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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]

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:

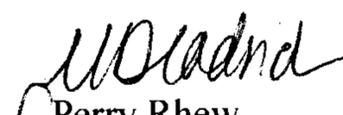
[REDACTED]

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 Hindu community center. 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 a priest. The director determined that the petitioner failed to fully respond to the request for evidence (RFE).

The director also determined that the petitioner had not established that the beneficiary was employed as a religious worker pursuant to his previously approved R-1 nonimmigrant visa petition. The U.S. Citizenship and Immigration Services (USCIS) 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 documentation if available).

The issue of the beneficiary's prior employment 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 past employment is an extension issue, rather than a petition issue, the AAO lacks authority to decide this question and it will not be addressed.

On appeal, counsel asserts that the director "did not consider all the submitted documents and thus applied the law inadequately."

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 issue presented on appeal is whether the petitioner adequately responded to the director's RFE and therefore established that it operates as a bona fide nonprofit tax-exempt religious organization.

On the Form I-129, the petitioner attested that it had a membership of 3,000 and four employees which included two priests. In an RFE dated February 14, 2009, the director inquired about the size of the petitioner's congregation and instructed the petitioner to "[s]ubmit a current membership directory verifying the total number of actual congregants at the work location." In response, the petitioner submitted a March 23, 2009 affidavit from [REDACTED] the petitioner's president and the official who signed the Form I-129 on behalf of the petitioner. [REDACTED] stated that the "total number of member families is fifteen hundred or approximately 7,500 individual members." However, in denying the petition, the director observed that the membership directory submitted by the petitioner only contained "approximately 350 family entries," and that the petitioner submitted no documentation to explain the discrepancy.

On appeal, [REDACTED] states in a May 22, 2009 affidavit that:

[The petitioner's] membership consists of approximately 350 due[s] paying families In addition temple have [sic] about 3,000 devotee visitors from the tristate region comprising New York, New Jersey, Connecticut and Pennsylvania who participate in religious congregations, programes [sic] and cultural events on holy days and holy events The total number of religious functions participants, devotees, visitors and followers are about 7,500 individual members.

The only documentation submitted by the petitioner to confirm any of these statements is its membership list that reflects a membership of 350 individual members. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). 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).

The petitioner also indicated in subsection 1 of Section 2 of the Form I-129 supplement that it had four employees; however, it only listed two in subsection 3. As the beneficiary is not currently working for the petitioner, the record is not clear as to the duties and responsibilities of the two remaining employees. This, together with the question about the size of the petitioner's

membership, raises questions as to the beneficiary's exact duties and whether he will work at least 20 hours per week. The regulation at 8 C.F.R. § 214.2(r)(1) 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:

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

Additionally, 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 indicated on the Form I-129, Petition for Nonimmigrant Worker, that the beneficiary would be compensated at the rate of \$10,500 annually and would be provided with free room and board. The petitioner submitted photographs of the kitchen area of its facility and unaudited financial statements accompanied by an accountant's compilation report for the years 2006 and 2008 but no verifiable evidence regarding how it will compensate the beneficiary. The accountant's compilation is based primarily on the representations of management and the accountant expressed no opinion as to whether they fairly present the financial position of the petitioning organization. In light of this, limited reliance can be placed on the validity of the facts presented in the financial statements that have been submitted. No further supporting documentation is included in the record to reflect the assertions made by the accountant in the financial documentation, or contained within the unaudited financial statements. Thus, the accountant's compilation reports alone are not sufficient documentation to establish how the petitioner intends to compensate the beneficiary.

Accordingly, the petitioner has submitted insufficient documentation to establish that the beneficiary will work at least 20 hours per week and how it intends to compensate the beneficiary.

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 at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (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.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.