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U.S. Citizenship and Immigration Services
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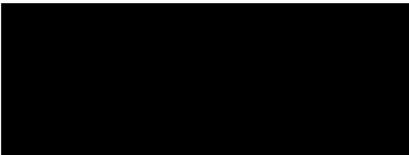
SEP 22 2010

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

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 appeal will be dismissed.

The petitioner is a conference of Seventh-day Adventist churches. It seeks to extend the beneficiary's status 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 religious instructor/youth pastor. As the result of a compliance review onsite inspection, the director determined that the petitioner had failed to establish that the beneficiary sought to enter the United States to work at least part time (20 hours per week) in a religious occupation or vocation.

The director also determined that the beneficiary had changed duties and locations and therefore the petitioner should have applied for a change of status for the beneficiary. The record also reflects that there are issues regarding the beneficiary's prior employment in R-1 status. The United States Citizenship and Immigration (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). The regulation at 8 C.F.R. § 214.1(e) states that a nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act. 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.

Counsel asserts on appeal that the director erred in the review of the rebuttal evidence submitted in response to the failed site visit and in response to the Notice of Intent to Deny (NOID). Counsel submits a brief and 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.

The issue presented is whether the petitioner has established that the beneficiary seeks to enter the United States to work at least part time (20 hours per week) in a religious occupation or vocation.

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

(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).

In its July 8, 2008 letter submitted in support of the petition, the petitioner stated that it sought to have the beneficiary continue to fulfill the duties of religious instructor/youth pastor at its [REDACTED] in Denver, Colorado.

USCIS records reveal that Arvada Seventh-day Adventist Church filed a Form I-129 on November 2, 2005 (USCIS receipt number [REDACTED] 7) to classify the beneficiary as a nonimmigrant religious worker. The petition was approved on November 7, 2005. On March 14, 2006, Arvada Seventh-day Adventist Church filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, (USCIS receipt number [REDACTED] 7) to classify the beneficiary for permanent immigration status as a religious worker. In connection with the latter petition, immigration officers (IOs) conducted an onsite inspection of the [REDACTED] y

██████████ on March 26, 2007 for the purpose of verifying the information contained in the petition.

The IOs reported that they spoke with a church member, later identified as ██████████, who stated that she had attended the ██████████ church for over 10 years and that that she did not know ██████████ but that ██████████ worked at the church "doing whatever the church needed." She named another individual as being in charge of the church's youth services. The IOs then interviewed ██████████, senior pastor of the ██████████, and the official who signed the Form I-360 petition on behalf of the petitioner. ██████████ advised the IOs that the beneficiary performed full-time religious work at the church as a youth pastor and assisted the pastors with preparation of services and visitations. He stated that the beneficiary had not been paid for his services in the past and was currently living with the pastor. ██████████ also stated that the beneficiary offered youth services every Wednesday from 6:00 or 7:00 p.m. to 8:30 to approximately 30 to 40 teens. The IOs reported that ██████████ was unable to provide any documentation of the beneficiary's work or of its youth program and that the church directory shown to the IO did not include any teen members.

The IOs also interviewed the beneficiary who reported that he received \$800 per month for his services and that he meets with teens at the church every Wednesday evening at 6:00 pm. The IOs reported that they returned to the church on Wednesday during the time specified and found no services underway. The IOs also reported that a church member advised them that the ██████████ did not offer youth services. A church bulletin reviewed by the IOs identified the beneficiary as the youth pastor but did not indicate any youth services offered on Wednesdays. The IOs reported that the bulletin indicated that children's church was held on Saturday by someone other than the beneficiary and that a youth meeting was held on Saturday. Based on their interviews, the IOs determined that the beneficiary was not performing the work specified in the Form I-360 petition.

On January 17, 2009, the director advised the petitioner of the instant petition of the failed onsite inspection and requested additional documentation to establish that the beneficiary worked in the proffered position. In response, the petitioner stated that the individuals interviewed by the IOs differed in their recollections of the interviews with that recorded and reported by the IOs. The petitioner submitted statements from those who were interviewed. In a letter dated February 1, 2009, ██████████ stated that he brought the beneficiary in to work with the teenagers and that the youth program has expanded to include "a vibrant group of both teens and young adults." In an undated statement, ██████████ the director of the petitioner's food bank, stated that she told the IO that the beneficiary "is a plus to our church, and is doing a wonderful job with our youth."

The petitioner also submitted statements from several individuals who attested that the beneficiary worked as youth pastor with the ██████████ church. Most of these statements are from officers of the church and members of its board, including ██████████, pastor of administration, who stated that the beneficiary had been the youth pastor since January 2006; and ██████████, treasurer, who stated that he worked closely with the beneficiary to make sure funding was available for the youth ministry. In addition to photographs that the petitioner states

are of the beneficiary performing his job as youth pastor, the petitioner also submitted several flyers, program information, and copies of pages from the [REDACTED] website that reference its teen church and identify the beneficiary as a minister with the church.

