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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

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[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

JUL 20 2010

IN RE:

Petitioner:

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:

[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.

Thank you,

M. Deadrick

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant employment based visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.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 minister. The director, citing outdated regulations, denied the petition based on the determination that the beneficiary's current nonimmigrant status had expired prior to the validity period of the current Form I-129, Petition for a Nonimmigrant Worker.

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). Under 8 C.F.R. § 214.2(r)(5), extension of status is available only to aliens who maintain R-1 status. Determinations on applications for extension of stay and change of status are concurrent with, but separate from, a determination on the alien's eligibility for a nonimmigrant petition. While the determination regarding an alien's eligibility may be appealed, there is no appeal from the denial of an application for extension of stay or change of status. 8 C.F.R. § 214.1(c)(5) and § 248.3(g). Because the beneficiary's past employment and maintenance of status relate to his extension and change of status, rather than petition eligibility, the AAO lacks authority to decide those questions.

Regarding the director's determination on petition eligibility, as the director found the beneficiary ineligible for nonimmigrant classification based upon an issue regarding his past employment, the matter will be remanded for the director to address the beneficiary's eligibility under 101(a)(15)(R)(1) of the Act. The director may request any additional evidence deemed warranted and if so, 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.

