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FILE: WAC 02 226 53642 Office: CALIFORNIA SERVICE CENTER Date: **AUG 01 2006**

IN RE: Petitioner:
Beneficiary



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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The petitioner filed an appeal, which the director treated as a motion to reopen and reconsider. The director again denied the petition, and the petitioner filed a second appeal. The director has certified the matter to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed.

The petitioner describes itself as an interdenominational religious organization. It is part of Kamlim Korean Church in Perris, California. It seeks to classify the beneficiary as a nonimmigrant 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), to perform services as a missionary. The director determined that the petitioner had not established that the beneficiary had the requisite two years of membership in the petitioner's religious denomination immediately preceding the filing date of the petition.

Section 101(a)(15)(R)(1) of the Act creates a nonimmigrant classification for:

an alien, and the spouse and children of the alien if accompanying or following to join the 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).

Those subclauses are as follows:

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, 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) before October 1, 2008, 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.

8 C.F.R. § 214.2(r)(3)(ii)(B) states that the petition must include a letter from the intending employer, indicating that, immediately prior to the application for the nonimmigrant visa or application for admission to the United States, the alien has the required two (2) years of membership in the religious denomination. This two-year period ended on July 5, 2002, the date the petitioner filed the petition.

Religious denomination means a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, and religious congregations, or comparable indicia of a bona fide religious denomination. For the purposes of this definition, an inter-denominational religious organization which is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 will be treated as a religious denomination. 8 C.F.R. § 214.2(r)(2).

The petitioner indicates, on the I-129 petition form, that the beneficiary “has served as a full-time missionary in Argentina for the Korean Missionary Foundation of Love [from] 1995 to 2002,” and “has attended the Kamlim Korean Church since his arrival in the USA in April of 2002 to present.” In a separate statement accompanying the initial filing, senior pastor [REDACTED] states: “We . . . are the same religious denomination as the Kamlim Korean Church, the Kamlim Mountain Retreat Center of Kyung Nam, Korea, and the Kamlim Mission Center of Pusan, Korea.” Pastor [REDACTED] does not indicate that the petitioner shares a religious denomination with the [REDACTED]

[REDACTED] president of the [REDACTED] verifies that the beneficiary served as a missionary for that organization from April 1995 to March 2002, but this brief statement offers no information about that foundation’s denominational affiliation.

On May 5, 2003, the director instructed the petitioner to submit evidence that the beneficiary meets the two-year denominational membership requirement. The director specifically asked: “What do you consider your religious denomination? Provide evidence to establish how [REDACTED] of Love is affiliated with the religious denomination.” In response to this notice, Pastor [REDACTED] states that the petitioning organization “is an interdenominational Christian religious organization . . . open to all Christians and those who believe in the Lord.” Pastor [REDACTED] mentions the beneficiary’s work for the [REDACTED] and states: “We deem all of this service within our interdenominational Christian denomination.” Pastor [REDACTED] assertion that the petitioner accepts the beneficiary’s experience with the [REDACTED] is not evidence that the foundation and the petitioner share a common denomination. Clearly the petitioner considers the beneficiary qualified for the position, or else the petitioner would not have filed the petition in the first place. At issue, rather, is whether there exists a legally qualifying denominational affiliation between the petitioner and the [REDACTED]

Pastor [REDACTED] states: “A certification from the above foundation is attached,” but the response to the director’s notice includes nothing from the foundation. It appears that the reference to an “attached” “certification” was simply copied from Pastor [REDACTED] earlier letter, which had accompanied the initial filing of the petition. Large sections of the two letters are identical, indicating that Pastor [REDACTED] simply modified the older letter to create the newer one.

The petitioner submits copies of Kamlim Korean Church’s by-laws and California Form 3500 Exemption Application. Neither of these documents contains any mention of the [REDACTED]

The director denied the petition on August 18, 2003, citing several grounds including the lack of evidence that the beneficiary belonged to the petitioner’s denomination throughout the July 2000-July 2002 qualifying

period. The petitioner, through counsel, filed an appeal of the director's decision, although the regulations do not provide any mechanism by which to appeal denial of an R-1 petition.

Counsel argues: "whether or not the beneficiary holds membership with the same religious denomination as the petitioning organization is irrelevant as long as it is 'an inter-denominational religious organization.'" Counsel offers no support for this argument. 8 C.F.R. § 214.2(r)(1) states, in pertinent part:

an alien who, for at least the two (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, may be admitted temporarily to the United States . . . solely to carry on the vocation of a minister of *the* religious denomination; to work for *the* religious organization . . . in a professional capacity; or to work for *the* organization, or a bona fide organization which is affiliated with *the* religious denomination.

(Emphasis added.) Similarly, 8 C.F.R. § 214.2(r)(3)(ii)(B) requires the petitioner to show that "the alien has the required two (2) years of membership in *the* religious denomination." The shift from the indefinite article "a" to the definite article "the" indicates that the nonprofit religious organization must belong to the same religious denomination to which the alien has belonged for the previous two years. We reject counsel's apparent assertion that, so long as the beneficiary was a member of *some* denomination for two years, it does not matter *which* denomination. We also do not find that all interdenominational organizations are interchangeable, such that membership in any one interdenominational organization counts as membership in any other interdenominational organization.

