

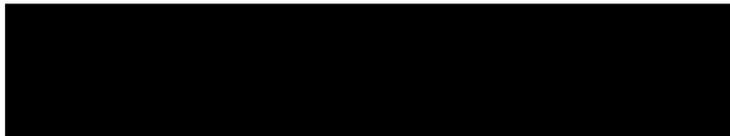
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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**



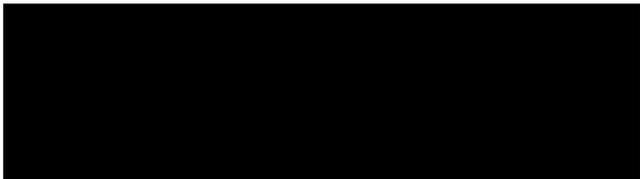
D 13

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **SEP 17 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)

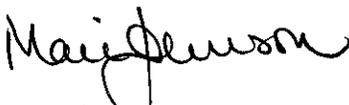
ON BEHALF OF PETITIONER:



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 remand the petition for further action and consideration.

The petitioner is a member congregation of the United Pentecostal Church International. 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 minister. The director determined that the petitioner had not submitted evidence of the beneficiary's earlier work as an R-1 nonimmigrant religious worker.

On appeal, the petitioner submits a brief from counsel, witness letters, 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) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(I), 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.

U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. § 214.2(r)(1) state 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 petitioner seeks to extend the beneficiary's R-1 nonimmigrant status with a change of employer. The beneficiary had previously entered the United States as an R-1 nonimmigrant in order to work for [REDACTED]. The USCIS regulation at 8 C.F.R. § 214.2(r)(12)(i) requires that any request for an extension of stay as an R-1 must include initial evidence of the previous R-1 employment. If the beneficiary received salaried compensation, the petitioner must submit Internal Revenue Service (IRS) documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of filed income tax returns, reflecting such work and compensation for the preceding two years. The director found the evidence of the beneficiary's previous R-1 employment to be insufficient, based in part on the petitioner's admission that [REDACTED] was unable to pay the beneficiary's salary (which led to his moving to the petitioning church).

We cannot review this finding on appeal. From the wording of the above regulation, it is clear that evidence of past employment specifically pertains not to the R-1 petition as such, but to the concurrent application for extension of stay. There is no appeal from the denial of an application for extension of stay filed on Form I-129. 8 C.F.R. § 214.1(c)(5).

The director did not articulate any grounds for denying the petition (as opposed to the application for extension of stay). Therefore, we must withdraw the denial of the petition. The director's findings regarding the beneficiary's prior employment may well be valid grounds for a separate decision, denying the application for extension of stay, but they are not grounds for denial of the petition, which is the only matter subject to our review here.

For the reasons discussed above, the director's decision cannot stand and we hereby withdraw that decision. Therefore, the AAO will remand this matter to the director, for consideration on the merits of the petition. The director may request any additional evidence deemed warranted 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.

Because the application for extension of stay is administratively separate from the petition, the director must also issue a separate decision on the application for extension of stay, taking into account the information discussed above and all other relevant issues such as the beneficiary's maintenance of lawful status.

**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 on appealable grounds, is to be certified to the Administrative Appeals Office for review.