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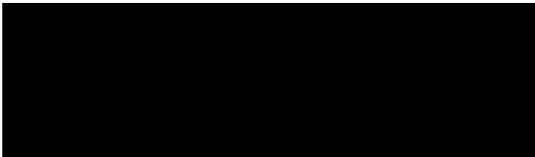
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
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FILE: WAC 09 036 51394 Office: CALIFORNIA SERVICE CENTER Date: FEB 23 2010

IN RE: Petitioner:
Beneficiary:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

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 church. It seeks to amend the beneficiary's status as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act, to perform services as an executive assistant and pastor. The director determined that the petitioner had not established that it qualifies as a tax-exempt non-profit religious organization.

On appeal, the petitioner submits a brief from its president and copies of various documents.

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.

TAX-EXEMPTION

The director's denial rested on a single issue, relating to the petitioner's claim of tax-exempt status. The USCIS regulation at 8 C.F.R. § 214.2(r)(9) requires that the 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 Internal Revenue Code, 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.

The petitioner filed the petition on November 21, 2008. In a letter accompanying the initial filing, [REDACTED] of the petitioning entity, stated:

We would like to hire [the beneficiary] to serve as our Executive Administrator of our offices for [the petitioning entity]. We also desire her to maintain her pastorate of the Grace Fellowship Chinese Congregation to which she has been affiliated for more than two years. . . .

[The beneficiary's] duties as our full time Executive Administrator will be to oversee our offices at 2 churches (Grace Fellowship in Monahans, TX and Parker Heights Christian in Odessa, TX), assist in an executive position at our 4 food bank warehouses [REDACTED].

stated that the petitioner is covered under a group tax exemption granted to the Full Gospel Fellowship of Churches and Ministers International (the Fellowship). [REDACTED] stated that "[s]ome of [the beneficiary's] duties would aid our helps arm, [REDACTED] and so there will be some pay from that organization." [REDACTED] indicated that the petitioner and [REDACTED] maintain separate budgets. The use of "Inc." indicates that WCGW is incorporated separately from the petitioning entity. While the two corporations may be affiliated, they are not the same corporation or the same employer.

The petitioner submitted a copy of an IRS letter from 2008, acknowledging the tax-exempt status of WCGW (but not the petitioner). A copy of WCGW's 2006 IRS Form 990 return indicates that WCGW's primary exempt purpose is "providing food for [the] needy."

The petitioner submitted a copy of a "form" letter from the Fellowship, indicating that the petitioner "has been accepted as a subordinate member of this Fellowship." The petitioner did not, however, submit evidence of the Fellowship's group exemption.

On January 2, 2009, the director instructed the petitioner to submit "documentary evidence (in the form of a signed letter) from the Internal Revenue Service that establishes [the Fellowship] is a non-profit religious organization with Federal tax exempt status." The director also requested evidence to show that the entities where the beneficiary would work are all covered by the Fellowship's group exemption.

In response, the petitioner submitted a copy of the Fellowship's 2008 directory, which lists the petitioning entity on page 85. Page 213 consists of a transcription of a June 3, 2003 IRS letter, affirming the Fellowship's group exemption. The directory did not reproduce the signed IRS letter itself, as the director requested.

In an unsigned letter, the petitioner explained that Grace Fellowship Church and Parker Heights Christian Church constitute “**ONE church with two locations**” (emphasis in original).

The director denied the petition on February 3, 2009, stating that the petitioner “did not provide a valid IRS determination letter confirming their tax exempt status.”

On appeal, counsel asserts that the director failed to take into consideration previously submitted evidence of the petitioner’s inclusion under the Fellowship’s group exemption. The petitioner submits a photocopy of the June 3, 2003 IRS letter that had been reproduced in the Fellowship’s directory. It remains that the petitioner did not submit a copy of the signed IRS letter when requested to do so. A transcription of the standardized language in the letter is insufficient. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). The director correctly found that the petitioner had failed to submit a required piece of evidence upon request, and the petitioner’s subsequent submission of that document does not retroactively contradict that finding.

Beyond the director’s decision, other factors prevent the approval of the petition. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

On November 26, 2008, five days after the petitioner filed the present petition, USCIS published substantially revised regulations that introduced a number of new documentary requirements and clarified existing ones. Supplementary information published with the new rule specified: “All cases pending on the rule’s effective date . . . will be adjudicated under the standards of this rule.” 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). Because this petition was pending on the rule’s effective date, the new regulations apply in this proceeding.

