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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

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: OCT 13 2010

IN RE:

Petitioner:
Beneficiary:

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.

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 church. 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 pastor. The director determined that the petitioner had not responded sufficiently to the request for evidence (RFE) regarding, *inter alia*, the beneficiary's compensation and the petitioner's affiliation with a bona fide, tax-exempt organization.

The record reflects that the director was also concerned with the beneficiary's employment during his prior R-1 approval period. 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 (IRS) documentation if available). Under 8 C.F.R. § 214.2(r)(5), extension of status is available only to aliens who maintain R-1 status.

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, Petition for a Nonimmigrant Worker. 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, and we will not discuss them in detail here.

On appeal, counsel asserts that the decision "is arbitrary, capricious, against the weight of the evidence, and constitutes an abuse of discretion." 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.

In its August 17, 2009 letter submitted in support of the petition, which was filed on August 18, 2009, the petitioner stated that it sought the services of the beneficiary as pastor of one of its mission churches. The petitioner stated that it is responsible for all financial obligations of the mission church and that the beneficiary would be an employee of the petitioning organization and would be paid \$500 per week.

With the petition, the petitioner submitted copies of an August 19, 1990 and a December 20, 2004 letter from the IRS indicating that the [REDACTED] had been granted a group tax exemption under sections 501(c)(3) and 170(b)(1)(A)(i) of the Internal Revenue Code (IRC). The petitioner also submitted undated letters from the [REDACTED] stating that the petitioner was covered under the group exemption granted to the Convention.

The petitioner submitted a copy of its August 7, 2009 treasury report and copies of 18 processed checks made payable to the beneficiary in the amount of \$500 and dated in 2006, 2007, 2008 and 2009. Additionally, the petitioner submitted copies of the articles of incorporation and other documentation for the church in which the beneficiary would work. The petitioner provided copies of the beneficiary's certificates of ordination and his theology diploma. However, the translations accompanying these documents do not contain the translator's certification that the translations are complete and accurate and that she is competent to translate from Spanish into English. Therefore, they do not comply with the provisions of 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.

On September 29, 2009, the director requested additional information from the petitioner about the religious organization and the beneficiary. Included in this request was the following:

Organization affiliated with a religious denomination: Petitioner has to submit the following evidence: (1) documentation that establishes the religious nature and purpose of the organization, which the petitioner is affiliated with, such as a copy of the organizing instrument of the organization that specifies the purpose of the organization; (2) organization literature, such as books, articles, brochures, calendars, flyers, and other literature describing the religious purpose and nature

of the activities of the organization, which the petitioner is affiliated with; and, (3) a signed, dated, and current statement certifying that the petitioning organization is affiliated with the religious denomination. [Emphasis in the original.]

The director also instructed the petitioner to submit documentation of its location and occupancy, its payroll summary, schedule of religious services, church history, a list of church employees, copies of recent financial documentation, and a copy of its certificate of incorporation and bylaws.

The regulation at 8 C.F.R. § 214.2(r)(3) defines a tax-exempt organization as “an organization that has received a determination letter from the IRS [Internal Revenue Service] establishing that it, or a group it belongs to, is exempt from taxation in accordance with section[] 501(c)(3) of the” IRC. The regulation at 8 C.F.R. § 214.2(r)(9) provides:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the IRS showing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or
- (iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3), or subsequent amendment or equivalent sections of prior enactments, of the [IRC], as something other than a religious organization:
 - (A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;
 - (B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;
 - (C) Organizational literature, such as books, articles, brochures, calendars, flyers, and other literature describing the religious purpose and nature of the activities of the organization; and
 - (D) A religious denomination certification. The religious organization must complete, sign and date a statement certifying that the petitioning organization is affiliated with the religious

denomination. The statement must be submitted by the petitioner along with the petition.

In response to the RFE, the petitioner stated that it had provided documentation with the petition to establish that it was covered under the group exemption granted to the [REDACTED] and by its letter, dated November 9, 2009, certified that it was affiliated with the [REDACTED] denomination. The petitioner submitted a copy of its articles of incorporation, provided a schedule for religious services, stated that the beneficiary was the only paid employee, and that it had not received a copy of its payroll summary from its accountant.

