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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



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FILE: WAC 07 140 50383 Office: CALIFORNIA SERVICE CENTER Date: **AUG 04 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:**

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 appeal will be dismissed.

The petitioner is an Islamic order. 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 an imam. The director determined that the petitioner had not established that it is operating as a bona fide nonprofit religious organization and how it intends to compensate the beneficiary.

On appeal, counsel asserts that the director based her denial "on an inaccurate and dubious assessment of petitioner's religious denomination." The petitioner submits additional documentation in support of the appeal.

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 first issue is whether the petitioner has established that it operates as a bona fide nonprofit tax-exempt religious organization.

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 petition, filed on April 9, 2007, indicated that the beneficiary resided at [REDACTED] in [REDACTED] and that he would also work at that address. The petitioner listed its mailing address as [REDACTED]. On August 27, 2008, an immigration official (IO) visited the petitioner's location for the purpose of conducting a compliance verification review. The IO reported that there were two houses adjacent to the petitioner's listed address, one of which was "clearly abandoned" and contained a sign that read [REDACTED]. The IO further reported that the woman who answered the summons at [REDACTED] identified herself as [REDACTED] and stated that she was temporarily living in the home with the petitioner's chief financial officer, [REDACTED] who also signed the petition. [REDACTED] stated that she was the mother of the man who lived at [REDACTED]. The IO reported that [REDACTED] told him the abandoned house that he observed would eventually be a house of worship but was "not 'up and running' yet."

The IO reported that he interviewed [REDACTED] by telephone and was told that she owned the three properties located on [REDACTED]. The IO stated that [REDACTED] also told him that the abandoned home was to be demolished and a worship center built on the site. The IO also reported that [REDACTED] told him that the organization, which relocated from California, currently met on Fridays and Saturdays at the local Methodist church. Finally, the IO reported that [REDACTED] admitted that the beneficiary currently lives in Utah and is not working. The IO found that there was no evidence of any ongoing religious activity at the petitioner's location and that the petitioner was not operating in the claimed capacity as a religious organization.

On June 5, 2009, the director informed the petitioner of the IO's findings and notified the petitioner of her intent to deny the petition based on these findings. In response to the director's Notice of Intent to Deny (NOID), the petitioner submitted a copy of a June 27, 2009 statement from [REDACTED] who claimed to not remember stating that the church was not up and running or that it had never served as a meeting place. In a copy of a June 27, 2009 statement, [REDACTED] stated that she owned two of the properties on [REDACTED] and had donated the property "where the church house would be renovated" to the church. The record contains a copy of a deed indicating that [REDACTED] deeded certain property in Nassau, New York to the petitioner. Taxation records indicate that the address of the petitioner at that location is [REDACTED]. [REDACTED] stated that the sign attached to the building pointed to tents that had been erected for worship and study during the spring and summer.

██████████ denied that she stated the organization met on Saturdays. She stated that the organization has “live internet services from the Clergy’s home in Nassau” on Saturdays. The petitioner provided no documentation of its use of the facilities of the Methodist Church and no documentation to establish that it provides “live internet services.” We note that ██████████ claimed that the petitioner had one full-time clergy and two part-time clergy, including herself. The beneficiary was not identified as either.

The petitioner submitted documentation reflecting that it was incorporated in the State of California and stated that it was advised that since it was a California corporation, it was not required to also incorporate within the State of New York

In a separate letter also dated June 27, 2009, ██████████ attested that since the organization moved from California to New York in 2005:

[The petitioner] has been conducting all manner of religious services, including worship services, prayer meetings, weddings, funerals and religious education and guidance . . . When [the petitioner] . . . moved to New York State, [it] was homeless and wandering, so to speak, but was prepared to worship wherever it could find a place. When it was offered a place to worship by the Methodist Church beginning spring 2007, it moved its religious services to that location. When it was blessed by a gift of land, it took the opportunity to get together in every way that it could, such as Sunday fellowships in the open air, educational programs for the public and the congregation’s families, such as learning to grow its own food and to appreciate the land and its creation, classes in how to build homes from the earth and micro projects in how to use solar energy and wind energy . . .

Since the congregation did not have a meeting place when it first moved to New York State, it met at ██████████ where the home office was set up. [The petitioner] searched for a place to worship and the Grace Methodist Church . . . offered the use of its Church House free of charge on Friday evenings . . . Last summer 2008, weather permitting, the congregation met at its property in a tent at ██████████ for its Friday meetings. . . .

Sunday fellowship started in 2005 and continues every Sunday to present. At present the Congregation . . . meets on ██████████ for dinner and fellowship. Other religious activities at the same location have been Arabic classes, bible, torah, and Quranic Studies.

