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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **SEP 22 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:

SELF-REPRESENTED

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 seeks to extend the beneficiary's status as a special immigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as a financial literacy trainee. The director determined that the petitioner had not established how it intends to compensate the beneficiary or that the proffered position is a religious occupation.

We note first that the director erroneously cited to the regulations at 8 C.F.R. § 204.5(m), which governs immigrant visa petitions under section 203(b)(4) of the Act; 8 U.S.C. § 1153(b)(4), as described at section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C). However, as the regulations governing section 101(a)(15)(R)(1) of the Act roughly parallels that of section 203(b)(4), we find that the director's citation to the wrong regulations constitutes harmless error.

In addition, the director also addressed the petitioner's failure to provide evidence of the beneficiary's prior employment while in an R-1 status. The 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. 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.

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.

The first issue presented is whether the petitioner has 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.

(ii) *Self support.*

(A) If the alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.

(B) An established program for temporary, uncompensated work is defined to be a missionary program in which:

- (1) Foreign workers, whether compensated or uncompensated, have previously participated in R-1 status;
- (2) Missionary workers are traditionally uncompensated;

- (3) The organization provides formal training for missionaries; and
- (4) Participation in such missionary work is an established element of religious development in that denomination.

(C) The petitioner must submit evidence demonstrating:

- (1) That the organization has an established program for temporary, uncompensated missionary work;
- (2) That the denomination maintains missionary programs both in the United States and abroad;
- (3) The religious worker's acceptance into the missionary program;
- (4) The religious duties and responsibilities associated with the traditionally uncompensated missionary work; and
- (5) Copies of the alien's bank records, budgets documenting the sources of self-support (including personal or family savings, room and board with host families in the United States, donations from the denomination's churches), or other verifiable evidence acceptable to USCIS.

The petitioner indicated on the Form I-129, Petition for Nonimmigrant Worker, that the beneficiary would be compensated at the rate of approximately \$75 per week for 10 to 15 hours of work per week, and would be provided with food and a housing allowance. The petitioner submitted no documentation to establish how it intends to compensate the beneficiary.

In an August 26, 2009 request for evidence (RFE), the director instructed the petitioner to submit documentation of how it intends to compensate the beneficiary as described in the above-cited regulation. In response, the petitioner stated that the beneficiary receives "about \$200 a month cash and room & board" and receives "limited support elsewhere." It indicated that it could not provide documentation of any non-salaried compensation received by the beneficiary. It provided a copy of its IRS Form 990-EZ, Return of Organization Exempt from Income Tax, for the year 2008 on which it reported a deficit of \$1,127 for the year.

On appeal, the petitioner submits a December 16, 2009 letter signed by [REDACTED] the official who signed the petition on behalf of the petitioner, stating that the beneficiary received \$1,500 in 2008 and \$1,220 in 2009. [REDACTED] did not indicate the source of these funds. The petitioner also provides a December 21, 2009 letter from [REDACTED] senior project manager of Acorn Properties, who stated that the beneficiary had been provided with housing at [REDACTED] Condominiums and that "[s]he has provided assistance to my various companies to offset her rent of \$250.00 per month."

The petitioner has not submitted verifiable documentation that it has paid or can pay the beneficiary a salary of \$75 per week or that it has paid her \$200 per month as claimed in its

response to the RFE. Further, the letter from [REDACTED] indicates that the beneficiary's housing was provided for her services to his company and not provided by the petitioner as part of her compensation as claimed on the Form I-129.

The petitioner has failed to establish how it intends to compensate the beneficiary.

The director also determined that the petitioner had failed to establish that the proffered position qualifies as that of a religious occupation.

The regulation at 8 C.F.R. § 214.2(r)(3) provides:

Religious occupation means an occupation that meets all of the following requirements:

- (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination;
- (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination;
- (C) The duties do not include positions which are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible; and
- (D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

The petitioner stated on the Form I-129 that the proffered position was that of a financial literacy trainee and that the beneficiary would learn financial topics to teach to others. Subsection (D) of the above-cited regulation specifically provides that religious study or training for religious work does not constitute a religious occupation. Therefore, even if the proffered work was in the nature of religious work, which, as discussed further below, the petitioner has not established, the beneficiary's training to perform such work does not qualify as a religious occupation.

In response to the RFE, the petitioner stated that it was teaching the beneficiary biblical financial principles which she can then teach to others and that she is mentored extensively in Christian principles and biblical financial teachings. The petitioner provided no documentation of the training that it was providing to the beneficiary and how the work to be done primarily relates to, and clearly involves, inculcating and carrying out the petitioner's religious creed and beliefs.

On appeal, the petitioner submits a copy of an April 21, 2000 certificate indicating that the beneficiary had completed the Leadership Clinic Training and was certified as a lay teacher/trainer, and an unsigned and undated letter from [REDACTED] President of International [REDACTED] who stated that the beneficiary had assisted that organization with training while working with the petitioning organization. The petitioner, however, provides no further documentation or information about the proffered position.

Accordingly, the petitioner has failed to establish that the proffered position is a religious occupation within the meaning of the regulation.

Beyond the decision of the director, the petitioner has failed to establish that it is a bona fide nonprofit religious organization. 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 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 Internal Revenue Code” (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.

The petitioner submitted a copy of an April 20, 2005 advance ruling letter from the IRS granting it tax-exempt status under section 501(c)(3) and 170(b)(1)(A)(vi) of the IRC. The ruling was valid until December 31, 2008. The petition was filed on July 6, 2009. The petitioner has therefore failed to submit a currently valid determination letter from the IRS showing it is a tax-exempt organization.

Furthermore, the IRS previously determined that the petitioner was exempt under section 170(b)(1)(A)(vi) of the IRC. An organization that qualifies for tax exemption as a publicly supported organization under section 170(b)(1)(A)(vi) of the IRC can be either religious or non-religious. The burden of proof is on the petitioner to establish that its classification under section 170(b)(1)(A)(vi) derives primarily from its religious character, rather than from its status as a publicly supported charitable and/or educational institution. The organization can establish this by submitting documentation that establishes the religious nature and purpose of the organization, such as a copy of its organization instrument, brochures or other literature describing the religious purpose and nature of the activities of the organization. 8 C.F.R. § 214.2(r)(9)(iii).

In response to the RFE, the petitioner stated that it was an independent, faith-based housing counseling agency that helped churches and individuals. It further stated that it was not involved with other ministries except to provide its counseling services. The petitioner provided a copy of its client bill of rights for its counseling services and brochures advertising its services. However, none of these documents establish the religious nature of the petitioning organization.

The petitioner has therefore failed to establish that it is a bona fide nonprofit religious organization.

The petitioner has also failed to establish that the beneficiary seeks to enter the United States to work for at least 20 hours per week. The regulation at 8 C.F.R. § 214.2(r)(1) provides 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:

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

The petitioner stated on the Form I-129 that the beneficiary would work from 10-15 hours per week. The petitioner did not provide a schedule of the beneficiary's work or provide any other documentation that the beneficiary would work an average of at least 20 hours per week.

Therefore, it has failed to establish that the beneficiary will be coming to the United States to work in a part-time position of at least 20 hours per week.

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.