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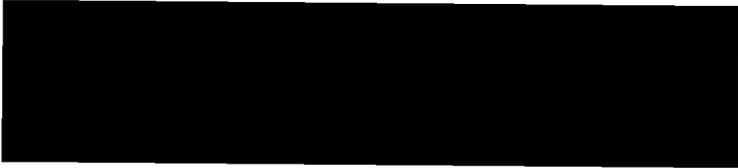
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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**U.S. Citizenship
and Immigration
Services**

LB



FILE: WAC 08 252 51206 Office: CALIFORNIA SERVICE CENTER Date: FEB 05 2010

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

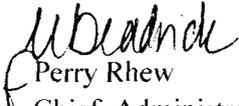
PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


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 withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further action and consideration.

The petitioner describes itself as an "International Church and Bible Institute." 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 a minister from September 8, 2008 to September 8, 2010. The director determined that the petitioner had failed to establish the beneficiary's credentials as a minister.

On appeal, the petitioner submits documentation of the beneficiary's training, licensure and ordination.

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.

U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. § 214.2(r)(1) state 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 USCIS regulation at 8 C.F.R. § 214.2(r)(3) defines a “minister” as an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination’s standards, to conduct religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and
- (D) Works solely as a minister in the United States which may include administrative duties incidental to the duties of a minister.

8 C.F.R. § 214.2(r)(10) states that, if the alien is a minister, the petitioner must submit the following:

- (i) A copy of the alien’s certificate of ordination or similar documents reflecting acceptance of the alien’s qualifications as a minister in the religious denomination; and
- (ii) Documents reflecting acceptance of the alien’s qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological education is accredited by the denomination, or

(iii) For denominations that do not require a prescribed theological education, evidence of:

- (A) The denomination's requirements for ordination to minister;
- (B) The duties allowed to be performed by virtue of ordination;
- (C) The denomination's levels of ordination, if any; and
- (D) The alien's completion of the denomination's requirements for ordination.

The petitioner filed the petition on September 24, 2008. The only supporting materials submitted with the petition were a partial photocopy of the beneficiary's passport and a short letter from [REDACTED] (no title specified) who described the beneficiary as "part of our Pastoral Staff." The petitioner submitted no documentation of the beneficiary's ministerial credentials.

Subsequently, on November 26, 2008, USCIS issued new regulations to replace the previous regulations at 8 C.F.R. § 214.2(r). Because the revised regulations included several new documentary requirements, the director issued a request for evidence on December 17, 2008, which read, in part:

EVIDENCE PERTAINING TO THE ORGANIZATION'S NONPROFIT STATUS

Nonprofit Religious Organization: Provide the following to establish that the petitioner is a bona fide nonprofit religious organization in the United States or that the petitioner is a bona fide organization which is affiliated with the religious denomination, as appropriate:

Federal Tax Exempt Status: Provide evidence that the petitioning organization in the United States qualifies as a non-profit religious organization with Federal tax exempt status in the form of a signed letter from the Internal Revenue Service ("IRS") showing that the organization is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code ("IRC") as it relates to religious organizations; **or**

EVIDENCE PERTAINING TO THE MINISTER POSITION

Minister: For purposes of this classification a minister is defined as an individual fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct religious worship and perform other duties usually performed by authorized members of the clergy of that denomination. . . .

The petitioner's response included evidence of the petitioner's tax-exempt status, but no evidence relating to the beneficiary's ordination or the petitioner's denomination's requirements for ordination.

The director denied the petition on February 26, 2009, stating that "the petitioner failed to address the duties and qualifications of the beneficiary as a Minister of the petitioning religious organization. . . . The petitioner did not provide any corroborating evidence that the beneficiary is qualified as a Minister of the church." The director found that the petitioner did not submit "[a] certificate of ordination as a Minister or any other evidence that substantiates that the beneficiary qualifies as a Minister."

On appeal, the petitioner submits evidence regarding the beneficiary's training and credentials. [REDACTED] of the petitioner's Human Resources office states:

The reason why we only sent the document that demonstrated the ministry['s] federal tax exempt status is that the request that we received on December 23, 2008 required us to send the "Evidence Pertaining to the Organization's Nonprofit Status"; OR "Evidence Pertaining to the Minister Position." . . .

The request did not require us to send both.

Review of the director's notice (quoted earlier in this decision) shows that the director had edited a longer passage relating to evidence of tax-exempt status. The director had removed some irrelevant paragraphs, but inadvertently left in place the conjunction "or" at the end of the last paragraph quoted. For a reader not familiar with the regulations, this created the false impression that the petitioner had the choice between documenting its tax-exempt status "or" establishing the beneficiary's ministerial qualifications. Given this understandable error, we will consider the new materials that the petitioner submits on appeal.

