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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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D13

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date SEP 09 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.

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 AAO will dismiss the appeal.

The petitioner is a Pentecostal Christian 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 a resident pastor. The director determined that the petitioner failed to establish that it is a bona fide non-profit religious organization; that the beneficiary belonged to the petitioner's religious denomination for two years prior to the petition filing date; or that it has made adequate arrangements for the beneficiary's compensation. The director also noted that the petitioner had not passed a compliance review and site inspection.

On appeal, the petitioner submits a statement from a church official and copies of various documents.

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)(I) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii), pertains to a nonimmigrant who seeks to enter the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(1) states 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:

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

- (iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and
- (v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

The first issue in the director's decision concerns the petitioner's status as a bona fide non-profit religious organization, which the USCIS regulation at 8 C.F.R. § 214.2(r)(3) defines as "a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code . . . , and possessing a currently valid determination letter from the Internal Revenue Service (IRS) confirming such exemption."

The USCIS regulation at 8 C.F.R. § 214.2(r)(9) requires the petitioner to submit 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 Internal Revenue Code, 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.

The petitioner filed the Form I-129 petition on July 27, 2007. The petitioner submitted copies of various documents relating to the incorporation of [REDACTED] in Georgia in 1999 and its subsequent name changes, first to [REDACTED] and then, in January 2006, to the name shown on Form I-129. An IRS determination letter dated August 21, 2001, acknowledged the tax-exempt status of [REDACTED] Irving, Texas, with Employer Identification Number (EIN) [REDACTED].

[REDACTED], the petitioner's church administrator, stated that while the petitioning organization first formed in Georgia, "[i]n the year 2000, the Church opened a new branch in Dallas, Texas." The initial documents showed the petitioner's address as being on [REDACTED] with a lease on that property "through the last day of July 2008."

On August 20, 2007, the director issued a request for evidence (RFE), noting that the IRS determination letter submitted by the petitioner "indicates a name and address that is different from the [name and] address listed in [the] I-129 petition." The director noted that tax-exempt entities "are required to inform IRS of all changes in . . . name or address." The director instructed the petitioner to submit documentation from the IRS to establish the tax-exempt status of the petitioner, under its current name and address.

In response, the petitioner's then attorney of record claimed that the petitioner "is still waiting to receive the new Tax Exempt Certification certificate from the IRS indicating the current name and address of the organization." The petitioner resubmitted a copy of the "Certificate of Name Change Amendment" showing that [REDACTED] in Atlanta, Georgia, had changed its name to the name shown on Form I-129. The certificate shows the name [REDACTED] which also appears on numerous documents from the petitioning church in Texas. The petitioner also submitted lease documentation for the [REDACTED] address, including a lease amendment reflecting the name change.

The petitioner also submitted a copy of the beneficiary's intended schedule. On certain weekdays, the schedule showed evening services from 7:00 p.m. to 10:00 p.m., and vigil prayers from midnight to 4:00 a.m. The schedule indicated that the beneficiary would perform "Christian advice and office duties" Tuesdays through Fridays from 10:00 a.m. to 4:00 p.m. There was no reference to duties during standard business hours on Mondays.

A Certificate of Occupancy, issued by the City of Dallas, indicated that the maximum occupancy load for the petitioning church was "180 persons."

On January 15, 2008, the director issued a second RFE, again instructing the petitioner to document the tax-exempt status of the petitioner under the name and address shown on Form I-129. In response, the petitioner submitted a copy of a November 26, 2007 letter from the IRS, in care of [REDACTED] (*sic*) at the [REDACTED] address, stating: "We have updated our records to change the name" of the petitioning entity. The letter showed the same EIN used on the earlier IRS letter and on Form I-129.

The USCIS regulation at 8 C.F.R. § 214.2(r)(16) reads:

*Inspections, evaluations, verifications, and compliance reviews.* The supporting evidence submitted may be verified by USCIS 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.

