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:

- (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 documentation, such as IRS Form W-2 [Wage and Tax Statement] 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 indicated on the Form I-129, Petition for Nonimmigrant Worker, that it would pay the beneficiary a salary of \$16,380 per year and provide her with a vehicle for her use. The petitioner indicated that it had an annual gross income of \$35,000 and a net annual income of \$20,153.40. The petitioner submitted what it indicated are paystubs reflecting that it paid the beneficiary \$8,835 from January through July 2009. The petitioner did not submit evidence such as checks processed by the bank to establish that the beneficiary actually received these payments. The petitioner also failed to provide IRS documentation or explain why such evidence was unavailable, as required by the above-cited regulation, and failed to submit any other verifiable documentation, such as audited financial statements or bank statements to establish how it would 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 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.



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ORDER: The appeal is dismissed.