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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]

NOV 17 2010

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:

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.

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 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 is a regional office of the Church of God (Cleveland, Tennessee). It initially sought to classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act, to perform services as an assistant pastor. The director determined that a change in the beneficiary's title reflects a disqualifying change in the beneficiary's employment.

We note that, on August 11, 2008, the director denied the application for extension of stay on technical grounds, but subsequently reopened that application on the petitioner's motion.

On appeal, the petitioner submits a brief from counsel.

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)(8)(vii) requires the petitioner to attest to the title of the position offered to the alien and provide a detailed description of the alien's proposed daily duties.

The petitioner filed the Form I-129 petition on December 27, 2007. At that time, there was no instruction on the form for the petitioner to specify the intended work location or provide a detailed job description. The petitioner's initial filing included a letter from [REDACTED], identified as an administrative bishop. [REDACTED] listed the beneficiary's "essential duties and responsibilities":

- Assist the pastor in conducting worship services, wedding, funeral, and other services and in coordinating activities of lay participants;
- Visit church members in hospitals and convalescent facilities, or at home, to offer spiritual guidance;
- Assist pastor and lay teachers in selecting books and reference materials for religious education classes and in adapting content to meet needs of different age groups;
- Leadership mentoring and provide training of leadership within the Congregation for each area of ministry;
- Discipline, which includes Biblical Counseling, mentoring and accountability usually done on a one on one basis or in small groups;
- Write, prepare, select content and deliver sermons; and
- Teach bible classes, teach history and doctrine and scriptures of church to church members.

[REDACTED] stated that the petitioner intends for the beneficiary "to serve [in] the Associate Pastor position within our Church," but did not state the name or location of the specific congregation that the beneficiary would serve.

On June 30, 2008, a USCIS immigration officer (IO) visited [REDACTED] at the address provided on the Form I-129. [REDACTED] told the IO that the beneficiary "currently works as a Pastor at a [REDACTED]. The IO visited the address of the Torrington church on July 1, 2008, and found a handwritten sign for the church on the ground floor of an apartment building. The beneficiary's name was on the church sign. The IO attempted several times to contact someone at the church, but no one answered the door or the telephone.

On September 24, 2008, the director issued a request for evidence (RFE) instructing the petitioner to provide further information about the job offer, including the location of intended employment. In response, [REDACTED], [REDACTED] successor as the petitioner's administrative bishop, stated that the beneficiary "is presently serving as the Pastor within our Torrington church." [REDACTED] provided a revised list of the beneficiary's duties, which is nearly identical to [REDACTED] original list, except that the new list includes two new items: "[o]verseeing budgetary matters related to [the] church," and "[o]rganize and facilitate ministry projects and encourage volunteerism within the church body." The new list retained the reference to assisting the pastor, although the beneficiary herself was, at that point, the pastor of the Torrington church.

On January 17, 2009, the director notified the petitioner of the director's intent to deny the petition, stating that the petitioner had failed the site inspection and that "[t]he job description in the petition is not the job that the beneficiary has been performing."

In response, [REDACTED] stated that the beneficiary "originally started with our Torrington church in the capacity of Associate Pastor and following the removal of the former pastor assumed the position of Pastor. Both positions are virtually identical . . . with the only essential difference being that the pastor has direct reporting responsibility to the regional office." [REDACTED] argued that, because the beneficiary continues to act in the capacity of a minister, she therefore qualifies for ongoing R-1 classification.

Counsel repeated these same points and observed that the site inspection confirmed [REDACTED] assertion that the beneficiary served as the pastor of the [REDACTED]. (Although the beneficiary was absent at the time of the inspection, the inspecting officer reported the presence of a sign with the name of the church, identifying the beneficiary as the pastor.)

In a new RFE dated March 17, 2009, the director instructed the petitioner to provide additional details about the beneficiary's intended position and duties. The petitioner responded by resubmitting the job description that [REDACTED] had previously provided.

The director denied the petition on July 20, 2009, stating: "The job description in the petition is not the job that the beneficiary has been performing."

On appeal, counsel asserts "there was no meaningful difference in the duties as both positions are vocations for a minister." Counsel adds that the site inspection confirmed that the beneficiary is performing qualifying religious work. Counsel also states: "It is further significant that the denial does

not cite any specific regulation which prohibits approval of the instant petition extension nor any case authority to support the denial upon the rational stated. . . . As such, this change from Associate Pastor to Pastor is a distinction without legal significance.”

We find counsel’s arguments persuasive. USCIS verification efforts have revealed no significant difference in the beneficiary’s duties, no change in her work place, and no evidence of deceitful intent on the part of the petitioner or the beneficiary.

The USCIS regulation at 8 C.F.R. § 214.1(e) provides 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. While a significant change in the beneficiary’s work would raise questions relating to her maintenance of status, because the beneficiary would then be engaged in employment other than what was authorized, we do not find that the beneficiary’s promotion from assistant pastor to pastor amounts to an unauthorized change of employment. Rather, the promotion appears to represent a negligible change in the beneficiary’s daily functions and responsibilities. The AAO holds that the regulations regarding compliance review and maintenance of status are meant to combat fraud and abuse, not to halt incremental, expected career progression. Promotion to a higher administrative status such as bishop, with a change in work location and significant expansion of responsibilities and duties, would present greater problems, but that is not what has occurred here.

For the above reasons, we will withdraw the director’s finding that the beneficiary’s promotion is a disqualifying change in her previously authorized employment. Other issues remain, however, which the petitioner must resolve before USCIS can properly approve the petition.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The regulation at 8 C.F.R. § 214.2(r)(8) requires the petitioner to submit a detailed attestation, containing information about the petitioner, the beneficiary and the job offer. The record contains section 2 of that attestation, the religious denomination certification, but the first section of the attestation is not in the record. The petition cannot be approved without that document.

Also, on Form I-129, the petitioner stated that it would pay the beneficiary \$18,000 per year, and provide “[h]ousing valued at \$4,000.00 per year.” The regulation at 8 C.F.R. § 214.2(r)(11)(i) requires the petitioner to submit verifiable evidence explaining how the petitioner will compensate the alien, which 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. Internal Revenue Service (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 petitioner has submitted various documents, including IRS transcripts of the beneficiary's income tax returns, showing the beneficiary's receipt of an annual salary of \$18,000. The record does not, however, contain evidence – from the IRS or elsewhere – to corroborate the petitioner's assertion that the petitioner provides the beneficiary with housing, in the form of either housing allowances or the use of a church-owned residence. The petitioner must address this deficiency by providing further evidence to show who owns and pays for the beneficiary's housing. If the beneficiary pays for her own housing out of her salary, then the petitioner's previous description of her compensation package is incorrect.

For the reasons discussed above, the director's decision cannot stand and we hereby withdraw that decision. At the same time, however, the record as it now stands does not permit approval of the petition. 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.