

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

PUBLIC COPY



**U.S. Citizenship
and Immigration
Services**



D 13

Date: DEC 05 2011

Office: CALIFORNIA SERVICE CENTER FILE: 

IN RE:

Petitioner:
Beneficiary:



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 \$630. 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 church. It seeks to classify the beneficiary 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 minister. The director determined that the petitioner had not established that the beneficiary had been a member of its religious denomination for two full years immediately preceding the filing of the petition.

On appeal, counsel asserts that the director “failed to properly consider [the] issue of the religious denomination.” 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 has been a member of its religious denomination for two full years immediately preceding the filing of the visa petition.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(1) states 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.

The petition was filed on April 29, 2010. Therefore, the petitioner must establish that the beneficiary was a member of its denomination for at least the two years immediately preceding that date.

In its April 20, 2010 letter submitted in support of the petition, the petitioner stated that the beneficiary "has been serving the Lord with us" since November 2009. In an April 9, 2010 statement, the petitioner, through its senior pastor [REDACTED] stated that the beneficiary had been a member of the church since August 2009. The petitioner also submitted an April 7, 2010 letter from the [REDACTED] in which its senior pastor, [REDACTED] certified that the beneficiary had been a member of that organization from August 2006 to August 2009.

In a June 29, 2010 request for evidence (RFE), the director instructed the petitioner to:

Submit evidence to establish how the petitioning organization is affiliated with the [REDACTED]. Provide proof in the form of a corresponding registry/directory and a letter from a Principal or Superior of the governing body of the religious denomination or the leading [REDACTED] in the United States verifying such commonalities as the ecclesiastical government.

Or submit evidence showing commonalities of belief, practice, and organization structure exist among religious organizations such as common creed and forms of worship, common code of doctrine and discipline, and common internal governing structure.

In her July 19, 2010 letter accompanying the petitioner's response, prior counsel stated that the petitioner "is a non-denomination church. It is neither affiliated with any denomination nor is it subject to any governing body of the religious organization."¹ Counsel also stated that "[j]ust like Petitioner . . . [REDACTED] is a Protestant and fundamentalist church. Neither is affiliated with any denomination . . . Both of them share the same beliefs and tenets of other denominations."

The petitioner submitted a copy of its December 2008 bylaws and a copy of the constitution of the [REDACTED]. The petitioner also submitted a July 16, 2010 letter from [REDACTED] who certified that the beneficiary had been a member of the organization from

¹ Different counsel represents the petitioner on appeal and is referred to as counsel in this decision.

April 2007 to August 2009 (correcting dates in his earlier letter, according to counsel). [REDACTED] also stated that the [REDACTED] is a non-denominational church and shares the same core Christian beliefs with the [petitioner].”

The regulation at 8 C.F.R. § 214.2(r)(3) states, in pertinent part:

Denominational membership means membership during at least the two-year period immediately preceding the filing date of the petition, in the same type of religious denomination as the United States religious organization where the alien will work.

Religious denomination means a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes one or more of the following:

- (A) A recognized common creed or statement of faith shared among the denomination’s members;
- (B) A common form of worship;
- (C) A common formal code of doctrine and discipline;
- (D) Common religious services and ceremonies;
- (E) Common established places of religious worship or religious congregations; or
- (F) Comparable indicia of a bona fide religious denomination.

In denying the petition, the director, applying a regulation that was superseded on November 26, 2008 by the above-cited regulation, found that the bylaws of the petitioning organization and the [REDACTED] show that they are organized differently and that they differed in their membership requirements. The director thus concluded that the petitioner had not established that the beneficiary was a member of its denomination for the two years immediately preceding the filing of the visa petition.

On appeal, counsel argues that director’s decision was “largely based . . . on perception of partially different bylaws and on perception that . . . the church to which the Beneficiary previously belonged to and through which he claims qualifying religious background/experience is a ‘nondenominational and independent church.’”

Counsel submits a September 15, 2010 letter from [REDACTED] a distinguished professor of bible exposition emeritus at the [REDACTED] who provides an “expert”

opinion as to whether the petitioning organization and the Dallas Chinese Fellowship Church are of the same denomination. Professor Pentecost writes:

A denomination is a union of churches that have a common doctrinal position and whose practices are determined by bylaws which they hold in common. Presbyterians would fit into this category.