The director denied the petition, in part, because the petitioner failed to submit a current signed and dated statement "certifying that they are affiliated with the [REDACTED] [REDACTED]". The director determined that the documentation submitted by the petitioner was insufficient because the letter from the [REDACTED] was not dated and "did not include documentation which establishes the religious nature and purpose of" the [REDACTED]

On appeal, the petitioner submits a January 28, 2010 letter from the [REDACTED] certifying that the petitioner is a church in good standing with the [REDACTED] and the [REDACTED]

We note that the director appears to have conflated the requirements of subsections (ii) and (iii) of the regulation at 8 C.F.R. § 214.2(r)(9), and that the petitioner submitted documentation that it was covered under the group exemption granted to the [REDACTED]. In her RFE, the director did not instruct the petitioner to provide specific documentation of its relationship to the [REDACTED]. If the director questioned the petitioner's bona fides as a religious organization, we find that the record sufficiently establishes that the petitioner is a bona fide nonprofit religious organization and is covered under the group exemption granted to the [REDACTED]

The director also questioned whether the petitioner had sufficiently 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.

In its August 17, 2009 letter submitted in support of the petition, the petitioner stated that it would pay the beneficiary \$500 per week in addition to "all benefits, such as housing, insurance, and travel." As discussed above, the petitioner submitted 18 processed checks issued to the beneficiary over a period of approximately 31 months in the amount of \$500. The petitioner also submitted an unaudited treasury report for the month of July 2009. The document reflects that it disbursed \$2,166 to "mission-pastor." However, the unaudited statement only captures the petitioner's financial status for a single month. Further, the statement is based solely on the representations of management and nothing in the record indicated whether they fairly present the petitioner's financial position. In light of this, limited reliance can be placed on the validity of the facts presented. No further supporting documentation is included in the record to support the petitioner's assertions or those contained within the unaudited financial statement.

In her September 29, 2009 RFE, the director instructed the petitioner to submit "official printouts" of the beneficiary's 2007 and 2008 federal tax returns, and IRS Forms W-2 and Forms 1099-Misc, Miscellaneous Income, and copies of the beneficiary's last four pay statements. In response, the petitioner submitted copies of IRS transcripts of his Form 1040, U.S. Individual Income Tax Return, for 2007 and 2008, reflecting that the beneficiary filed as self-employed and reported gross income of \$16,189 and \$20,157, respectively. The petitioner did not provide copies of the IRS Forms 1099-MISC that it issued to the beneficiary or any evidence of compensation that it allegedly paid to the beneficiary. Additionally, despite the fact that the petitioner's July 2009 "treasury report" indicates that disbursements were made for "salary-pastor" and "music director," the petitioner indicated in its November 9, 2009, that the beneficiary was the only paid employee of the petitioning organization.

The director denied the petition, in part, because the petitioner failed to submit the IRS transcripts in a sealed envelope, failed to submit signed copies of the beneficiary's federal tax returns, and failed to submit copies of the beneficiary's last four pay statements. We note that these documents relate to the beneficiary's prior employment as an R-1, which is not within the AAO's jurisdiction. However, such documents are relevant to the issue of how the petitioner intends to compensate the beneficiary.

On appeal, the petitioner submits a January 28, 2010 summary of its deposit account, indicating that it had a current balance of \$1,119 and an average 12-months balance of \$302. The petitioner also submits copies of checks made payable to the beneficiary in the amount of \$500 for December 31, 2009, and January 7, 14 and 21 of 2010. However, there is no evidence that the checks have been processed by the bank. Furthermore, 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. 8 C.F.R. §§ 103.2(b)(1),

(12); *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). The petitioner additionally submits a copy of the beneficiary's Social Security transcript, which reflects \$16,088 in self-employment earnings in 2007 and, in 2008, \$11,700 in wages from [REDACTED] in [REDACTED] and \$8,404 in self-employment earnings. The petitioner again fails to provide copies of the Forms 1099-MISC that it issued to the beneficiary and has provided no documentation that it provided the beneficiary with housing or other non-salaried compensation.

The evidence submitted by the petitioner is insufficient to establish 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 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.