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U.S. Citizenship and Immigration Services
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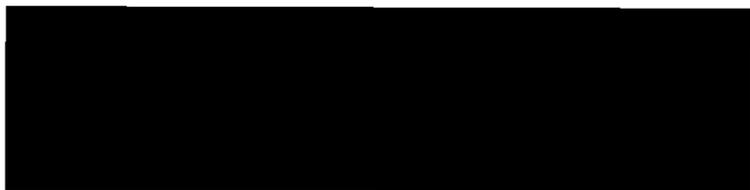
D13



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: OCT 07 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:



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 and will remand the petition 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 its youth pastor. The director determined that the petitioner had not established that the beneficiary had been a member of its religious denomination for two full years immediately preceding the filing of the visa petition and that the beneficiary was qualified for the proffered position.

On appeal, counsel states that the record establishes that the beneficiary has been a member of the Pentecostal denomination since 1997 and that he possesses the required qualifications for the position.

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 first issue presented is whether the petitioner has established that the beneficiary was a member of its religious denomination for two full years immediately preceding the filing of the visa petition.

The regulation at 8 C.F.R. 214.2(r) provides, in pertinent part:

(1) 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.

In its February 7, 2008 letter submitted in support of the petition, the petitioner stated that the beneficiary "has been a member of the [REDACTED] denominational church, since July 6, 1997 and has been ordained as a pastor." The petitioner also stated:

Prior to his coming to the U.S., [the beneficiary] has had over ten years of religious work experience working in various churches and religious organization[s] in [REDACTED]

With the petition, the petitioner submitted a copy of the beneficiary's July 6, 1997 "Certificate of [REDACTED]"

In July 2008, an immigration official (IO) conducted compliance review verification visits to the petitioner's premises. While concluding that the petitioner was a bona fide nonprofit religious organization and operating as claimed, the IO questioned the beneficiary's qualifications for the proffered position.

In a January 29, 2009, Notice of Intent to Deny (NOID) the petition, the director instructed the petitioner to provide evidence that the beneficiary had the required two-year membership in its denomination. In response, the petitioner submitted the original of the beneficiary's membership certificate.

In denying the petition, the director stated:

The petitioner[']s response dated March 9, 2009, states that the "beneficiary joined the [REDACTED] [']bringing vast local church knowledge and youth experience['] into the growing church. He had been [REDACTED]"

Although the beneficiary worked for organizations that have tenets similar to the organization currently seeking the beneficiary's services, mere similarities in religious practices do not serve to make unrelated religious organizations members

of the same "religious denomination" as that term is defined in the regulation. The petitioner has not established that there is an institutional relationship or common governing body between the organization currently seeking the beneficiary's services and the institution or institutions where the beneficiary claimed to have obtained prior work experience.

On appeal, counsel asserts that both the [REDACTED] and the petitioning organization are of the [REDACTED] and that the director's conclusion that "mere similarities in religious practices do not serve to make unrelated religious organizations members of the same 'religious denomination'" serves to "defeat the interpretation of a 'common form of worship' as one of the criteria recognized under Section 204.5(m)(3)."

We withdraw this determination of the director. There is nothing in the record to suggest that the petitioning organization and the [REDACTED] are of different denominations. The petitioner stated in its February 7, 2008 letter submitted in support of the petition that the [REDACTED] was of the Pentecostal denomination, the same denomination as that of the petitioner. Further, in his February 1, 2008 letter, [REDACTED] in charge of the [REDACTED] stated that the beneficiary came to the organization "from our sister church."

The evidence sufficiently establishes that the beneficiary was a member of the petitioner's denomination for two full years immediately preceding the filing of the visa petition.

The second issue is whether the petitioner has established that the beneficiary is qualified for the proffered position.

The regulation at 8 C.F.R. § 214.2(r)(3) defines minister as an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and
- (D) Works solely as a minister in the United States which may include administrative duties incidental to the duties of a minister.

In its letter of February 2008, the petitioner stated:

In the proffered position of a Youth Pastor, [the beneficiary], as an ordained Pastor, will be charged with duties that will complement the work of our Senior Pastor . . . and he responsible for conducting the pastoral activities specifically involving the education of the youth members in our church's congregation. Additionally, [he] will also assist our Senior Pastor in leading the congregation in Sunday worship services, preparing sermons for our various services, administering religious rites, and performing other spiritual functions associated with the beliefs and practices of our religious faith, as authorized. In addition, [the beneficiary] will officiate at baptisms, communions, wedding ceremonies and funeral services, as requested, and will conduct weekly orientation classes for the newly registered members and administer special classes for the new congregants, which consist of comprehensive briefing of our church's history, bible study, and personal counseling.

The petitioner submitted a copy of the beneficiary's ordination certificate, reflecting that he was ordained as a pastor with the [redacted]. The beneficiary's résumé reflects concurrent secular and religious experience. From April 2003 to September 2004, the beneficiary served as managing director of [redacted] and from September 2004 to July 2007, as chief executive officer and corporate account manager for [redacted]. The résumé also reflects that the beneficiary served as choir director and youth pastor with the [redacted].

