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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 16 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. 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 \$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 dismissed.

The petitioner is a Hindu temple. 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 priest. The director determined that the petitioner had not established it qualifies as a bona fide nonprofit religious organization.

The director also determined that the beneficiary had not maintained the R-1 nonimmigrant religious worker status previously approved and that his previously authorized R-1 status had expired. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(12) requires that any request for an extension of stay as an R-1 must include initial evidence of the previous R-1 employment (including Internal Revenue Service documentation if available). The regulation at 8 C.F.R. § 214.1(c)(4) provides that an extension of stay may not be approved for an applicant who failed to maintain the previously accorded status or where such status expired before the application or petition was filed. Additionally, the regulation at 8 C.F.R. § 214.1(e) states that a nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act. Under 8 C.F.R. § 214.2(r)(5), extension of status is available only to aliens who maintain R-1 status.

The issues of the beneficiary's prior employment and maintenance of R-1 status are significant only insofar as they relate to the application to extend that status. An application for extension is concurrent with, but separate from, the nonimmigrant petition. *There is no appeal from the denial of an application for extension of stay filed on Form I-129.* 8 C.F.R. § 214.1(c)(5). Because the beneficiary's past employment and maintenance of status are extension issues, rather than petition issues, the AAO lacks the authority to decide those questions, and will not further address those issues in this proceeding.

Regarding the issue of the petitioner's bona fides, counsel argues on appeal that the petitioner submitted the documentation outlined in a December 17, 2003 USCIS memorandum. Counsel submits a letter and a copy of the USCIS memorandum 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 issue presented is whether the petitioner has established that it is a bona fide nonprofit tax-exempt religious organization.

The regulation at 8 C.F.R. § 214.2(r)(3) defines a tax-exempt organization as “an organization that has received a determination letter from the IRS [Internal Revenue Service] establishing that it, or a group it belongs to, is exempt from taxation in accordance with section[] 501(c)(3) of the Internal Revenue Code [IRC].” Additionally, the regulation at 8 C.F.R. § 214.2(r)(9) provides:

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 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; or

(iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3), or subsequent amendment or equivalent sections of prior enactments, of the [IRC], as something other than a religious organization:

(A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as books, articles, brochures, calendars, flyers, and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a statement certifying that the petitioning organization is affiliated with the religious denomination. The statement must be submitted by the petitioner along with the petition.

With its petition, filed on February 5, 2010, the petitioner submitted a copy of its November 9, 2009 certificate of incorporation issued by the State of Georgia, a copy of a November 10, 2009 letter from the IRS advising the petitioner that the IRS had assigned it an employer identification number (EIN), a copy of its articles of incorporation and bylaws, and a copy of an unsigned and undated IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.

The director denied the petitioner based on the petitioner's failure to submit a currently valid letter from the IRS showing that it had been granted tax-exempt status.

On appeal, counsel asserts that the director ignored a December 17, 2003 USCIS memorandum which "specifically outlines which alternative documents would be accepted by the Service to qualify a petitioner as a non-profit religious organization."

The memorandum cited by counsel, as clearly indicated on its face, is based on the requirements of regulations that were superseded on November 26, 2008 when new regulations for religious workers were promulgated. Unlike the previous regulations at 8 C.F.R. § 204.5(m)(3)(i) and 8 C.F.R. § 214.2(r)(3)(i), the current regulations at 8 C.F.R. § 204.5(m)(5) and (8) and 8 C.F.R. § 214.2(r)(3)(i) and (9) do not provide for alternative means of establishing that the petitioner is a bona fide nonprofit religious organization.

Counsel also asserts that "[a]t the very minimum the Service could have set a Request for Evidence to obtain clarification. The fact that the Service denied the petition without an opportunity to respond to this issue was malicious."

The regulation at 8 C.F.R. § 214.2(r)(9) provides that initial evidence submitted in support of the petition shall include a currently valid determination letter from the IRS showing that the organization is a tax-exempt organization. Further, the regulation at 8 C.F.R. § 103.2(b)(8) provides that if a petitioner fails to provide all of the required initial evidence with the petition, the director, in his or her discretion, may deny the petition or request the missing documentation. Counsel specified no grounds on which to conclude that the director's discretionary act to deny the petition without first issuing a request for evidence was malicious. Additionally, the petitioner failed to submit the missing evidence on appeal.

As the petitioner has failed to provide a currently valid determination letter from the IRS establishing that it is a tax-exempt organization, it has failed to establish that it is a bona fide nonprofit religious organization as defined by the regulation.

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 appeal will be dismissed.

ORDER: The appeal is dismissed.