On July 8, 2008, a USCIS officer traveled to the [REDACTED] address shown on Form I-129 and other documents. The officer reported:

No one affiliated with the [petitioning] organization was on-site. . . . [A c]urrent tenant . . . stated that [the petitioner] was ordered to vacate the property in March 2008. No forwarding address information was provided by the organization.

[The b]uilding owner . . . verified the information provided by [the tenant]. He also mentioned that the building was set on fire the day before [the petitioner] vacated.

The officer determined that, in the absence of a forwarding address, USCIS could not verify the continued existence of the petitioning organization.

On July 31, 2008, the petitioner issued a third RFE (through the petitioner's then-attorney of record), instructing the petitioner to provide evidence of the petitioner's continued tax-exempt status and "the exact address . . . of the local place(s) of religious worship where the beneficiary will be working."

In response, the petitioner submitted copies of lease documents dated February 27, 2008, showing that the petitioner had moved to a new address on [REDACTED]. The petitioner also submitted another copy of the November 2007 IRS letter, acknowledging the petitioner's name change and its [REDACTED] address.

On January 30, 2009, a USCIS officer visited the petitioner's new address on [REDACTED]. The officer reported:

Again, no one affiliated with the organization was on-site. . . . [T]here was no visible information displayed for church service hours, Pastor contact information, or office

telephone number. Visible through the glass [were] 6 chairs and a small cross on the wall. No pamphlets, pictures, books, or other religious materials were displayed.

Two calls were made to the attorney of record in order to verify the organization's address and office hours. As of this writing [on February 5, 2009], the calls were not returned.

The officer concluded that USCIS was unable to verify the ongoing existence and operation of the petitioning church. We note that January 30, 2009, was a Friday.

On February 23, 2009, the director notified the petitioner of the director's intent to deny the petition, in part based on the July 2008 site inspection that showed the petitioner had left the [REDACTED] address. The director did not mention the January 2009 site inspection. The director advised the petitioner of new documentary requirements based on revised regulations, and instructed the petitioner to show that it had reported its latest change of address to the IRS.

The director also requested the following evidence of ongoing activity at the [REDACTED] address:

- 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.

In response, the petitioner submitted an IRS-certified copy of IRS Form 8822, Change of Address. We note that the petitioner filed this form on March 18, 2009, more than a year after the petitioner moved to [REDACTED] and several weeks after the director asked for proof that the petitioner had filed it.

The petitioner submitted documentation from the Dallas Fire Dispatch System, regarding the March 2008 fire at the [REDACTED] address. This is not what the director requested; the director requested "[a] copy of the city or county fire department occupancy permit for the petitioner's location." The question is not whether a fire occurred at the petitioner's old address, but rather, the legal capacity of the new address (which might shed light on whether the property could realistically serve as a church). The petitioner, having previously submitted proof that the City of Dallas issues certificates of occupancy to churches, did not explain its failure to submit such a certificate for its new address.

The petitioner submitted copies of invoices, showing that the petitioner paid rent and electricity costs to the owner of the [REDACTED] property in early 2009. Other invoices show waste collection fees paid.

A copy of a church brochure shows the [REDACTED] address, and show times for Sunday morning services and evening meetings Tuesday through Friday. The brochure does not refer to the beneficiary's asserted weekday office hours.

The petitioner submitted several color photographs of the interior and exterior of the church. Most of the interior photographs showed rows of empty chairs; one photograph showed six people.

The director denied the petition on October 22, 2009, stating that a second site inspection had failed, and that the petitioner "is just now notifying IRS of the change of address." The director asserted that the petitioner had failed to submit "utility and phone bills and occupancy permit . . . [with] no explanation." The director stated that "the petitioner failed to provide a valid IRS determination letter confirming their tax exempt status. . . . Therefore, the petitioner has not established that they qualify as a bona fide organization that is affiliated with the religious denomination."