As previously discussed, as the result of a compliance review verification visit, the IO questioned the beneficiary's qualifications for the proffered job. The IO stated that although [redacted] stated in his letter that the beneficiary had served as youth pastor and choir director from May 2005 to June 2007, USCIS records reflect that the beneficiary entered the United States on February 18, 2007 and departed on July 14, 2007. The IO questioned how the beneficiary could work for the [redacted] if he was in the United States for almost five months. The IO indicated that in an e-mail, [redacted] stated that the beneficiary had worked for the church from "the end of 2005 until he left for the U.S.A." The IO concluded that [redacted] letter and e-mail were contradictory. The IO further reported that a review of the website for the [redacted] did not return a result for the beneficiary. The IO therefore concluded that the beneficiary's ordination certificate was fraudulent.

In her NOID, the director instructed the petitioner to submit the originals of the beneficiary's college transcripts and degrees and "evidence that establishes the beneficiary had the requisite training or accumulated and extensive training in the field or a high degree of spiritual maturity." The director also requested additional information about the beneficiary and the denomination's requirements for ordination:

- **Beneficiary Qualifications:** Submit evidence to show that the beneficiary has been ordained. If the petitioner's religion or organization does not have formal ordination procedures, provide other evidence that the beneficiary has been authorized to conduct religious worship and perform other services usually performed by members of the clergy such as marriages and funerals.

- **Requirements for Ordination:** If the petitioner's religion or organization does have formal ordination procedures, provide a detailed description of the religious denomination's or organization's requirements for ordination. Submit a copy of the organization's constitution, by-laws, manuals, IRS Form 1023, IRS Form 990, or California Form 199 to demonstrate the petitioner's ordination requirements.

Additionally, the director also questioned the "experience letter," stating that "it was not written by an authorized individual at the location at which the beneficiary worked" and instructed the petitioner to:

Provide sufficient evidence of the beneficiary's work history beginning with the two years prior to the beneficiary entering into the U.S. on August 31, 2007. Provide experience letters written by the previous and current employers that include a breakdown of duties performed in the religious occupation for an average week. Include the employer's name and address, specific dates of employment, specific job duties, number of hours worked per week, form and amount of compensation, and level of responsibility/supervision.

In response to the NOID, the petitioner stated that the CAC "does not require that a candidate for the proffered position of Youth pastor to possess a degree in any specific area of education or training," but that the individual must "be ordained as a pastor in the [REDACTED], after having been trained and having received the baptism of the Holy Ghost, thus being licensed and authorized to preach and minister in any Assembly or Assemblies of the [REDACTED]." The petitioner further stated that it required the individual to have "a college education and a college degree in any field" for the purpose of "equip[ping] the candidate with the ability to read, write, communicate and articulate" to youths.

The petitioner submitted the original of the beneficiary's ordination certificate and what it states are the beneficiary's college degrees and diplomas and Polish transcripts. The latter documents were not, however, accompanied by English translations as required by the regulation at 8 C.F.R. § 103.2(b)(3), which provides:

Translations. Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

The petitioner also submitted the original of [REDACTED] February 1, 2008 letter, stating that the beneficiary had served as its youth pastor and choir director from May 2005 to June 2007 without remuneration. In a February 24, 2009 letter, [REDACTED] also stated that the beneficiary did not give up his position while he was in the United States, even during the 5-month absence. [REDACTED] stated that during these absences, assistant leaders took charge. He further stated

that when he used the term "left for the USA," he meant when the beneficiary took his final trip which was paid for by the church paid as a parting gift.

In denying the petition, the director stated that because the petitioner did not provide an English translation for the beneficiary's diplomas and transcripts, it could not be established that the beneficiary met the minimum requirements for the position. On appeal, the petitioner submits a copy of a July 28, 2007 diploma issued to the beneficiary from the [REDACTED] a translated copy of a diploma issued to the beneficiary by the [REDACTED] October 20, 2006, indicating that he received a Master of Science in Engineering and an English version of the beneficiary's transcripts from the institution. The petitioner also submits an Educational Evaluation Report, dated August 24, 2009, indicating that the beneficiary's degree is the equivalent of a Bachelor of Science in Aeronautical Engineering from a "regularly accredited university in the United States."

We find that the documentation submitted by the petitioner sufficiently establishes that the beneficiary is qualified for the proffered position, and we withdraw the director's determination to the contrary.

The regulation at 8 C.F.R. 214.2(r)(16) provides that satisfactory completion of a verification review will be a condition for approval of any petition. The record, as it stands, does not contain a satisfactory review.

Further, beyond the findings of the director, the petitioner has not established how it intends to compensate the beneficiary. 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 stated that the beneficiary would receive an annual remuneration of [REDACTED] in addition to other pastoral expenses and miscellaneous allowances. The petitioner submitted copies of its monthly bank statements for June 2007 through January 2008 and unaudited copies of its

income and expenditure statements for the third and fourth quarters of 2006 and for the year 2007. It also submitted a copy of its 2008 income statement and a copy of its 2008 income and expenditure budget. The budget, however, does not show monies set aside for any particular expenditure.

In response to the RFE, the petitioner submitted a copy of IRS Form 990, Return of Organization Exempt from Income Tax for 2007 and a copy of California State Form 199, California Exempt Organization Annual Information Return. The documents are not certified, as required by the above-cited regulation, and there is no indication that the returns were filed with the appropriate taxing authorities. The petitioner also submitted copies of its monthly bank statements for March and April 2008. The petitioner, however, has submitted insufficient verifiable documentation of how it intends to compensate the beneficiary.

The petition is therefore remanded to the director for consideration of the above issues. The director may request any additional evidence deemed warranted, including another onsite inspection, 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.