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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: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date: DEC 08 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:

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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.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition on September 28, 2009. Pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2), the director treated the petitioner's March 2, 2010 appeal of that decision as a motion to reopen and reconsider and again denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision and will remand the petition for further action and consideration.

The petitioner is a church. It seeks to classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as a music director. The director determined as the Form I-129, Petition for a Nonimmigrant Worker, was signed by a nonimmigrant religious worker, the Form I-129 was not properly filed.

On appeal, counsel asserts that the director's decision is "in error and contrary to the law." Counsel submits a brief and 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.

who is identified in the record as the petitioner's senior pastor, signed the Form I-129 petition on behalf of the petitioner. According to U.S. Citizenship and Immigration Services (USCIS) records, was present in the United States pursuant to an R-1 nonimmigrant religious worker visa.

In denying the petition, the director stated:

Since [REDACTED] was a temporary nonimmigrant worker in the U.S. when the petition was received by USCIS, he was never an eligible U.S. employer and was never eligible to file petitions for other temporary nonimmigrant workers to work in the United States.

There is no provision in the regulations that permits an R-1 nonimmigrant worker to employ another nonimmigrant worker, while in the United States.

Counsel argues on appeal that the petitioner is not [REDACTED] but [REDACTED], an organization registered in the State of Texas. Counsel further states:

We submit that there is neither a regulation stating that the signatory of the petitioning US employer must be a US citizen, nor a regulation prohibiting an individual in any other immigration status from signing the petition for a nonimmigrant temporary worker on behalf of the petitioning US employer/entity.

As noted by the director, the regulation at 8 C.F.R. § 103.2(a)(1) provides that:

Every application, petition, appeal, motion, request, or other document submitted on any form prescribed by this chapter I, notwithstanding any other regulations to the contrary, must be filed . . . and executed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter I requiring its submission.

The Instructions for Form I-129 provides that the Form I-129 may be filed by a U.S. employer to classify any alien as a nonimmigrant worker in accordance with the statute and regulation.

The petitioner submits a copy of the petitioner's 2008 amended articles of incorporation filed with the State of Texas and signed by [REDACTED] as the president. Documentation filed with the Texas Secretary of State identifies [REDACTED] as a registered agent for the petitioner and one of its directors.

The regulation at 8 C.F.R. § 214.2(r)(8) requires the petitioner to submit a detailed attestation with information regarding the petitioner, the beneficiary, the job offer, and other aspects of the petition. The regulation does not specify who is an "authorized official" of an organization. However, the documentation submitted by the petitioner clearly establishes that [REDACTED] is authorized to act on behalf of the petitioner, a U.S. employer. While the regulations do not permit a beneficiary to self-petition for an R-1 visa, no provision of the regulation or statute states that the authorized official of a U.S. employer may not be an R-1 nonimmigrant religious worker.

Accordingly, we withdraw the director's decision. Nonetheless, the petition cannot be approved as the record now stands, and the petition will be remanded to the director for further action and consideration as discussed below.

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 record does not establish that the petitioner has successfully completed an onsite inspection. Accordingly, the matter is remanded to the director to determine whether another onsite inspection or compliance review is appropriate in the instant case. 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 AAO for review.