Counsel goes on to claim that "the beneficiary has belonged to the same religious denomination, and interdenominational religious organization." Counsel states:

[The beneficiary] is a life-long Christian who has served as a missionary in the Christian outreach programs in Argentina as part of the [REDACTED] prior to his entry into the United States. . . . Upon [the beneficiary's] arrival in April 2002, he became active in [the petitioning organization]. Both Kamlim Christian centers are of the same interdenominational Christian denomination.

The Petitioner's and [the beneficiary's] foreign church, mission and center are both Kamlim Christian denominations and qualify as affiliated denominations.

The record is entirely devoid of evidence to show that the KMFL is affiliated in any way with the petitioning organization. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel claims that the letter from the petitioner's senior pastor demonstrates the affiliation between the [REDACTED] and the petitioning entity. That letter, however, never indicates that such an affiliation exists. The

senior pastor states only that the petitioner recognizes the beneficiary's experience with the [REDACTED], not that the petitioner is affiliated with the [REDACTED] in any way.

Counsel is correct that, pursuant to 8 C.F.R. § 214.2(r)(2), an interdenominational organization qualifies as a religious denomination for the purposes of this proceeding, but the record contains no documentary evidence to show that the [REDACTED] and the petitioning entity are part of the same organization. Certainly, the petitioner has never named any interdenominational religious organization that encompasses both the [REDACTED] and the petitioning entity.

Counsel calls the director's decision "a serious constitutional intrusion" on "the free exercise of religion" "under the First Amendment to the United States Constitution." Citizenship and Immigration Services (CIS) lacks jurisdiction to decide constitutional issues. Nevertheless, we note that, while the determination of an individual's status within a religious organization is not under the purview of CIS, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978). Approval of a nonimmigrant visa is not an internal religious matter protected by the free exercise clause, nor is it a constitutional right. Rather, it is a secular benefit for which the petitioner must establish eligibility.

Because there exists no regulation that allows a petitioner to appeal the denial of an R-1 petition, the director treated the petitioner's appeal as a motion to reopen and reconsider. On February 4, 2004, the director reopened the proceeding and again denied the petition. In this second decision, the director dropped some of the grounds cited in the August 2003 denial notice, leaving, as the sole basis for denial, the issue of the beneficiary's past membership in the petitioner's religious denomination. The director acknowledged the claim that the [REDACTED] and the petitioner belong to the same denomination or the same interdenominational organization, but the director found that "[p]roper affiliation between the organization[s] was not substantiated."

On March 3, 2004, the petitioner filed a second appeal through counsel. Counsel protests: "The Director erroneously considered this matter as only a motion. . . . The Director is required to forward this matter to the Office of Administrative Appeals." As noted above, the regulations do not permit the filing of an appeal when an R-1 petition is denied. By treating the first appeal as a motion by default, the director respected rather than limited the petitioner's recourse to due process. Counsel's arguments are now in the hands of the AAO not because the petitioner has filed an appeal, but because the director opted, as a matter of discretion, to forward the matter to the AAO on certification pursuant to 8 C.F.R. § 103.4(a)(5).

The director certified the matter to the AAO on April 15, 2004, and allowed the petitioner 30 days in which to supplement the record. The petitioner supplemented the record during this allotted period, and we shall consider this latest submission here.

We note that the notice of certification includes a copy of the director's August 18, 2003 denial notice. That decision, however, had already been reopened and superseded by a newer decision, dated February 4, 2004.

Therefore, in this matter the AAO will consider the more recent 2004 decision, rather than the 2003 decision, to be the decision that has been certified for review.

Some of the materials submitted by the petitioner concern tax issues raised in the 2003 decision, but not in the more recent 2004 decision. The AAO considers the tax issues to have been resolved in the petitioner's favor; there shall be no further discussion, here, of those issues.

Counsel asserts that the petitioner "qualifies as an interdenominational Christian organization, and hence it is not solely one single denomination." We must repeat, here, that 8 C.F.R. § 214.2(r)(2) states that "an interdenominational religious organization . . . will be treated as a religious denomination."

Calling an organization "interdenominational" does not mean that the organization can absorb individuals from a broad range of distinct denominations, and then assert that each of those individuals meets the two-year denominational membership requirement. If the petitioner is, for immigration purposes, its own denomination, then the petitioner must show that the beneficiary has been a member of the petitioning organization throughout the two years immediately preceding the petition's filing date. An alien who moves from one interdenominational organization to another interdenominational organization has not remained in "the denomination" for two years – rather, the alien has moved from one "denomination" to another.

The petitioner provides additional documentation from, and information about, various sub-entities within the petitioning organization in California, such as "Rainbow Tres Dias" and the "Heir-Bones" youth mission movement. The petitioner provides nothing at all from, or about, the [REDACTED]. The petitioner has never produced any documentary evidence to show that there exists one single interdenominational religious organization to which both the petitioner and the [REDACTED] both belong. Instead, counsel has offered various arguments about the definition of "denomination" which are of little use here because the regulation contains its own controlling definition of that term.

Because the petitioner has not shown that it falls within the same interdenominational religious organization as the [REDACTED], or that the beneficiary was a member of the petitioning organization between July 2000 and March 2002, the petitioner has failed to show that the beneficiary met the two-year denominational membership requirement as of the petition's July 2002 filing date. We conclude, therefore, that the director acted properly in denying the 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 director's decision of April 14, 2004 is affirmed. The petition is denied.