

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

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

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

NOV 22 2010

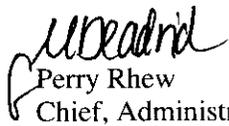
PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(1) of the
Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1)

ON BEHALF OF PETITIONER:

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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.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 under section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1), to perform services as pastor of its “daughter” church. The director determined that the petitioner had not established the existence of its “daughter” church and that the beneficiary will work at least 20 hours per week.

On appeal, counsel asserts that the petitioner’s “daughter” church has been in existence since 2008, and that although the church holds services in a hotel, it does not mean that the organization does not exist.

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 issues presented are whether the petitioner has established that the “daughter” church exists and whether the beneficiary seeks to enter the United States to work in a qualifying religious occupation or vocation for at least 20 hours per week.

The regulation at 8 C.F.R. § 214.2(r)(1) provides:

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:

- (ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);

In its May 6, 2008 letter submitted in support of the petition, the petitioner stated:

[The beneficiary] will lead our daughter church located at [REDACTED] [REDACTED]. He will reach out [to] the growing Filipino community in the East Bay, especially the first generation Filipinos and elderly people whose primary medium of communication is Tagalog. More specifically, [he] will be responsible for the following:

- Assist the Senior Pastor of the Church and [] handle the operation and development of our daughter church located at [REDACTED]
- Responsible for the development, creation and growth of the daughter church in Union City;
- Evangelize to the community with the view to reach out for the lost and the needy;
- Continue the regular Bible study and prayer meeting to aid in the spiritual growth of the new members;
- Establish the organizational leadership and committees that will lead to the systematic operation of the daughter church;
- Assist and conduct services, funerals, weddings, dedications, baptisms and other rituals as needed.

On February 5, 2009, an immigration officer (IO) visited the beneficiary's proposed work site at [REDACTED] for the purpose of conducting an onsite inspection to verify the petitioner's claims set forth in the petition. The IO reported that the address was a commercial site "housing at least three other businesses." The IO also reported that church services were held at the site from 5 p.m. to 7 p.m. on Sunday with approximately 25 to 40 congregants and a Wednesday night bible study was held from 7:30 pm to 8:30 p.m. The IO determined that the "daughter" church would not be able to support a full-time pastor and pay all of the church's operating expenses.

On January 4, 2010, the director issued the petitioner a request for evidence (RFE) in which she sought additional information about the petitioner's location, including that of the "daughter" church in Union City. The director specifically requested:

- Copies of the petitioner's lease agreements, rental agreements, and/or mortgage payments;
- A copy of the city or county fire department occupancy permit for the petitioner's location;
- Copies of utility bills and telephone bills for the last three months;
- Brochures, advertising about the religious organization
- Color photographs of the petitioner's location, both inside and outside the building.

Contrary to her statement in the decision, the director did not request additional information about the beneficiary's duties or the hours he would be expected to work.

On the Form I-129 Supplement submitted in response to the RFE, the petitioner reiterated that in the proffered position, the beneficiary would assist the senior pastor and "handle the operation and development of our daughter church." The petitioner submitted copies of four rental receipts from the [REDACTED] (three of which are dated in January 2010 one in May 2009) reflecting that the petitioner rented facilities at the hotel for \$100 on three separate dates. The petitioner also submitted two copies of brochures dated in January 2010 for Sunday services at the [REDACTED]

The petitioner submitted documentation of its operations at the parent site, including a 2008 to 2011 facilities use permit with the Jefferson School District, copies of its phone bill for November and December 2009 and January 2010, water and garbage bills for October 2009 through December 2009, copies of four of its monthly church bulletins, and photographs of its facilities.

The director denied the petition, finding that the "daughter" church did not exist and therefore the petitioner had not established a need for the beneficiary's service or that the beneficiary will work at least 20 hours per week.

On appeal, the petitioner states that the [REDACTED] church uses the [REDACTED] for its Sunday services but that its business address is at [REDACTED]. The petitioner submits an April 23, 2010 affidavit from [REDACTED] who states that he is a member of the petitioner's board of directors, that he owns and operates a business at [REDACTED] and that he sublets part of his space to two other businesses. [REDACTED] stated that he allows the petitioner's "daughter" church to use the address as a church office, worship center and bible study meeting place. The petitioner provides a copy of [REDACTED] April 1, 2008 lease agreement for the premises. The petitioner also submits an April 5, 2010 letter from the [REDACTED] certifying that the beneficiary, as "head pastor" of the petitioning organization in [REDACTED] "is currently renting one of the rooms of this hotel for their Sunday Worship Services" and that the room was under a renewable contract for a period of

one year. The letter does not indicate when the contract with the hotel became effective. The petitioner submitted copies of rental receipts dating from October 2009.

The petitioner also submits photographs and a copy of a brochure indicating that the [REDACTED] church celebrated its second anniversary in 2010. Additionally, the petitioner submits affidavits from eight of its members attesting that they had attended the [REDACTED] church since April 2008, first attending at the [REDACTED]. We note that the IO reported that religious services were held at the [REDACTED].

We find that the record sufficiently establishes that the “daughter” church exists and was in existence at the time the petition was filed on May 23, 2008.

Nonetheless, the record does not clearly establish the beneficiary’s working hours. Although the director stated that the petitioner was requested to submit a detailed description of the beneficiary’s work, including his work hours, the RFE did not contain this instruction. The petitioner stated that the beneficiary would assist the senior pastor. However, the record does not contain any information about these duties. Additionally, 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.

The record does not establish that the petitioner has satisfactorily completed the onsite inspection.

This matter will be remanded. 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 AAO for review.