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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

D13

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

OCT 01 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:

SELF-REPRESENTED

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, with a fee of \$585. 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 church. It seeks to continue 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 minister. After noting the petitioner's contradictory claims regarding the beneficiary's proposed salary, the director determined that the petitioner had violated his R-1 status by obtaining unauthorized employment and therefore, further found that the petitioner failed to establish that the beneficiary intended to enter the United States for the sole purpose of working as a minister.

On appeal, the petitioner states that the beneficiary was not aware that he was unable to engage in secular employment during his R-1 status. The beneficiary submits a letter in support of the appeal in which he does not deny that he engaged in unauthorized employment. In a March 24, 2009 statement, the beneficiary states that he was advised by his attorney that it "would be alright to have a local license" allowing him to work as a painter with another employer. The beneficiary further stated that after consulting with another lawyer who advised him that he "thought it would be better for me to only be involved with my work at the church," the beneficiary "canceled the local license and [has] not been involved in anything else but the church work."

We note first that the 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 (IRS) documentation if available). 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 regulation at 8 C.F.R. § 214.1(c)(1) states that an employer seeking the services of an alien as an R-1 nonimmigrant religious worker beyond the period previously granted must petition for an extension of stay on Form I-129, Petition for a Nonimmigrant Worker.

The issues of the beneficiary's prior employment and maintenance of R-1 status are significant only insofar as they relate 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. 8 C.F.R. § 214.1(c)(5). Because the beneficiary's past employment and maintenance of status are extension issues, rather than petition issues, the AAO lacks authority to decide those questions.

Nonetheless, the beneficiary's unauthorized employment brings into question the credibility of the information provided by the petitioner in support of the instant petition as it relates to the beneficiary's proposed compensation and whether the petitioner has established that the beneficiary is coming to the United States to work solely as a minister.

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

* * *

(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).

The regulation at 8 C.F.R. § 214.2(r)(11) provides:

Evidence relating to compensation. Initial evidence must state how the petitioner intends to compensate the alien, including specific monetary or in-kind compensation, or whether the alien intends to be self-supporting. In either case, the petitioner must submit verifiable evidence explaining how the petitioner will compensate the alien or how the alien will be self-supporting. Compensation may include:

(i) *Salaried or non-salaried compensation.* Evidence of compensation 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. 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 must also submit an attestation in which it affirms the type of compensation that the beneficiary will receive as well as “details of such compensation.”

The record reflects that the beneficiary was approved for R-1 status on July 7, 2004 to work for the petitioner for a period from August 16, 2004 to July 31, 2007. On May 31, 2007, the petitioner filed the instant petition to continue the beneficiary’s services as a minister. In a May 29, 2007 letter submitted with the petition, the petitioner’s pastor, Reverend [REDACTED] stated that the petitioner was offering the beneficiary a “permanent full-time position” as a minister, rather than a temporary position pursuant to section 101(a)(15)(R)(1) of the Act, 8 U.S.C. § 1101(a)(15)(R)(1). Reverend Domingues also stated that the beneficiary’s starting salary “was \$1,100.00 per month with the addition of his expenses,” and that “[his] current salary is \$1,500.00 and his expenses.”

On May 6, 2008, an immigration officer (IO) conducted an onsite inspection of the petitioner’s premises, during which he discovered that the beneficiary was engaged in secular employment as a house painter. Based on the results of the inspection, on June 27, 2008, the director issued the petitioner a Notice of Intent to Deny (NOID) the petition.

Although the petitioner did not specifically address the beneficiary’s unauthorized employment in its response to the NOID, as it relates to the beneficiary’s compensation, the petitioner claimed in a July 24, 2008 letter signed by its church secretary/treasurer and bishop, that it was increasing the beneficiary’s salary from \$800 to \$1,275 per month and providing him with a monthly housing allowance of \$700. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

In addition to these material changes regarding the beneficiary’s compensation, we note discrepancies between the petitioner’s claims and the documentary evidence submitted in support of the petition. Specifically, while the petitioner claimed that the beneficiary had been paid \$800 per month, the 2006 IRS Form W-2 reports that the petitioner paid the beneficiary \$10,200 in wages and \$8,900 in housing. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such

inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

As discussed above, the petitioner's claims regarding the beneficiary's compensation do not accurately reflect the actual pay arrangement. The petitioner initially stated that the beneficiary would receive a salary of \$1,500 plus expenses. The 2006 Form W-2 reflects that the petitioner paid the beneficiary an average of \$850 per month in addition to housing of approximately \$742 per month. The petitioner also submitted copies of its unaudited financial statements for 2006 and January through October 8, 2007, with a handwritten note that it had a balance of approximately \$20,000 in an "admin" account. As the documents have not been audited by a certified public accountant, they do not provide verifiable documentation of the petitioner's financial status and therefore of how the petitioner intends to pay the beneficiary a salary of \$1,500 per month in addition to expenses. We, therefore, concur with the findings of the director.

Beyond the decision of the director, the petitioner has also failed to meet the requirements of the regulation at 8 C.F.R. § 214.2(r)(8), which requires the petitioner to submit a detailed attestation with details regarding the petitioner, the beneficiary, the job offer, and other aspects of the petition. The record contains no such attestation.

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 petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.