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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

Date: **APR 11 2013**

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

Beneficiary: [REDACTED]

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

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,

A handwritten signature in cursive script that reads "Ron Rosenberg".

Ron Rosenberg

Acting 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 beneficiary was not eligible for the visa classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) approval of the petition and her reasons for doing so, and subsequently exercised her discretion to revoke approval of the petition on May 16, 2012. 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 seeks classification of the beneficiary as a nonimmigrant religious worker under section 101(a)(15)(R) of the Act, 8 U.S.C. § 1101(a)(15)(R), to perform services as a Buddhism preacher. Based on the results of compliance reviews, the director determined that the beneficiary was not qualified for the proffered position.

On appeal, counsel asserts that the director failed to provide the petitioner an opportunity to rebut the findings of the compliance reviews and that the director's decision to revoke approval of the petition "is arbitrary and capricious, without any legal basis and merit." Counsel submits a brief and copies of previously submitted documentation in support of the appeal.

The U.S. Citizenship and Immigration Services (USCIS) 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)(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).

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.

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 at 8 C.F.R. § 214.2(r)(10) requires that, if the alien is a minister, the petitioner must submit:

- (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 allowed to be performed by virtue of ordination;
 - (C) The denomination's levels of ordination, if any, and
 - (D) The alien's completion of the denomination's requirements for ordination.

In its September 2, 2011 letter submitted in support of the petition, the petitioner stated:

[The beneficiary] started her religious education with the [REDACTED] since Feb, 2005. For the purpose of pursuing a higher level of Buddhism Dharma, she went to Hong Kong for training in Buddhism Dharma Level One through Level Three and Buddhism Preacher Training Courses from January 2006 to February 2007. [She] was ordained by the [REDACTED] [REDACTED] as a tonsured Buddhism Preacher on February 13, 2007, after her completion of required religious training and according to her moral character, soundness of doctrine and administrative capability for the work of the temple. Since then [the beneficiary] has continuously ministered in the Buddhism Temples in both Hong Kong and overseas, and has devoted herself to the teaching, studying and preaching of the traditional Buddhism dharma and sutras.

The petitioner submitted a copy of the beneficiary's February 13, 2007 certificate of ordination and an August 2, 2011 letter from the [REDACTED] of Hong Kong certifying that:

[The beneficiary] has been responsible for: conducting worship services; directing, organizing and planning programs designed to preach Buddhism dharma and sutras, and Buddhism Yoga; counseling Buddhist members of the Temple with personal and spiritual problems; organizing and conducting religious discussions with temple members; holding and sponsoring meetings, lectures, seminars, conferences and forums on the teachings of Buddhism faith, and conducting research and preparing and translating papers on religious topics and themes for presentation to the temple members and the general public, and supervising the temple operations and affiliated committees.

The director initially approved the petition on January 18, 2012. Following a May 31, 2011 verification review of the petitioner's premises in connection with an immigrant religious worker petition filed on behalf of another beneficiary, immigration officers reviewed all of the petitions filed by the petitioner, including the instant one. The review caused USCIS to question the beneficiary's qualifications for the proffered position.

In her March 26, 2012 NOIR, the director advised the petitioner:

[A] review of the U.S. Department of State Consular Consolidated Database indicates that the beneficiary applied for and was issued a B1/B2 visa on September 14, 2006. Information obtained from that database contradicts information contained in the petition. According to the U.S. Department of State [the beneficiary's] current occupation was listed as a "Banker" and her employment was shown to be with the [REDACTED] Hong Kong Branch."

The information establishes that [the beneficiary] was working as a banker during the period it is claimed she was training to be ordained. Therefore it appears the

petitioner/beneficiary has misrepresented material facts and doubt is cast upon the validity of the ordination certificate. Fabrication of the certificate would indicate [the beneficiary] is not a qualified religious worker.

In addition, the petitioner submitted a copy of the beneficiary's B1/B2 visa, issued September 14, 2006, that depicts a photograph of the beneficiary with long hair, a condition typically not associated with nuns/monks of the Buddhist religion.

