

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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

[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: DEC 14 2010

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(i)

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 AAO will dismiss the appeal.

The petitioner is a Pentecostal Christian church. It seeks to classify the beneficiary as 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 music minister. The director determined that the petitioner had failed to establish its tax-exempt status, that the petitioner had not passed a site inspection, and that the petitioner had provided insufficient and inconsistent evidence and information regarding the beneficiary's work schedule and compensation.

On appeal, the petitioner submits statements from counsel and a church official, as well as various documents relating to the stated grounds for denial.

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 first issue we will address concerns the petitioner's claimed tax-exempt status. The USCIS regulation at 8 C.F.R. § 214.2(r)(9) reads, in part:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the IRS [Internal Revenue Service] showing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt.

The petitioner filed the petition on June 11, 2008. The petitioner submitted a copy of an April 17, 1964 letter from the IRS indicating that the [REDACTED] with an address on [REDACTED] Los Angeles, is tax-exempt under section 501(c)(3) of the Internal Revenue Code. The letter establishes a group exemption for the entity named and its "affiliated congregations." The letter shows a nine-digit employer identification number (EIN), [REDACTED]. The petitioner's Form I-129 petition shows a variation of this EIN, [REDACTED] (The zero at the third digit appears to be a typographical error. An EIN is nine digits, rather than ten, and the zero occupies a space normally filled by a hyphen, which is adjacent to the zero key on a standard typewriter or computer keyboard.)

In a cover letter accompanying the petition, Rev. [REDACTED] pastor of the petitioning church, noted that the petitioner is one member of an "organization [that] has Churches in 22 countries and about 800 Churches throughout the United States." [REDACTED] general secretary of the [REDACTED]

██████████ stated: ██████████ . . . is currently the Pastor of our church ██████████

On March 21, 2009, the director advised the petitioner of the director's intent to deny the petition, in part because "no evidence was submitted to establish the petitioning agent is the same religious organization as noted on the tax exemption notice" from 1964. The director did not discuss or acknowledge the documentation showing that the 1964 IRS letter established a group exemption for an umbrella organization.

In response to the director's notice, the petitioner submitted copies of "financial statements," printed with the name of the ██████████ and the address of its headquarters in Rancho Cucamonga, California. The name of the petitioning church is handwritten in a blank space left for that purpose. These documents, by themselves, are not conclusive evidence of affiliation, but they are consistent with prior evidence of a multi-church organization.

The director denied the petition on May 19, 2009, based in part on the finding that the petitioner had failed to establish its tax-exempt status. On appeal, the petitioner submits copies of various letters and documents, some previously submitted, reiterating that the petitioner is a member of a large organization that, in turn, holds a group tax exemption.

The director's doubts about the petitioner's tax-exempt status appear to have only one basis. Specifically, the petitioner's current address does not match the address on a 45-year-old IRS determination letter. Because that determination letter establishes a group exemption, it necessarily applies to congregations at locations other than the headquarters address. The petitioner has persuasively shown that it is a member of the umbrella organization that holds the group exemption. We therefore find that the petitioner has established that it is a qualifying tax-exempt religious organization, and we withdraw the director's finding to the contrary.

The second and third issues that the director cited are interrelated, as they both deal with the petitioner's compensation of the beneficiary. The USCIS regulation at 8 C.F.R. § 214.2(r)(11) requires the petitioner to 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.

If the petitioner is to compensate the alien (as is the case here), 8 C.F.R. § 214.2(r)(11)(i) states:

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.

The USCIS regulation at 8 C.F.R. § 214.2(r)(16) reads:

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.

On Form I-129, the petitioner indicated that the beneficiary would receive a salary of \$18,000 per year plus "[f]ree accommodation." The petitioner's initial submission included photocopies of handwritten pay receipts indicating that the petitioner paid the beneficiary \$1,500 per month (equal to \$18,000 per year) from January 2006 to December 2007. The record contains no lease or other documentation showing that the petitioner owns, rents, or otherwise controls the property where the beneficiary resides.

