

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

**PUBLIC COPY**

D13

[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date:

NOV 22 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:

[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.

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. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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 monastery. 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 cantor/reader. The director determined that the petitioner had not established that it is operating as a bona fide nonprofit religious organization.

The director further determined that the beneficiary had begun working for the petitioner prior to approval of the instant petition and therefore violated his previously granted R-1 status. 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 issue of the beneficiary's maintenance of R-1 status is significant only insofar as it relates 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, Petition for a Nonimmigrant Worker. 8 C.F.R. § 214.1(c)(5). Because the beneficiary's maintenance of status is an extension issue, rather than a petition issue, the AAO lacks authority to decide the question, and we will not discuss it any further here.

The remaining issue is whether the petitioner has established that it operates as a bona fide nonprofit tax-exempt religious organization.

Counsel asserts on appeal that the director erred in her decision "for a myriad of reasons," and that the petitioner has submitted evidence of "its formal establishment as a place of worship, evidence of financial health and active membership." The petitioner submits additional documentation 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 petitioner indicated on the Form I-129, filed on June 29, 2009 that the duties of the proffered position were to “perform religious function of cantor/reader for daily services” and would be carried out at the petitioner’s address of [REDACTED] On the Form I-129 Supplement, the petitioner described the duties as:

Assist [the petitioner] and its parishioners, by performing Cantorship and Reader (religious singing) duties; also assists with daily services, and assists in cooking and serving Agape Meals each Sunday and Feast day following the liturgical services.

In its undated letter submitted in support of the petition, the petitioner stated that the beneficiary became one of its residents on June 1, 2009, and that:

He helps out our priest to prepare and perform the daily services, provides transportation for the elderly [parishioners] to and from church, and helps cook and serve our agape meals which are held every Sunday and Feast days, following Liturgy. At this time [the beneficiary] is receiving free room and board, as well as free meals. He is not receiving any monetary compensation from the [petitioner] in exchange for his services.

The regulation at 8 C.F.R. § 214.2(r)(16) provides:

*Inspections, evaluations, verifications, and compliance reviews.* The supporting evidence submitted may be verified by USCIS [U.S. Citizenship and Immigration Services] through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization’s facilities, an interview with the organization’s officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection,

satisfactory completion of such inspection will be a condition for approval of any petition.

On March 6, 2008, an immigration officer (IO) visited the petitioner's premises for the purpose of conducting an onsite inspection to verify the petitioner's claims in another petition. The IO discovered that the petitioner was "operating from a house located in a residential section of Cleveland" that was deeded in the name of the beneficiary of that petition. The IO was advised that the deed was recorded as such "because the bank would not finance the home in the name of the monastery." The IO noted the house did not appear to be configured to hold religious services or to cater to the church-going public. For example, the IO noted that the altar area did not have a Templon, the "barrier that separates the laity in the nave from the priests" and the house had no public bathroom.

On August 19, 2009, the director notified the petitioner of the IO's findings and her intent to deny the petition based on the results of the onsite inspection. The director requested additional documentation to establish that the petitioner had extended a valid job offer to the beneficiary.

In response, counsel argues that, contrary to the observations noted by the IO and included in the director's Notice of Intent to Deny (NOID), the house occupied by the petitioner is used as a monastery. Counsel minimizes the IO's observation that the "bathrooms appeared to be associated with the occupants of the house and not for common use" and questions how one would distinguish a "common use" bathroom from a monk's bathroom. However, counsel did not address the underlying issue of the lack of a public bathroom in a house where religious services were supposedly held. Counsel also asserts that a Templon is not a necessary requirement for "Orthodox religious worship" and that the petitioner is a monastery and not a church. Counsel provides a copy of an article from *The Faith Magazine* that includes a photograph of an apparent religious service. Counsel also provided an unidentified photograph that appears to depict another religious service. Both of the photographs show that there is no separation of the altar from the laity. However, as noted by the director, the magazine article is not accompanied by an English translation as required by the regulation at 8 C.F.R. § 103.2(b)(3), and the other photograph contains no explanation or description of the activity shown. It is not clear from the photographs if the activities depicted are of regular traditional religious services.

In an August 28, 2009 letter, [REDACTED] who identifies himself as the administrator and coordinator of the Romanian Orthodox Exarchate of America, stated that the IO reported on "a location which is used as a house chapel for the monks of the monastery, which is at [REDACTED] . . . not about the location of the monastery at [REDACTED] . . . where is a 'normal' Orthodox church . . . This church is part of the monastery . . . since September last year." The petitioner submitted a copy of a September 8, 2008 "land installment contract" wherein the petitioner contracted to purchase the property located at [REDACTED] on an installment basis.

The petitioner also submitted photographs that counsel stated were of the petitioning organization; however, nothing in the photographs, such as a sign or street address, supports

counsel's statement. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner submitted copies of its monthly bulletins for June, July and August of 2009. Each indicates that services are held on Monday through Friday at the petitioner's location on [REDACTED] with additional services held at [REDACTED]. The bulletins contain a picture of the building shown in the photographs submitted by the petitioner but the building is not identified as the monastery or the [REDACTED].

The petitioner's bulletins clearly indicate it holds services at the [REDACTED] address and the petitioner clearly states on the Form I-129 that the beneficiary would work at that address. The petitioner also submitted statements from individuals who stated that they attended services at the [REDACTED] address. Thus, the petitioning monastery allegedly serves as both a residence and a place of worship. On appeal, counsel acknowledges that the beneficiary will be employed at the [REDACTED] address and that the [REDACTED] street location is an additional worship area because of the petitioner's growing congregation. Counsel's explanation, however, does not alter the fact that the petitioner's [REDACTED] location, where the beneficiary is scheduled to work, lacked sufficient indicia to establish that the petitioner operated as claimed at that location.

Counsel asserts on appeal that the director relied upon a previous onsite inspection of the petitioner's premises to deny the instant petition and that this is evidence that the director did not "independently verify" the contents of the petition. However, nothing in the record reflects that there has been a significant change in the petitioner's operations at the planned work location. We do not find that three monthly bulletins and several unsworn form letters regarding services at the intended address sufficiently establish the bona fide nature of the petitioner. Further, the petitioner's past noncompliance with immigration regulations is relevant to any subsequent petition or application filed with USCIS. The petitioner has submitted no documentation to overcome the findings of the IO during the onsite inspection.

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, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.