In denying the petition, the director stated:

[A] review of the record finds that the petitioner's response [to the NOID] fails to clearly identify the exact duty, time and location of the beneficiary[s] work. In the [NOID] response, [the petitioner] stated that [the beneficiary] "has presided over the teen youth services in the past, but has recently been assigned to conduct the worship services for the entire church congregation, with specific focus over the young adult membership" and "During the summer, when this Petition was filed, these weekly youth worship services were held on Wednesdays, but with the beginning of the new school year, the meetings are not held on Fridays evenings instead." . . . Nevertheless, [the petitioner] did not mention when and where the specific focused young adult congregation was started or held or mention when the Friday youth worship services was started to replace the Wednesday services and the time that it was held.

On appeal, counsel asserts that the director's denial "based on whether a worship service was performed on Wednesday or Friday evening . . . is both arbitrary and capricious" and violates the First Amendment of the U.S. Constitution by entangling the government in religious matters." Counsel further asserts:

The Service should not be basing its decision on whether additional services were held on Wednesday night or Friday night. Once a determination has been made that this is a legitimate religious organization conducting bonafide religious services, the Service should not be involved in the order of services. A reasonable person recognizes that a church pastor has duties that may vary from day to day. Requiring more evidence to show that services were held every Wednesday is irrelevant to the overwhelming evidence that [the beneficiary was working as a Youth pastor at the [REDACTED] Church. The site visit showed that the church location exists and that [the beneficiary] was working as a religious worker at that location.

Counsel's arguments are not persuasive. First, the director's questions and concerns regarding Wednesday and Friday night services arose because the IOs visited the [REDACTED] church at the time the beneficiary stated he conducted youth services. However, they found no evidence of any Wednesday night youth services. When notified of this deficiency in the NOID, the petitioner then claimed that the services were now held on Fridays. It did not, however, state when this change occurred and offered no explanation as to why the beneficiary stated during the interview on March 14, 2006 that the services were held on Wednesdays at 6:00, yet when the IOs returned on Wednesday at the time specified, no service was in progress.

USCIS is not concerned with when religious services take place but is concerned with whether they take place as claimed by the petitioner. Despite counsel's assertion, the IOs, while confirming that the petitioner exists as a religious organization, were unable to verify that the beneficiary worked in the claimed capacity.

Citing *Camphill Soltane v. DOJ*, 381 F.3d 143 (3rd Cir. 2004), counsel asserts that since the petitioner has provided letters verifying that the beneficiary has been employed as a religious worker for the past three years, that these letters "should eliminate any perceived inconsistencies raised by the Service from a brief site visit." We note first that *Camphill Soltane* was decided prior to the implementation of new USCIS regulations on November 26, 2008. Additionally, the Third Circuit did not hold that the petitioner in *Camphill Soltane* met its burden of proof by attesting in a letter that the beneficiary of the petitioner was engaged in religious activity. Rather the court held that the AAO had not fully articulated why the evidence was deficient and remanded the matter for further action.

In the present case, the letters from church officials are at odds with the statements and observations of the IOs during the onsite inspection. The beneficiary claimed that he held services on Wednesday evenings at 6:00 pm. However, when the IOs returned during that time, there were no services. The beneficiary also claimed that he was paid \$800 per month; however, [REDACTED] reported that the beneficiary had not received a salary. Finally, [REDACTED] stated that she did not know the beneficiary as a pastor but stated that he helped around the church. She also stated that another pastor was in charge of youth services. The IOs were unable to verify that any youth services were held at the [REDACTED] church. Statements submitted by the petitioner therefore fall far short of the objective and independent evidence needed to resolve the discrepancies in the record. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Additionally, we note that the beneficiary was approved to work for the [REDACTED] church in an R-1 status. However, it is clear that the [REDACTED] church, a subordinate of the current petitioner, did not pay the beneficiary in accordance with its petition, which formed part of the basis of the USCIS approval of the petition. While the failure of the [REDACTED] church to pay the beneficiary is an extension issue, as discussed previously, and is not at issue in the current petition, its failure to do so reflects upon the credibility of information provided by church officials. Doubt cast on any aspect of the petitioner's proof may, of course, 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). 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 petitioner has failed to establish that the beneficiary seeks to enter the United States to work at least part time (20 hours per week) in a religious occupation or vocation or that the proffered position is a religious occupation within the meaning of the regulation.

USCIS regulations at 8 C.F.R. § 214.2(16) state:

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.

As the petitioning organization has not completed the requisite site inspection, this 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.