On January 5, 2009, two USCIS officers spoke with the beneficiary, the beneficiary's brother (also identified as a music minister, and the beneficiary of another petition with receipt number [REDACTED] and Rev. [REDACTED] at the petitioning church. According to the compliance review report, Rev. [REDACTED]

claims that the BENEFICIARIES each work 15-20 hours per week; however, he was unable to provide the BENEFICIARIES['] work schedule.

[One] Officer asked [REDACTED] to explain what duties the BENEFICIARIES perform and what a typical work day entails. Pastor [REDACTED] stated that the BENEFICIARIES work independently. [REDACTED] was unable to explain why he needs the services of two Music Ministers, other than to say "the church needs music."

[The] Officer then requested [REDACTED] to provide copies of tax documents (Form De-6 Quarterly Wage Report for his employees), pay records, annual tax forms, church bank statements, and church budget or expense reports. [REDACTED] claimed he did not have the requested documents at hand and that they were at his house and he would fax the documents later. . . .

On January 7, 2009, [the] Officer received the first page of 7 of the [petitioner's] bank statement for . . . Oct. 2008, Nov. 2008 and Dec. 2008. Page[s] 2-7 were not provided by Pastor [REDACTED]

Based on the foregoing, the Compliance Review of the organization did not reveal any evidence or documentation that appeared to be sufficient to establish that the church is able to pay the two BENEFICIARIES the stated salaries. No documentation was provided to ascertain that the church has a need for two Music Directors. No tax documentation for the employees, pay records, work history or evidence of religious training/education was provided by [Pastor] [REDACTED]

In the March 2009 notice, the director advised the petitioner that the findings from the compliance review "brought into question" the validity of the petition. The director added:

Evidence to establish the size and congregation of the religious organization needs to be submitted. And evidence of employment of both beneficiaries needs to be submitted. This evidence can be but is not limited to copies of the beneficiary's W-2 forms . . . , copies of the petitioner's Quarterly Wage Reports to the State of California listing both beneficiaries . . . , and an itemized record from the Social Security Administration.

In response, the petitioner submitted copies of income tax returns for 2006 and 2007, indicating that the beneficiary reported his earnings as business income. The copies are not IRS-certified, and therefore there is no evidence that the beneficiary actually filed these returns with the IRS. The beneficiary's signature does not appear on the returns. The returns are both dated July 8, 2008. The petitioner did not submit supporting documents (such as IRS-certified Form 1099-MISC Miscellaneous Income statements) to verify the source and amount of the beneficiary's claimed business income.

We note that the 2006 return identified its preparer as [REDACTED] in Encinitas, California. The 2007 identified its preparer as [REDACTED] in Oceanside, California. Both preparers, however, claimed the same employer identification number, and both returns show the same Social Security number for the preparer. This indicates that the same person prepared both returns on the same day, supposedly on behalf of two different businesses with two different addresses (but the same employer identification number). The tax returns, therefore, raise more questions than they answer.

The petitioner also submitted complete or nearly complete copies of its bank statements from February 2008 through March 2009. The bank statements include reproductions of checks. Only one check shows the beneficiary's name: a \$500 payment dated March 19, 2008. The bank statements do not show monthly \$1,500 checks to the beneficiary, nor do they show monthly \$1,500 cash withdrawals or debits that would match such payments.

The petitioner submitted copies of its financial statements for 2005 through 2008. The itemized expenses on the statements do not include a line item for salaries, except for "Pastoral Allowance/Salary," an amount between \$44,000 and \$60,000 each year.

The petitioner did not submit quarterly wage reports or Social Security Administration records; any first-hand evidence proving payments to the beneficiary in 2006 or 2007; or any evidence at all that the petitioner employed the beneficiary, paying him a regular salary rather than a one-time \$500 payment in 2008.