However, there are also denominations which are a union of churches that have a common doctrinal position but are totally independent churches and each would have its own bylaws. Southern Baptists would fit this category. It was doctrine which united them not practices governed by bylaws.

There are multitudes of independent churches in the US which recognize other similar churches because of adherence to the same doctrinal position, but which might have different bylaws governing their practices. This would be true of independent Bible churches.

further opines that differences in bylaws do not “isolate from the general group even though they are not called a denomination. **The determinative feature is doctrine, not (administrative) practices determined by bylaws.**” [His emphasis.] He further states, “We can even conclude that all Christian churches are, in fact, one denomination, despite some ‘administrative’ or procedural, or even ritualistic differences.” concludes that the petitioner and the “are indeed clearly affiliated religious institutions, sharing the same statement of faith, same form of (Christian) worship, a formal doctrine, religious services and other comparable indicia of a bona fide religious denomination.”

The petitioner also submits a September 22, 2010 letter from who states that his church “is a non-denominational, autonomous, Protestant church. As such, it does not belong to a denomination, nor is itself a denomination. It can best be described as an evangelical, Bible-believing church.” He further states that it is this “commonality in doctrines that binds” it to the petitioning organization in addition to the fact that they share the same “makeup of their members.”

The petitioner’s pastor, also submits a statement in which he outlines some “basic commonalities” shared by the two organizations, including the need for personal conversion, that both “actively express and share the gospel,” both “hold high regard for biblical authority,” that both emphasize the teaching of the Bible and a “personal relationship with our Lord Jesus Christ,” and both share “common practices in ceremonies/ordinances of baptism and Lord’s Supper.”

Counsel also submits a copy of the November 21, 2008 “Questions and Answers” that USCIS promulgated in connection with publication of the final rule for religious worker classifications on November 26, 2008. Counsel refers to the following question and answer:

Q. How is “denominational membership” defined?

A. The definition of *denomination membership* is premised on a shared faith and worship practices, and not on formal affiliation.

Based on all of the preceding, counsel argues that:

The term “denomination” refers to a union of churches that have a common doctrinal position. The determining factor in deciding religious denomination and/or commonality are not differences in procedural administrative and other bylaws but rather whether or not the churches/religious organizations share common doctrine, articles of faith and beliefs.

In this instance, the petitioner’s church and the church to which the Beneficiary previously belonged to share commonality of doctrine, articles of faith and beliefs. The mere facts that there are differences in bylaws do not outweigh the significant denominational commonality of the two churches.

Counsel’s argument is not persuasive. The USCIS definition of denomination “is premised on the shared faith and worship practices of the institution, rather than on their formal affiliation.” 72 Fed. Reg. 20442, 20445 (Apr. 25, 2007). “The focus of the regulation is [] on the commonality of the faith and internal organization of the denomination.” 73 Fed. Reg. 72276, 72280 (Nov. 26, 2008).

The petitioner has submitted no documentation to establish that it shares a common creed or statement of faith with the beneficiary’s prior church or that the two organizations share any specific religious practices, such as the same form of worship, the same religious services and ceremonies, or the same established places of worship or religious congregations. The record reflects that the two organizations share only a general Christian belief, such as baptism and the sacraments. In his September 22, 2010 letter, [REDACTED] states that the two organizations share the “makeup of their members”; however, a similar “makeup” of members means only that the two organizations draw from the same community of individuals. There is no evidence in the record that the two organizations share congregations. [REDACTED] is not a member of any denomination, and prior counsel stated that the petitioner “is a non-denomination church” that is not “affiliated with any denomination.”

[REDACTED] statements are also unpersuasive. Under his analysis, any church that believes in Christianity is of the same denomination. This interpretation clearly is more expansive than the definition provided in the regulation.

The petitioner has not established that the beneficiary was a member of its nondenominational organization and therefore of its religious denomination for the two years immediately preceding the filing of the petition.

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).

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.