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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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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: SEP 29 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.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based nonimmigrant visa petition on October 20, 2009. The director considered the petitioner's subsequent appeal of that decision as untimely and treated it as a motion to reopen and reconsider pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(2), and again denied the petition on December 2, 2009. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision and will remand the petition for further action and consideration.

The petitioner is a church. 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 pastor. The director determined that the petitioner had materially changed the terms of employment and that the beneficiary does not seek to enter the United States to work for at least 20 hours per week.

The director also determined that the petitioner had not established that the beneficiary worked full time as alleged in the petition. 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 issue of the beneficiary's prior employment is significant only insofar as it relates 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 is an extension issue rather than a petition issue, the AAO lacks authority to decide this question, and we will not discuss it in detail here.

The petitioner submits a letter 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 first issue is whether the petitioner has materially changed the terms of employment for the proffered position.

The petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that the proffered position was that of "Spanish pastor" and that the beneficiary would work in Yuma, Arizona. The petitioner further stated that the duties of the proffered position are to "preach, disciple, baptize, instruct, counsel, prayer, visitation, property care, vehicle care, minister to Spanish speaking community." In a request for evidence (RFE) dated September 3, 2009, the director sought additional information about the proffered position and instructed the petitioner to submit a weekly work schedule for the beneficiary and a detailed description of the requirements of the position. In response, the petitioner submitted a September 10, 2009 statement reiterating the duties of the position and stating that the beneficiary held Spanish services on Sundays from 1:30 pm to 3:30 pm and on Thursday evenings from 6:00 pm to 7:30 pm. In a separate statement, the petitioner stated that the beneficiary's weekly work schedule was flexible depending on the needs of the ministry.

In denying the petition, the director determined that the petitioner did not fully respond to the RFE in that it did not provide a work schedule for the beneficiary as instructed. In support of its appeal from the director's decision, the petitioner provided a copy of the beneficiary's weekly work schedule, which included working approximately eight hours a week in the petitioner's church in Los Algodones, Mexico, which it stated was about 15 miles from its church in Yuma.

On motion, the director found that the petitioner had added an additional location to the beneficiary's expected work locale. Citing the regulation at 8 C.F.R. § 214.2(r), the director stated that the Form I-94 must be "endorsed with the name and location of the specific organizational unit of the religious organization for which the alien will be providing services within the United States." Also citing *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978) and *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988), the director determined that the petitioner had materially altered the terms of the proffered position after the petition was filed.

We note that the regulation at 8 C.F.R. § 214.2(r) does not contain the language alleged by the director. Additionally, we do not find that *Matter of Michelin Tire Corp* and *Matter of Soriano* are applicable in this case. The petitioner indicated that the beneficiary's work in the United States would be at its facility in Yuma, Arizona. It did not alter that statement. Additionally, that

the petitioner expected the beneficiary to work at least 8 hours per week at its facility in Mexico did not change the duties that he was expected to perform in the United States.

On appeal, the petitioner stated that the beneficiary's duties would be as stated in the petition and provided a revised work schedule in which it removed the duties of caring for the petitioner's Mexican church. We do not find that the petitioner materially altered the terms of the proffered position on appeal and we withdraw the director's decision to the contrary.

The director also determined that the petitioner had not established 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, in pertinent part:

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).

As discussed previously, the petitioner failed to provide a weekly work schedule as instructed by the director in her RFE. In the weekly work schedule, the petitioner indicated that the beneficiary's work in the United States would encompass approximately 35 hours per week, including working in the church and office from 9:00 am to 1:00 pm on Tuesday through Friday during which the petitioner stated that the beneficiary would prepare sermons, study the bible, make phone calls, do website work, pick up ministry materials and organize additional church activities. The schedule also reflects that the beneficiary would fill in for the English pastor when necessary or in an emergency, and that unscheduled work would include baptisms, marriage counseling, funerals, weddings, jail visits and evangelizing at parades and fairs. The schedule indicates that the beneficiary would be on call 7 days a week and 24 hours per day.

The director questioned the hours the beneficiary would need to prepare for his sermons and opined that the other duties "require only a modest time commitment and no specialized religious training or education." On appeal, the petitioner states that, although ordained in 2002, the beneficiary "must continue every week to read, study, [and] learn the scriptures and pray as the Bible commands" and that his preparation includes organizing the musical content for the service. The petitioner also states that the general nature of the beneficiary's other duties do not distract from the fact that they are religious in nature.

We do not find that the duties as outlined by the petitioner are inconsistent with the beneficiary's position as a pastor or that he requires excessive time to prepare for his services. We find that the petitioner has submitted sufficient documentation to establish that the beneficiary seeks to enter the United States to work at least 20 hours per week and withdraw the director's finding.

Nonetheless, the petition may not be approved as the record now stands. Beyond the decision of the director, the petitioner had not 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 [U.S. Citizenship and Immigration Services]. IRS [Internal Revenue Service] 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.

The petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that the beneficiary would receive a salary of \$21,600 year. The petitioner submitted some bank statements and electricity and telephone bills, but no evidence that it has compensated the beneficiary at the rate of \$21,600 per year in the past or that it has the ability to do so. Accordingly, it has failed to establish how it intends to compensate the beneficiary.

In addition, 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 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 does not reflect that a compliance review or onsite inspection has been conducted. The matter is therefore remanded to the director to determine whether or not an onsite inspection or compliance review is appropriate in the instant case.

The matter will be remanded. 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.

**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, is to be certified to the AAO for review.