



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

C 1



FILE: WAC 08 072 50802 Office: CALIFORNIA SERVICE CENTER Date: NOV 25 2009

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:



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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the application for change of status. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will reject the appeal and remand the petition for a decision on its merits.

The U.S. Citizenship and Immigration Services regulation at 8 C.F.R. § 248.3(a) states that an employer seeking the services of an alien as an R-1 nonimmigrant religious worker, must, where the alien is already in the U.S. and does not currently hold such status, apply for a change of status on Form I-129. Thus, the petition form is also the application form for change of status, but the petition and the application are separate proceedings.

Under the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 248.3(g), there is no appeal from the denial of an application for change of status. The director, in the December 4, 2008 notice of decision, correctly informed the petitioner that the decision could not be appealed. Because 8 C.F.R. § 248.3(g) does not allow appeal of a denial of a change of status application, we cannot accept, and therefore must reject, the appeal.

The director, in the denial notice, did not address the merits of the R-1 nonimmigrant petition. The director found only that the beneficiary is not eligible for change of status. More specifically, the director found that the beneficiary had failed to maintain his previous B-2 status. This issue is not a valid basis for denying a petition for R-1 classification under 8 C.F.R. § 214.2(r); it is only a ground for denying the concurrent application for change of status under 8 C.F.R. § 248.

Turning to the separate matter of the petition, the director did not issue any decision regarding the merits of the petitioner's claim that the beneficiary qualifies for R-1 classification. As we have already observed, the allegation that the beneficiary violated his B-2 status would affect his eligibility for change of status, but it does not directly address the merits of the underlying R-1 petition. Because an alien can obtain a nonimmigrant visa without an approved application for change of status (by traveling overseas and receiving the visa at a consulate), the director cannot simply assert that the beneficiary is ineligible for change of status and leave it at that.

The director must issue a decision on the merits of the R-1 petition. We hereby remand the matter to the director for that purpose.

ORDER: The appeal of the denial of change of status is rejected. The matter is remanded to the director for the purpose of a decision on the merits of the R-1 petition. If the director's R-1 decision is unfavorable to the petitioner, the director must certify that decision to the Administrative Appeals Office for review.