It should be noted further, the petitioner filed another non-immigrant petition on behalf of [redacted]. All three beneficiaries were ordained by the [redacted]. Of particular note is that fact that [the beneficiary] and [redacted] were ordained on the same day in February as indicated by the ordination certificates, however the signatures on the certificate do not match. [redacted] visa application also indicated secular employment during the claimed time of training.

In an April 26, 2012 letter submitted in response to the NOIR, the petitioner's presiding officer, [redacted] stated that the beneficiary applied for B1/B2 visitor's visa in September 2006 and that her ten-year visa was still valid. She further stated:

[The beneficiary] did not file any updates about her occupation/work experience with the Department of State, nor was she aware that she is ever required to do so. Therefore, the purported current record of the Department of State about her occupation, in truth, is not current at all; only reflect her occupation status at the time when she applied for her B1/B2 visa, i.e. September 2006.

Regarding the beneficiary's training, [redacted] stated:

Please be advised that it is a general practice of our Temple, as all religions in the world, to hold the religious preaching and teachings during the evening hours, weekends and public holidays to accommodate the working hours of our followers and the public. It is also the case for pastoral training. During the period of training and prior to graduation and ordination, the attendees are encouraged to continue their work schedule so that they could provide financial support to themselves and their families. Only individuals, after being ordained as a Buddhist Preacher, became qualified to perform the traditional religious function of preaching and teaching of our religion, and who by their own volition chose the Buddhism Calling as their life path, would be accepted to serve full-time in the Temple.

[The beneficiary] did not become a devoted full-time Buddhist Preacher, until after she was ordained in February 13, 2007. It was not contradictory that she maintained her employment with the [redacted] Hong Kong Branch when she was pursuing the pastoral training with the [redacted]

Buddhism Research Institute, because she attended her training mostly during the night hours, and weekends and her vacation times. She resigned from her employment at [REDACTED] Hong Kong Branch on April 10, 2007 and became a full time Buddhist Preacher for our temple since . . .

[REDACTED] also stated:

The photo as shown on the B1/B2 visa was the photo taken prior to [the beneficiary's] ordination to become a Buddhist Preacher on February 13, 2007. It is not the practice of our religion to require the followers, or a trainee to shave the head. [The beneficiary] shaved her head after her ordination and after she became a full time Preacher in February 2007.

The petitioner provided a copy of an April 4, 2007 letter from [REDACTED] Hong Kong Branch, signed by the general manager, [REDACTED] who stated that the beneficiary resigned her position with the bank effective as of April 10, 2007. The petitioner also submitted a copy of what it states are the beneficiary's January 10, 2007 "converted student certificate" and January 27, 2007 "converted disciples certificate," each carrying a picture of the beneficiary with a full head of hair. However, the translations accompanying these documents do not comply with the provisions of 8 C.F.R. § 103.2(b)(3) in that the translator is not identified, did not certify that the translations were complete and accurate, and did not certify that he or she is competent to translate from Chinese into English. The petitioner also provided a picture that it states is of the beneficiary, after she graduated, with "her fellow graduates and ordained Preachers" in June 2007 with a shaved head.

The petitioner stated that the conclusion that the signatures on the two ordination certificates are different is "completely false and is without any merit." The petitioner additionally stated:

The signatures are from the same person, our [REDACTED] with his official signature stamp. In real life, it is simply impossible for an individual to sign his or her name exactly the same every time. This is particularly true for writing Chinese characters. It is completely arbitrary and capricious for the Service to allege that "the signatures do not match" and insinuate some type of fraud, without any scientific proof.

The petitioner submitted an April 26, 2012 sworn statement from [REDACTED] who certified that he signed the ordination certificates for both the beneficiary of this petition and [REDACTED]. The statement was notarized by a notary public in New York.