On appeal, [REDACTED] identified as the president and founder of the petitioning entity, stated:

On [REDACTED], the former Church Building located at . . . [REDACTED] . . . caught on fire and it became an emergency situation for the church to be relocated. . . .

The move to a new location took some weeks. It was during this period of preparation and relocation that the officers from the USCIS visited the old Church site at the [REDACTED] address in Dallas. It was unfortunate that this incident coincided with the USCIS site visit. . . .

It took some time to acquire the new location and move the new Church to its new site at . . . [REDACTED] . . . It was at this time that USCIS requested . . . proof of the IRS status for the new location. . . .

The record does not support [REDACTED] version of events. The term for the lease for the [REDACTED] property began on March 1, 2008. [REDACTED] himself signed that lease several days earlier, on February 27, 2008. If these dates are correct, then the petitioner was already planning to move before the fire on March 10, 2008. (If the dates are not correct, then the lease contains false information, which raises its own set of obvious problems.) The fire may have forced the petitioner to vacate the old address more quickly than expected, but the petitioner had already "acquire[d] a new location" and there would have been no further delay in that regard. According to lease documents that the petitioner submitted, the petitioner knew its new address in February 2008, more than a year before it finally notified the IRS of that address. Therefore, we cannot accept the claim that the fire, and the fire alone, forced the petitioner unexpectedly to seek and move to a new location.

Because [REDACTED] new explanation contradicts the available evidence, credibility issues prevent us from giving credence to the petitioner's unsupported claims. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

At the same time, while [REDACTED] claims on appeal lack credibility, we cannot presume that these credibility issues automatically and permanently discredit every piece of documentary

evidence that the petitioner has submitted. The petitioner may resolve inconsistencies in the record with independent objective evidence. *See id.* at 582, 591-92.

The available evidence indicates that the petitioner does exist as a functioning church, and that the IRS recognizes the petitioner as a tax-exempt organization. The record strongly and consistently ties the petitioner, under its present name and at its present address, to [REDACTED] formerly at the [REDACTED] address. The director was correct in finding that the petitioner did not file a timely change of address notice with the IRS when it moved from [REDACTED] to [REDACTED], but the director cited no statute, regulation, or other source to indicate that this untimely filing, or the change of address itself, automatically voided the petitioner's prior tax exempt status. The director has repeatedly requested evidence of the petitioner's tax-exempt status, and the petitioner has by and large complied with those requests. It is not clear what more the petitioner could submit to establish its continuing tax-exempt status.

We will withdraw the director's finding that the petitioner has not established qualifying tax-exempt status. We will not, however, withdraw the related finding that the petitioner has not passed a site inspection. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition. 8 C.F.R. § 214.2(r)(16). In this proceeding, there has been no satisfactory completion of a pre-approval inspection, despite two attempts to conduct such an inspection.

The failed site inspections do not prove that the petitioning church does not exist. Indeed, the inspecting officer noted posted signs for the church at the new location, which does not indicate that the church is wholly fictitious. The petitioner's failure to provide telephone bills is of some concern, but the petitioner has provided rent and utility documentation, and other evidence that it engages in ongoing activity. The extent of that activity, however, is not evident from the record. A church that operates only a few hours per week cannot realistically provide full-time employment as the petitioner has claimed. Therefore, the failed site inspections raise legitimate questions about the extent of the church's activities, if not its outright existence.

The next issue concerns the beneficiary's denominational membership, a phrase that the regulation at 8 C.F.R. § 214.2(r)(3) defines as "membership during at least the two-year period immediately preceding the filing date of the petition, in the same type of religious denomination as the United States religious organization where the alien will work." This regulation mirrors section 101(a)(15)(R)(i) of the Act.

The director, in the denial decision, stated: "The petitioner has not established that the beneficiary has, for at least the two (2) years immediately preceding the time of application, been a member of a religious denomination having a bona fide nonprofit religious organization in the United States." The director did not elaborate.