Pastor [REDACTED] stated that the beneficiary "and his brother . . . have been religious workers as Music Ministers at [the petitioning church] since October 1, 2005 to present date." He added: "The size of our congregation is a total of 180 congregants (not including 70 children and 5 babies)." [REDACTED] claimed that the beneficiary works "35 hours a week." An accompanying schedule did not provide a day-to-day breakdown, except to indicate that the beneficiary worked on Sundays "[f]rom 9 AM to 5 PM." The schedule indicated that the beneficiary spends two and a half hours each week "[a]ssist[ing] the Youth Group with music selections and rehearsals for their special Youth activities done twice a month." The schedule also indicated that the beneficiary required two hours each week to "[p]lan the music and preparations necessary for the Church Picnic which takes place twice a year."

Pastor [REDACTED] did not address the compliance review report, which indicated that the beneficiary works "15-20 hours per week" (a non-qualifying work schedule, under 8 C.F.R. § 214.2(r)(1)(ii)). Likewise, he did not explain why the financial documents from 2008 contain no evidence of the beneficiary's employment, even though the beneficiary held R-1 nonimmigrant status for most of that year and therefore could have worked lawfully for the petitioner during that time.

We note that the petitioner's response included an attestation from [REDACTED] as required by 8 C.F.R. § 214.2(r)(8). In the attestation, [REDACTED] claimed that his church had not employed any nonimmigrant religious workers in the past five years, even though this proceeding represents the petitioner's attempt to extend that very status for the beneficiary.

In denying the petition, the director concluded that the petitioner had "not fully addressed . . . the issue of the payment of the proffered wage of the proffered position." The director noted the near-total absence of first-hand, verifiable evidence of payments to the beneficiary, and concluded that the compliance review and site inspection had not shown that the petitioner had met its burden of proof or presented a credible claim.

On appeal, the petitioner submits an unsigned work schedule for the beneficiary, indicating that the beneficiary works "40 hours a week." The schedule shows some similarities with the earlier schedule, but differences as well. The petitioner had earlier indicated that the beneficiary worked 35 hours per week. The new schedule indicates that the youth group activities require only one and a half hours, an hour less than previously claimed. Both versions of the schedule contain the claim that the beneficiary must spend two hours of every week preparing for church picnics that only take place twice a year; neither version provides much explanation of what sort of preparation consumes so much year-round

activity. The beneficiary's Sunday hours have changed from 9:00-5:00 to 8:30-4:30. The petitioner does not explain why the schedules do not match, nor does the petitioner submit any documentary evidence to support the claims in the schedules.

Regarding the beneficiary's compensation, [REDACTED] claims: "An offering in cash is collected twice a month to pay for the \$1,500 (fundraisers are also done for this cause)," and that "church members donate food, gift cards and grocery gift certificates." The petitioner provided no documentation to support these claims, and no explanation for the petitioner's failure to submit tax documents the director had requested such as quarterly returns.

The petitioner submits copies of the beneficiary's income tax returns for 2005 through 2008, including copies of the 2006 and 2007 returns submitted previously. The same preparer who had prepared the beneficiary's 2006 and 2007 returns also prepared the 2005 return, on the same day (July 8, 2008). That date falls well after the filing deadlines for those returns, but roughly coincides with the preparation of the Form I-129 petition. This indicates that the beneficiary had the returns prepared not for timely filing with the IRS, but for submission in support of the petition. Like the earlier submission, these copies are not IRS-certified to confirm that the beneficiary filed the returns.

The petitioner submits a copy of a Social Security Administration printout, showing \$8,724 in earnings reported for the beneficiary in 2008, with no earnings reported for earlier years. Counsel observes that this printout gives no reason to believe that the beneficiary worked for outside employers. By the same logic, however, it offers no reason to believe the beneficiary worked for the petitioner either. The \$8,724 figure appears nowhere on the beneficiary's 2008 income tax return.

We agree with the director's finding that the petitioner's information has lacked consistency and verifiable detail, and that the petitioner, despite numerous opportunities to do so, has failed to provide persuasive evidence that it has paid, and will continue to pay the beneficiary. Under the regulation at 8 C.F.R. § 214.2(r)(16), failure to pass a compliance review is grounds for denial. The petitioner has not overcome the findings arising from that review.

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.