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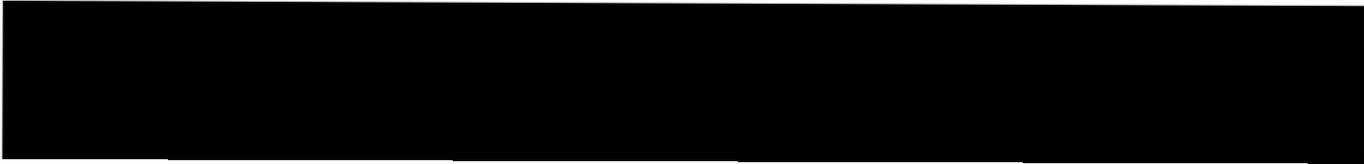
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

D13



FILE: WAC 08 121 51170 Office: CALIFORNIA SERVICE CENTER Date: **APR 14 2010**

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
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further action and consideration.

The petitioner is a regional conference of the United Methodist Church (UMC). It seeks to extend the beneficiary's status as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act, to perform services as a minister. The director determined that the petitioner had not established the existence of a *bona fide* job offer.

On appeal, the petitioner submits arguments from counsel and several exhibits, including witness letters. Many of the witnesses attest to the beneficiary's character without addressing the specific points at issue in this proceeding.

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.

U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. § 214.2(r)(1) state that, to be approved for temporary admission to the United States, or extension and maintenance of status, for the purpose of conducting the activities of a religious worker for a period not to exceed five years, an alien must:

- (i) Be a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least two years immediately preceding the time of application for admission;
- (ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);
- (iii) Be coming solely as a minister or to perform a religious vocation or occupation as defined in paragraph (r)(3) of this section (in either a professional or nonprofessional capacity);
- (iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and
- (v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

The petitioner filed the petition on March 24, 2008. On Part 2 of the Form I-129 petition, the petitioner indicated that it seeks “[c]ontinuation of previously approved employment without change with the same employer.” On Part 5 of the same form, the petitioner indicated that the beneficiary will work at Watsonville (California) UMC.

In a letter accompanying the petition, Rev. [REDACTED], then the petitioner’s San Jose District Superintendent, stated: “We wish to continue to employ [the beneficiary] in her duties as Pastor of the Methodist Soledad United Methodist Church (Soledad, California).” Documentation of the beneficiary’s prior R-1 status indicates that the beneficiary was admitted in 2004 to work at Community Methodist Church in Greenfield, California. The initial submission thus identifies three different churches in three different cities.

The petitioner submitted a printout from [REDACTED] listing “San Jose District Churches” of the UMC denomination. The listing for Watsonville UMC named the beneficiary as the associate pastor. Beneath the listing appeared the phrase “+ Hispanic Mission of Greenfield in Soledad,” linking the Soledad mission to the Watsonville church.

According to the beneficiary’s résumé, the beneficiary worked at “Greenfield United Methodist – Soledad Circuit” from July 2004 to June 2006, and at “Soledad United Methodist Church & Watsonville First United Methodist Church” from July 2006 onward.

On October 6, 2008, the director instructed the petitioner to submit tax and payroll documents to demonstrate the beneficiary’s prior employment. In response, Rev. [REDACTED] apparently Rev. [REDACTED] successor as San Jose District Superintendent, stated that the beneficiary’s “current appointment is at Mision Metodista Hispana de Soledad (Soledad Hispanic Methodist Mission).”

The petitioner submitted a letter from [REDACTED], Treasurer of the Monterey Bay Church Extension Society (MBCES), attesting that "MBCES handles all expenses of Mission Metodista De Soledad." Mr. [REDACTED] stated that MBCES paid the beneficiary \$1,366.92, plus \$91.68 for "Parsonage Utilities," twice a month from April 2008 to October 2008 (the six-month period covered by the director's request). The petitioner also submitted photocopies of handwritten pay receipts from MBCES consistent with Mr. [REDACTED] description.

Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, indicates that "Monterey Bay Missionary & Church" in Marina, California, paid the beneficiary \$31,149.84 in 2007. An uncertified copy of the beneficiary's IRS Form 1040 income tax return indicates that the beneficiary reported that sum (minus expenses) as business income for 2007.

The director denied the petition on December 30, 2008, stating that "contradictory information cast doubt on the validity of the employment offer," because the materials in the record are inconsistent as to where the beneficiary actually works. The director found that the petitioner failed to submit "evidence to support the claimed relationship between MBCES and Soledad United Methodist Church."

On appeal, counsel argues that the director failed to understand the relationship between the regional conference; the district; and the individual churches within that district. Counsel claims that, taking this relationship into account, "the evidence is in fact consistent." Counsel states:

The decision also stated the fact that [the beneficiary] was paid by a "Monterey Bay Mission and Church" as . . . contradictory evidence. This is an error. [The beneficiary's] W-2 and paychecks were executed by the Monterey Bay Mission and Church Extension Society, which was in turn funded by the [petitioner]. The Monterey Bay Mission and Church Extension Society is not a church; it is an organization within the United Methodist Church that exists to help the Conference with financial matters. It consists of volunteers and does not offer religious services. The tax and pay stub information submitted for [the beneficiary] was prepared by a volunteer for the Extension Society who used his home address on the paperwork and did not list the full name of the Extension Society. . . . [the beneficiary] has never worked for this organization, though they processed her payroll.