The petitioner has consistently indicated that the beneficiary has belonged to the petitioning church since 2003, some four years before the petition's July 2007 filing date. The director did not question

any of the petitioner's evidence in this respect. It appears that, because the director questioned the petitioner's status as a qualifying religious organization, the director determined that the beneficiary's membership in the petitioning organization could not constitute qualifying denominational membership. As we have already discussed, we will withdraw the director's finding regarding the petitioner's status as a tax-exempt religious organization, which will leave no evident basis to question the beneficiary's denominational membership. We will, therefore, withdraw the director's unexplained finding with regard to the beneficiary's denominational membership.

The final issue under consideration concerns the beneficiary's intended compensation. The petitioner has stated that it will pay the beneficiary \$2,000 per month. The USCIS regulation at 8 C.F.R. § 214.2(r)(11)(i) requires the petitioner to submit verifiable evidence explaining how the petitioner will compensate the alien. 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 the first RFE, issued August 2007, the director instructed the petitioner to submit "evidence of the petitioner's ability to pay the beneficiary's wage." In response, the petitioner submitted a "Salary Scale," listing the names and salaries of three paid pastors (including the beneficiary) and one unpaid volunteer. One pastor was to receive \$400 per week, or \$20,800 per year; another pastor, \$100 per week, or \$5,200 per year; and the beneficiary was to receive the previously stated rate of \$2,000 per month, or \$24,000 per year.

██████████, the petitioner's church administrator, stated that the beneficiary "will receive a salary of \$2,000.00 monthly along with Housing Accommodations and Transportation." The petitioner did not submit any further evidence about the nature or value of the "Housing Accommodations and Transportation."

Copies of bank statements indicated that the petitioner's monthly average bank balance sometimes dropped below \$2,000.

The director's subsequent RFEs and notice of intent to deny did not address the issue of the beneficiary's intended compensation. In the denial notice, the director stated: "The petitioner failed to submit verifiable documentary evidence of compensation, such as financial records, lease, document that room and board will be provided, budgets showing monies set aside for salaries or IRS documentation."

On appeal, ██████████ states: "In 2007 and 2008 the Church at the new address filed for IRS Return of Organization Exempt [from] Income Tax. Copies of these forms for the said period are attached for your perusal." The petitioner submitted uncertified copies of IRS Form 990 returns for 2007 and 2008.

wording implies that the petitioner timely filed those returns, but both returns are dated August 12, 2009.

The return for 2007 indicates that the petitioner took in \$77,950 in revenue, and paid out \$73,769 in expenses, leaving only \$4,181 in net income. This amount is barely enough to pay the beneficiary's salary for two months. The petitioner claims to have paid \$50,919 in salaries in 2007, but does not claim or document that it paid the beneficiary any salary or benefits that year. The beneficiary was an F-1 nonimmigrant student in 2007, and had no legal authorization to work for the petitioner that year. We note that, if the petitioner did employ the beneficiary in 2007 or 2008, then the beneficiary failed to maintain lawful status and is ineligible for a change of nonimmigrant status. *See* 8 C.F.R. § 248.1(b).

The return for 2008 is only partially completed. (We note that, according to the IRS determination letter in the record, the petitioner is exempt from filing Form 990 returns because it is a church.) The petitioner claims \$74,149 in revenue and functional expenses of \$82,547, indicating that its expenses exceeded revenue by more than \$8,000. The petitioner claims to have paid only \$11,290 in salaries and wages in 2008.

The IRS Form 990 returns submitted on appeal do not readily indicate that the petitioner will be able to compensate the beneficiary at the stated level of \$2,000 per month, even without taking into account the unspecified additional expense of housing and transportation. We affirm the director's finding that the petitioner has not adequately shown how it intends to compensate the beneficiary.

The AAO will dismiss the appeal 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. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.