The petitioner submitted an "Official Transcript" showing that the beneficiary studied at River Bible Institute from 2003 to 2007. River Bible Institute is clearly a branch of the petitioning entity, sharing the same post office box and web site.

[REDACTED] of the petitioning entity, stated that the petitioner's policy is "to first license a person to preach the gospel and perform the duties of a minister, for a two year period. Upon completion of that time, the person is then given ordination papers." The petitioner submits copies of certifications showing that the petitioner licensed the beneficiary on December 21, 2006, and ordained the beneficiary on December 21, 2008.

We note that the petitioner did not ordain the beneficiary until after the petition's filing date, but the two certificates do not show significant differences between the duties and privileges of a licensed minister and an ordained minister. The Licensing Certification reads, in part: "We confer upon him the rights and privileges and responsibilities of a licensed minister including the authority to solemnize marriages, conduct baptisms, burials and conduct other forms of religious worship and sacerdotal functions." The Ordination Certification includes a nearly-identical passage: "We confer upon him the rights and

privileges of an ordained minister including the authority to solemnize marriages, conduct baptisms, burials and conduct other forms of religious worship and sacerdotal functions.” Therefore, the record indicates that the petitioner already considered the beneficiary to be a minister before ordaining him as such. If the director remains concerned about this issue, then the proper remedy would be to request complete information from the petitioner to explain the difference between a licensed minister and an ordained minister in the petitioner’s religious denomination. The petitioner may also benefit from explaining how the beneficiary received his minister’s license before he completed his studies at River Bible Institute.

As we noted above, new regulations published on November 26, 2008 introduced substantial new documentary requirements. Review of the record indicates that the petitioner has not yet met several of these requirements, and the director’s request for evidence did not cover these requirements. Therefore, the director must now allow the petitioner a final opportunity to submit the necessary evidence. Because this proceeding has already seen some confusion about whether some of these requirements are optional (*i.e.*, the petitioner’s misunderstanding that it must establish *either* its tax-exempt status *or* the beneficiary’s qualifications), we emphasize that the petitioner must meet all of these requirements before the petition can be approved.

Under 8 C.F.R. § 214.2(r)(8), an authorized official of the prospective employer of an R-1 alien must complete, sign and date an attestation prescribed by USCIS and submit it along with the petition. The prospective employer must specifically attest to all of the following:

- (i) That the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation;
- (ii) That the alien has been a member of the denomination for at least two years and that the alien is otherwise qualified for the position offered;
- (iii) The number of members of the prospective employer’s organization;
- (iv) The number of employees who work at the same location where the beneficiary will be employed and a summary of the type of responsibilities of those employees. USCIS may request a list of all employees, their titles, and a brief description of their duties at its discretion;
- (v) The number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past five years by the prospective employer’s organization;
- (vi) The number of special immigrant religious worker and nonimmigrant religious worker petitions and applications filed by or on behalf of any aliens for employment by the prospective employer in the past five years;

- (vii) The title of the position offered to the alien and a detailed description of the alien's proposed daily duties;
- (viii) Whether the alien will receive salaried or non-salaried compensation and the details of such compensation;
- (ix) That the alien will be employed at least 20 hours per week;
- (x) The specific location(s) of the proposed employment; and
- (xi) That the alien will not be engaged in secular employment.

The director instructed the petitioner to “[c]omplete the attached employer attestation,” but the record does not contain a completed attestation. Given the petitioner's misperception that the request for evidence contained a list of options rather than requirements, it is not clear whether the petitioner completed the attestation. The petition cannot be approved without the required attestation.

Under 8 C.F.R. § 214.2(r)(11), the petitioner 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. The petitioner has stated that the beneficiary will receive \$26,400 per year plus benefits, and therefore the provisions regarding self-support do not apply. 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.

Under 8 C.F.R. § 214.2(r)(12), any request for an extension of stay as an R-1 must include initial evidence of the previous R-1 employment. If the beneficiary:

- (i) Received salaried compensation, the petitioner must submit IRS documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of filed income tax returns, reflecting such work and compensation for the preceding two years.
- (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available. If IRS documentation is unavailable, an explanation for the absence of IRS documentation must be provided, and the petitioner must provide verifiable evidence of all financial support,

including stipends, room and board, or other support for the beneficiary by submitting a description of the location where the beneficiary lived, a lease to establish where the beneficiary lived, or other evidence acceptable to USCIS.

(iii) Received no salary but provided for his or her own support, and that of any dependents, the petitioner must show how support was maintained by submitting with the petition verifiable documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other evidence acceptable to USCIS.

The record, at this time, does not contain evidence relating to the beneficiary's past or intended future compensation. The director cannot approve the petition until and unless the petitioner submits all of the required evidence described above.

For the reasons discussed above, the director's decision cannot stand and we hereby withdraw that decision. At the same time, however, the petition is not yet approvable. Therefore, the AAO will remand this matter to the director. 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 Administrative Appeals Office for review.