(Counsel's emphasis.) To substantiate these assertions, the petitioner submits a letter from Rev. [REDACTED] who states that pastors' "assignments to particular churches are in one year increments, which we call appointments" and that "[t]he Monterey Bay Church Extension Society is an official agency of" the petitioning conference.

We note that Mr. [REDACTED] did not claim that the beneficiary worked for MBCES. Rather, he stated that MBCES paid the beneficiary for her work "as pastor of the Mission Metodista De Soledad," a church previously identified in the record. Payroll documentation from MBCES, therefore, is not evidence of separate employment.

Upon careful consideration of the petitioner's evidence, we find that the petitioner's claims are not "contradictory" as such. Rather, it appears that the beneficiary has worked at several churches, either in succession or simultaneously, and the petitioner's sometimes unclear references to these churches have created the appearance of contradiction.

That being said, the petition cannot be approved as it now stands. A number of issues require attention.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

On November 26, 2008, USCIS substantially revised the former regulations at 8 C.F.R. § 214.2(r). These new regulations were already in effect when the director denied the petition on December 30, 2008, but the director did not cite those regulations in the denial notice. Review of the revised regulations reveals several deficiencies in the record that the petitioner had no opportunity to address before the director denied the petition.

8 C.F.R. § 214.2(r)(8) requires an authorized official of the prospective employer of an R-1 alien to complete, sign and date an attestation prescribed by USCIS and submit it along with the petition. The prospective employer must specifically attest to several facts relating to the employer, the beneficiary, and the terms of the proposed employment. The record contains no such attestation, and the petition cannot be approved without it.

8 C.F.R. §§ 214.2(r)(11) and (12) relate to the beneficiary's past work and compensation. The relevant portions of the regulations read as follows:

(11) *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 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. . . .

(12) *Evidence of previous R-1 employment.* Any request for an extension of stay as an R-1 must include initial evidence of the previous R-1 employment. If the beneficiary:

(i) Received salaried compensation, the petitioner must submit IRS documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of filed income tax returns, reflecting such work and compensation for the preceding two years.

In this instance, the petitioner has submitted only partial evidence of the beneficiary's past compensation, including an IRS Form W-2 for 2007. On appeal, Rev. Olah states: "W-2 forms for [the beneficiary] for the years 2004 through 2007 are attached." Those forms, however, are not in the record (except for the 2007 form submitted previously), and a list of appellate exhibits does not mention them. As the petitioner has gone on record attesting to the existence of IRS Forms W-2 for earlier years, the petitioner ought to be able to submit them upon request.

Another regulatory requirement is found at 8 C.F.R. § 214.2(r)(16):

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS 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.

USCIS records show that such an inspection took place. The USCIS officer who reported the results of the inspection concluded that those results did not support approval of the petition. The regulations do not permit approval of the petition until and unless this issue is resolved.

Another issue requires the director's attention and action. As we noted previously, the beneficiary's R-1 authorized her to work specifically and exclusively at Community Methodist Church in Greenfield, California, but she worked at other churches as well. An R-1 alien may not be compensated for work for any religious organization other than the one for which a petition has been approved or the alien will be out of status. 8 C.F.R. § 214.2(r)(13). An extension of stay may not be

approved for an applicant who failed to maintain the previously accorded status. 8 C.F.R. § 214.1(c)(4). On appeal, counsel indirectly acknowledges these regulations, stating: "It is our position and hope that with the [petitioning regional] Conference as petitioner, the beneficiary would be authorized to work at any church within its jurisdiction and remain within the terms of her visa."

Section 2(b)(1) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008) required USCIS to "issue final regulations to eliminate or reduce fraud" among religious worker petitions. One such regulation at 8 C.F.R. § 214.2(r)(8)(x) requires the petitioner to attest to the specific location(s) of the proposed employment. The regulation at 8 C.F.R. § 214.2(r)(16) establishes a procedure for site visits in order to verify a petitioner's claims. If a petitioner can vary the work site at will without notice, then inspection and verification become impractical or impossible. Therefore, permitting such practices goes against stated congressional intent.

The terms of the beneficiary's R-1 admission authorized employment at a specific church, and neither the petitioner nor the beneficiary is free to alter the terms or location of employment without prior USCIS permission. Nevertheless, a definitive finding as to whether the beneficiary violated her R-1 status lies outside our appellate authority in this proceeding. Violation of status is not grounds for denying an R-1 petition. Rather, it is grounds for denying an application for extension of stay, which is related but nevertheless distinct from the petition. There is no appeal from the denial of an application for extension of stay filed on Form I-129. 8 C.F.R. § 214.2(c)(5). If the director believes that the beneficiary's unauthorized change of employment is grounds for denial of extension of stay, the director must issue a separate decision in that regard. Furthermore, we note that denial of change of status does not preclude the beneficiary from applying for a nonimmigrant visa at a consulate.

For the reasons discussed above, the director's decision cannot stand and we hereby withdraw that decision. At the same time, however, the record as it now stands does not permit approval of the petition. Therefore, the AAO will remand this matter to the director. 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 Administrative Appeals Office for review.