While the petitioner submitted copies of bank statements indicating that it has a bank account and copies of Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, reflecting that it paid wages to two employees in 2007 and to one employee in 2008, it submitted insufficient documentation to establish that it operated as a religious organization. The director determined that

the petitioner failed to provide documentation to corroborate its activities as a religious organization at the time the petition was filed and at the time of the compliance review.

On appeal, counsel points to the petitioner's documentation reflecting that it is a California corporation, the IRS Forms W-2 for its employees, the deed, and the letter from the IRS granting the petitioner tax-exempt status under section 501(c)(3) of the Internal Revenue Code. However, while these documents indicate that the petitioner exists on paper, the documentation does not establish that the petitioner operates in its stated capacity as a religious organization.

To establish that it was a viable organization before and during the petition process, the petitioner submits copies of what counsel refers to as the petitioner's newsletters. However, the earlier documents contain information about the petitioner's religion and a post office box in California but do not reflect any activity by the petitioner. The last document is dated "Late Summer 2009," and describes the renovation of property in "upstate new York." The documentation shows a post office box in Nassau, New York. Again, however, the "newsletter" contains no information that would establish the petitioner as a congregation and operating as a religious activity. Further, the date of this latter "newsletter" is after the filing date of the petition and the date of the compliance review. The petitioner also submits copies of what it states are photographs of the "house of worship" in Nassau. However, most of these documents are dated in October 2009. Therefore, none of these documents constitute evidence of the petitioner's activities as of the date the petition was filed. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1) and (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The petitioner also includes copies of photographs that it states are of the house of worship dated in April 2009 and November 2005 "prior to renovations." The facility depicted does not indicate that it was in use on those dates.

The petitioner submits a copy of a "Building Usage Policy" that allows its use of the Methodist Church House of the Grace United Methodist Church and a copy of a photograph that it states reflects attendance at a Friday night service. The policy is dated June 8, 2007 and the photograph allegedly depicts the meeting of July 27, 2008. The petitioner also submits copies of unsworn statements from several individuals who state that they are members of the petitioning organization and regularly participate in activities with and for the petitioner. The petitioner, however, submitted no documentation to corroborate any of these statements. The petitioner submits insufficient documentation of any of its activities in New York prior to April 9, 2007, the filing date of the petition.

Accordingly, despite counsel's argument to the contrary, the documentation in the record does not sufficiently establish that the petitioner operated as a worship center prior to the filing of the visa petition. While the petitioner presented documentation that it was recognized by the IRS as a religious organization and that it had a bank account, it presented insufficient documentation of its religious activities as of the date the petition was filed. The petitioner claims to have services via the Internet but provided no documentation of such services. Further, the petitioner claimed on the Form I-129, Petition for a Nonimmigrant Worker, that the beneficiary's place of employment would

be [REDACTED] However, the petitioner provided insufficient documentation to establish that any religious activity took place at any location on [REDACTED]

Accordingly, the petitioner has failed to establish that it operated as a bona fide nonprofit religious organization on the date the petition was filed.

The second issue is whether the petitioner has established how it intends to compensate the beneficiary.

The petitioner stated that the beneficiary would be compensated at the rate of \$30,000 per year and would be provided with medical insurance. On the Form I-129, the petitioner stated that it had a gross income of \$40,000 per year and had two employees. With the petition, the petitioner provided a copy of an unprocessed check dated January 15, 2007, made payable to the beneficiary in the amount of \$2,129.52, and a check stub indicating that the check was for January 2005 wages in the amount of \$2,500 before withholding.

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 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.

In response to the director's NOID, the petitioner submitted copies of IRS Forms W-2 for two employees in 2007 and one employee in 2008. Neither of the employees was the beneficiary, although the petitioner alleged that the beneficiary worked for the organization from April 30, 2004 until April 2007, and neither of the IRS Forms W-2 was in the amount of \$30,000. In fact, the highest salary paid in 2007 was \$14,755.40. The petitioner also submitted partial copies of its bank statements for the months of December of 2005; May, July, August, October and December of 2008; and January, February, April, and May of 2009.

On appeal, the petitioner submits partial copies of its bank statements for the months of June through September of 2009 and a copy of its unaudited profit and loss statement for 2008. We note

that the profit and loss statement reflects payroll expenses of approximately \$16,309 and net income of \$9,821.

The petitioner has submitted insufficient documentation to establish how it intends to compensate the beneficiary. It has not established that it has compensated the beneficiary or anyone in a similar position at the proffered rate in the past, has not provided IRS documentation of compensation to the beneficiary, and has not provided documentation of monies set aside to compensate the proffered position. The petitioner submitted no other verifiable documentation of how it intends to compensate the beneficiary. Accordingly, the petitioner has failed to establish how it intends to compensate the beneficiary.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.