NATURE OF THE POSITION

Not every person employed by a church or religious organization qualifies for immigration benefits as a religious worker. We must consider the nature of the duties of a given position. 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.

The same regulation defines a “religious occupation” as an occupation that meets all of the following requirements:

- (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination;
- (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination;
- (C) The duties do not include positions which are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible; and
- (D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

As previously noted, [REDACTED] stated that the petitioner seeks “to hire [the beneficiary] to serve as our Executive Administrator of our offices for [the petitioning entity]. We also desire her to maintain her pastorate of the Grace Fellowship Chinese Congregation.”

In subsequent correspondence, the petitioner stated:

[The beneficiary] will serve as Pastor and preach in a Chinese 11:00 Sunday service in the Parker Heights Chapel. In addition, she will work in our Parker Heights Offices (occasionally the Grace Fellowship location offices) in secretarial, administration, and assist in book-keeping position. Her office hours will normally be 10 a.m. to 3:00 p.m. Monday-Friday when pastoral duties do not require her to be out of the office with visitation. She will also (as we all do) provide help and assistance with our food bank and its office paperwork (most of the office accounting of [REDACTED] . . . is handled out of our church offices).

The dual employment as a pastor and as an executive administrator is problematic, because section 101(a)(27)(C)(ii)(I) of the Act requires that the alien seeks to enter the United States solely for the purpose of carrying on the vocation of a minister. From [REDACTED] description, the beneficiary would serve first and foremost as the petitioner's executive administrator, and will also "assist in an executive position at our 4 food bank warehouses ([REDACTED])." These extensive administrative responsibilities appear to go well beyond duties incidental to the duties of a minister.

In the alternative, one could argue that the petitioner seeks to employ the beneficiary not in the vocation of a minister, but in the occupation of an executive administrator. Even then, however, the position as described appears to be primarily administrative. 8 C.F.R. § 214.2(r)(3) states that "limited administrative duties that are only incidental to religious functions are permissible," but the regulatory definition of "religious occupation" flatly excludes "positions which are primarily administrative."

For the above reasons, the petitioner has not shown that it has offered the beneficiary a position that qualifies as either the vocation of a minister or a religious occupation. USCIS cannot approve the petition until and unless the petitioner resolves this issue. We note that a drastic revision of the beneficiary's duties at this late date cannot settle the issue. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Commr. 1998).

ATTESTATION

8 C.F.R. § 214.2(r)(8) requires that 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 petitioner has not executed the required attestation, and the petition cannot be approved without it. We note the requirement at 8 C.F.R. § 214.2(r)(8)(xi) that the petitioner must attest the alien will not be engaged in secular employment. As previously noted, some of the beneficiary's proposed duties appear to be inherently secular administrative functions, both at the petitioner's church and at the separately incorporated WCGW.

MULTIPLE EMPLOYERS

An R-1 alien may not be compensated for work for any religious organization other than the one for which a petition has been approved or the alien will be out of status. A different or additional employer seeking to employ the alien may obtain prior approval of such employment through the filing of a separate petition and appropriate supplement, supporting documents, and fee prescribed in 8 C.F.R. § 103.7(b)(1). 8 C.F.R. § 214.2(r)(13).

The petitioner has indicated that the beneficiary is to work not only at the petitioning church, but also at WCGW, which is a separately incorporated entity that files its own Form 990 returns with the IRS (indicating that its finances are separate from the petitioner). The petitioner has also indicated that Parker Heights Christian Church "still exists" as a separate corporation, despite the absorption of its congregation into the petitioning church, and that "Parker Heights Christian Church has continued to pay" some employees from its own account. The petitioner, therefore, has indicated that the beneficiary is to work for two or possibly three separate corporations, each of which has employees on its own payroll. Each intending employer must file its own Form I-129 petition on the

beneficiary's behalf, because a single petition cannot authorize employment for multiple distinct (albeit interdependent) entities.

Furthermore, [REDACTED] stated that the beneficiary would "maintain her pastorate of the Grace Fellowship Chinese Congregation to which she has been affiliated for more than two years," which indicates that the beneficiary has already served as a pastor for the petitioning church. The petitioner has not claimed or shown that the beneficiary was authorized to serve in this way. If the beneficiary received any form of compensation for this work (whether monetary or non-monetary) while under R-1 status for a different employer, then such work amounts to a violation of her R-1 status.

The AAO will dismiss the appeal for the above stated reasons, with each considered as an independent and alternative basis for dismissal. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.