

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

PUBLIC COPY

[Redacted]

813

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **SEP 16 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, 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
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 minister. The director denied the petition because the petitioner failed a compliance review verification site visit by an immigration official (IO).

On appeal, counsel asserts that the director abused her discretion in denying the petition because the petitioner had submitted documentation of its new address prior to issuance of the Notice of Intent to Deny (NOID). The petitioner submits a letter 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.

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

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS [U.S. Citizenship and Immigration Services] 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.

The record reflects that on July 21, 2008 and again on July 22, 2008, USCIS attempted to conduct a compliance review at the petitioner's address as listed on the Form I-129, Petition for a Nonimmigrant Worker. The IO observed that the name of the organization at that address, while apparently a church, was not that of the petitioner. The IO left telephone messages with [REDACTED] the official who signed the petition on behalf of the petitioner, on August 4, 2008 and August 18, 2008. However, the IO received no response.

In a September 23, 2008 request for evidence (RFE), the director notified the petitioner of the results of the compliance review and noted that the record reflected three different addresses for the petitioning organization. The director instructed the petitioner to submit documentation of its religious activities at the address listed on the Form I-129 petition. In response, the petitioner provided documentation of its name change and stated:

At the time the Petition . . . was filed, we had our worship center at [REDACTED] VA [REDACTED]. We moved to [REDACTED] MD [REDACTED] September 2005 after selling the building. We moved our ministry to [REDACTED] MD [REDACTED] in April of 2007. We had to move to our current location at [REDACTED] MD 20745 in September 2008 because the building in Baltimore was sold from under us.

The petitioner provided a copy of its lease for [REDACTED] Maryland, and what it stated were photographs of its current premises. The petitioner did not reference its failure to respond to the IO's phone calls.

On November 20, 2008, the director notified the petitioner of her intent to deny the petition based in part on the results of the compliance review verification visit. The director noted that the petitioner's lease was dated September 1, 2008; however, the compliance review was conducted in July 2008. The director also noted that the petitioner failed to respond to the IO's phone calls.

In response to the NOID, [REDACTED] on behalf of the petitioner, acknowledged that when the IO visited the address listed on the Form I-129 petition, the organization was no longer at that address, and had moved from that address in April 2007. However, the petitioner offered no explanation as to why its petition, filed on June 7, 2007 reflected an old address or why the Form G-28, Notice of Entry of Appearance as Attorney or Representative, also reflected that

address, despite counsel's assertion in her letter accompanying the petitioner's response that the petition was filed prior to the petitioner's change of address.

On appeal, counsel asserts that the petitioner notified USCIS of its address change in October 2008, "well before the NOID was issued" and argues that since the regulation on site visits was promulgated in November 2008, "[i]t would seem in fairness that given the newness of the requirements for an on site inspections and the circumstances explained by the petitioner and his willingness to rectify the problem," the petitioner should be given another opportunity to comply with the requirements of the regulation.

Counsel's argument is without merit. USCIS has always had the authority and has conducted unannounced compliance review verification visits of selected organizations. The fact that the discretion to conduct these inspections and compliance reviews has been incorporated into the regulations would not and does not alter the facts of this case. The petitioner alleged in its petition that it was located at a particular address, [REDACTED] Maryland, an address that it subsequently stated it vacated two months before the petition was filed. Further, the petitioner failed to notify USCIS of the change of address until after a compliance review indicated it did not exist at the location claimed. The petitioner submitted no documentation of its religious activities at [REDACTED] the address to which it alleged it moved in April 2007. While the petitioner submitted evidence of its religious activities at its current location, it did not enter into this lease until September 2008, well over a year after the petition was filed. 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).

[REDACTED] asserts that the IO "likely used our old telephone number" in its attempts to reach the petitioner. However, we note that the number that the IO stated he called is the same that is listed on the petitioner's letterhead. Further, the IO stated that the greeting on the answering machine identified the number as that of [REDACTED]. While [REDACTED] alleges that he was personally contacted by another IO in August 2008, the individual with whom he allegedly spoke has not been identified as a USCIS employee. Further, [REDACTED] does not indicate that he attempted to speak with any other individual at USCIS about the pending petition. 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).

The record does not establish that the petitioner was operating as a bona fide nonprofit religious organization at the time the petition was filed. Accordingly, it has not satisfactorily completed the verification process and the petition may not be approved.

Beyond the decision of the director, the petitioner has 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.

.R1:07/28/10: