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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**



A13

FILE: WAC 06 241 53615 Office: CALIFORNIA SERVICE CENTER Date:

APR 29 2010

IN RE: Petitioner:
Beneficiary:



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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

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 dismiss the appeal.

The petitioner is a district of a Protestant Christian denomination. It seeks to change the beneficiary's status to that of a nonimmigrant religious worker under section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1), to perform services as a minister of music at the [REDACTED]. The director determined that the petitioner failed to submit a complete response to a request for evidence.

On appeal, the petitioner submits various documents requested previously.

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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(1) states 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 matter at issue here is the petitioner's submission of required evidence and information when requested by the director.

The petitioner filed the Form I-129 petition on July 31, 2006. The record contains only pages 1, 2 and 4 of the four-page Form I-129; the third page of the petition form is missing. [REDACTED] the petitioner's Hispanic ministries coordinator, stated that the petitioner is "a bonafide religious organization and exempt from taxation under section 501(c)(3)," but the petitioner's initial submission did not include Internal Revenue Service (IRS) documentation of the petitioner's tax-exempt status or documentation of eligibility for such status, as required by the then-current U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(3)(i).

On January 16, 2007, the director issued a request for evidence (RFE), advising the petitioner that the third page of Form I-129 was missing from the record and that "[t]he petitioner must complete and submit this page before [the] petition is considered complete." The director also requested information regarding the petitioning entity (including evidence of qualifying tax-exempt status) and the position offered to the beneficiary.

In response to the RFE, the petitioner submitted photographs, financial documents, and other materials, but not page 3 of Form I-129, IRS documentation, or other requested materials. [REDACTED] in his cover letter, did not mention the missing documents or explain their omission. The petitioner likewise failed to provide many of the details the director had requested.

[REDACTED] repeated the assertion that the petitioner is "a bonafide religious organization and exempt from taxation under section 501(c)(3)," but the petitioner did not submit the documentation that the director requested in the RFE. [REDACTED] referred to "a copy of the 2006 District Minutes of the [petitioning] District," but we find no such document in the record, and even if it were otherwise, the District Minutes are not qualifying evidence of the petitioner's tax-exempt status.

The director denied the petition on January 28, 2009, quoting 8 C.F.R. § 103.2(b)(14): "Where an applicant or petitioner does not submit all requested additional evidence . . . , a decision shall be issued based on the record. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition." The director found that, because the petitioner had failed to submit required documentation, the petition could not be approved.

On appeal, the petitioner submits a new letter from [REDACTED] a completed page 3 of Form I-129; an Exempt Organization Certification that relates to the petitioner's exemption from state, but not federal, taxation; and other documents, some of which the director had requested in the RFE.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits some of it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). The question at hand is not whether the required evidence exists, but whether the petitioner submitted that evidence upon the director's request. The petitioner does not claim to have submitted this evidence in response to the RFE, and there is no evidence that the petitioner did so. Therefore, the director acted properly in denying the petition, and we will affirm that decision.

We note that the petitioner initially filed the petition using the April 1, 2006 revision of Form I-129. On appeal, the petitioner submits page three of the January 22, 2009 revision of Form I-129. Owing to substantial changes on the form, the record still does not contain a complete petition form.

We further note that, on appeal, [REDACTED] states that the petitioner intends to employ the beneficiary as an associate pastor. All previous submissions had consistently indicated that the beneficiary was to serve as a music minister. [REDACTED] does not explain this change in the offered position.

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 AAO will dismiss the appeal.

ORDER: The appeal is dismissed.