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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: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 07 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:

[REDACTED]

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 \$630. 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 summarily dismissed.

The petitioner is a Sikh temple. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as a priest. The director determined that beneficiary has reached the statutory maximum period for which he can qualify as an R-1 nonimmigrant religious worker.

On appeal, counsel asserts that the beneficiary has provided all of the documents requested by U.S. Citizenship and Immigration Services (USCIS).

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 regulation at 8 C.F.R. § 214.2(r)(6) provides:

Limitation on total stay. An alien who has spent five years in the United States in R-1 status may not be readmitted to or receive an extension of stay in the United States under the R visa classification unless the alien has resided abroad and has been physically present outside the United States for the immediate prior year. The limitations in this paragraph shall not apply to R-1 aliens who did not reside continually in the United States and whose employment in the United States was seasonal or intermittent or was for an aggregate of six months or less per year. In

addition, the limitations shall not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. To qualify for this exception, the petitioner and the alien must provide clear and convincing proof that the alien qualifies for such an exception. Such proof shall consist of evidence such as arrival and departure records, transcripts of processed income tax returns, and records of employment abroad.

The petition was filed on October 6, 2009. In a December 3, 2009 request for evidence (RFE), the director instructed the petitioner to submit documentation of the beneficiary's current immigration status, copies of his current and previous Form I-94, Arrival/Departure Form, copies of passport pages, and copies of Form I-797A, Notice of Action, approving the beneficiary's change of status or extension of stay in the United States.

In response, the petitioner acknowledged that the beneficiary had been in an R-1 status from 2004 to 2009. The petitioner submitted a copy of the beneficiary's visa indicating that he was approved for an R-1 visa on January 20, 2004 and that he entered the United States pursuant to that visa on March 16, 2004. The passport indicates four other entries into the United States by the beneficiary: in July 2005, September 2006, December 2007, and June 2008. The petitioner did not provide copies of Forms I-94 or I-797A to establish that the beneficiary did not reside continually in the United States and that his work in the United States was only on a part-time basis.

The petitioner does not dispute and presents no documentation to establish that the beneficiary has been employed in an R-1 status for less than five years or that he meets the exception of the regulation cited above.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

The petitioner has failed to identify specifically any erroneous conclusion of law or a statement of fact in this proceeding; therefore, the appeal must be summarily dismissed.

ORDER: The appeal is summarily dismissed.