In revoking approval of the petition, the director appears to accept that the beneficiary would not be required to shave her head until after ordination but determined that the petitioner's evidence did not address the issue of the beneficiary's work while in training to be a Buddhist preacher. The director also stated:

[I]t can be concluded the petitioner is operating as a legitimate bona fide religious organization. However, it was the result of further follow-up investigations conducted by another officer authorized to make the final determination, and the result of that investigation and further checks with other agencies, i.e., the U.S. Department of State, that USCIS determined that the compliance review failed verification.

On appeal, counsel states that the “purported further follow-up investigation by another officer and his or her findings that formed part of the basis of the CIS revocation decision was never made known to the petitioner” and asserts that the petitioner “was never given an opportunity to rebuttal [sic] the obvious negative evidence, used by the USCIS in rendering the herein decision of revocation.” The AAO notes that the “follow-up investigations” cited by the Director did not include any additional site visit, but rather the review of records and evidence discussed in the NOIR. A review of the record reveals that the petitioner was put on notice of all of the negative evidence relevant to the instant petition and had sufficient time and opportunity to submit evidence in rebuttal.

Counsel also asserts that the director “rejected” the petitioner’s evidence submitted in response to the NOIR, “impermissibly discarded the evidential value of the authorized statement letter by [redacted] and “arbitrarily and capriciously dismissed all the supporting documentary evidence submitted by the petitioner in its rebuttal, and in corroborating various points made by [redacted] Counsel states:

[redacted] submitted an Affidavit by [redacted] that was signed by the master himself, before a licensed notary public in the State of New York. The affidavit confirms not only that the signatures on both ordination certificates are his, but also that both signatures are visibly identical to the signature on the Affidavit, which was acknowledged, confirmed by a licensed notary public in New York. It [is] noted that as the master of the petitioner’s religious, [redacted] serves temple facilities of the petitioner both in Hong Kong and the United States, and travels frequently between Hong Kong and U.S.

The AAO will withdraw the director’s decision. The record does not contain a copy of the ordination certificate of [redacted] Thus, any comparison of the signatures on the beneficiary’s ordination certificate and that of [redacted] is without an evidentiary basis. Additionally, [redacted] attests that he signed both certificates, and an untutored comparison of his signature on the beneficiary’s certificate and the affidavit indicate they are the same. The director questioned the validity of the affidavit, stating that [redacted] was in Hong Kong at the time the affidavit was signed. However, the record contains no evidence to support the director’s statement.

The director determined that the petitioner has not submitted sufficient documentation to establish that the beneficiary was authorized to work while she was in training to be a Buddhist preacher. This issue is irrelevant if the ordination certificate is valid. The petitioner does not have

to establish that the beneficiary was authorized to work while she trained. The regulation requires only that the petitioner establish that the beneficiary is qualified "according to the denomination's standards." The regulation at 8 C.F.R. § 214.2(r)(10) sets forth specific documentation the petitioner must submit if the proffered position is that of a minister. The petitioner indicates that training is necessary to perform the duties of a Buddhist preacher. The petitioner, however, submitted none of the documentation required by the regulation at 8 C.F.R. § 214.2(r)(10)(ii) or 8 C.F.R. § 214.2(r)(10)(iii). The record does not reflect that the director has ever inquired into this matter. Accordingly, the matter is remanded for the director to inquire into the specifics of the beneficiary's training in accordance with the regulation cited immediately above.

The director determined that the petitioner "is operating as a legitimate bona fide religious organization." While an immigration officer determined that, based on the results of an onsite inspection, the petitioner had not successfully completed a compliance review, the determination was based on findings that the beneficiaries of three petitions, including this one, were not qualified for the positions offered. On remand, the director shall determine if another onsite verification or compliance review is appropriate for the instant petition. The director may wish to obtain the original document certifying the beneficiary's ordainment.

The petitioner has also 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 [Internal Revenue Service] 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 in its letter of September 2, 2011 that it would compensate the beneficiary in the form of free lodging, food and travel allowances. The petitioner submitted no documentation explaining how it will provide this non-salaried compensation to the beneficiary. The director should also address this issue on remand.

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.