

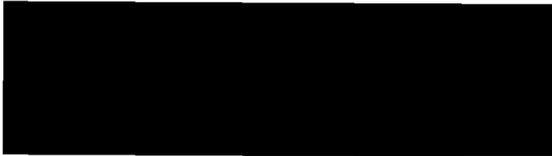
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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



U.S. Citizenship
and Immigration
Services



D 13

Date: **DEC 08 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:

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 \$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, Texas Service Center (TSC), initially approved the employment-based nonimmigrant visa petition. On further review, the director determined that the beneficiary was not eligible for the nonimmigrant classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the petition and her reasons for doing so. On January 7, 2010, the Director, California Service Center (CSC) exercised her discretion to revoke approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is 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 minister. Based on the results of investigation into the beneficiary's work, the director determined that the beneficiary was not working in the position approved for the R-1 nonimmigrant visa.

The petitioner denies the grounds on which the director revoked the petition and alleges that the beneficiary "is still working for the petitioner in a different capacity." The petitioner submits a letter and copies of previously submitted documentation in support of the appeal.

The regulation at 8 C.F.R. § 214.2(r)(18) provides that the director may revoke a petition at any time, even after the expiration of the petition, for the following reasons:

1. The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;
2. The statement of facts contained in the petition was not true and correct;
3. The petitioner violated terms and conditions of the approved petition;
4. The petitioner violated requirements of section 101(a)(15)(R) of the Act or paragraph (r) of this section; or
5. The approval of the petition violated paragraph (r) of this section or involved gross error.

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)(I) 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.

The regulation at 8 C.F.R. § 214.2(r)(1), as in effect at the time the petitioner filed the petition, reads:

General. Under section 101(a)(15)(R) of the Act, an alien who, for at least the two (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, may be admitted temporarily to the United States to carry on the activities of a religious worker for a period not to exceed five (5) years. The alien must be coming to the United States for one of the following purposes: solely to carry on the vocation of a minister of the religious denomination; to work for the religious organization at the request of the organization in a professional capacity; or to work for the organization, or a bona fide organization which is affiliated with the religious denomination, at the request of the organization in a religious vocation or occupation.

In its Form I-129, Petition for a Nonimmigrant Worker, filed on September 15, 2005, the petitioner stated that the proffered position was that of a "religious minister" and that the duties of the position were to "preach the gospel of Jesus Christ; assist in water baptism; teach the youth; teach new converts and workers in training; visitation of the sick and hurting, consecrate children." The petitioner also alleged that the beneficiary had been performing the duties for the past two years. An investigation into the beneficiary's activities, however, reveals that he is a practicing attorney in the United States.

On July 18, 2006, the Director, TSC notified the petitioner that an investigation revealed that the beneficiary was not employed in the capacity for which he was approved, and instructed the petitioner to submit "convincing evidence that the beneficiary is in fact employed as a minister for the petitioner."

In its August 11, 2006 response, the petitioner, through its senior pastor, [REDACTED] stated that the beneficiary passed the New York bar examination prior to his employment. The petitioner further stated that since October 2004, when he was licensed, the beneficiary "has been using his skills to assist our congregation, which has a large number of aliens." The petitioner also stated that the beneficiary "has helped many of our members, as well as non-members, to legalize their immigration status without charging fees."

The petitioner submitted financial documentation, including transcripts from the Internal Revenue Service (IRS) for 2003 and 2004, IRS Forms W-2, Wage and Tax Statements for 2003, 2004 and 2005, and payroll journals for 2004 and 2006, showing that the beneficiary was paid by the petitioner during the stated years. As evidence that the beneficiary worked as a minister, the petitioner submitted a July 28, 2005 letter from [REDACTED] [REDACTED] inviting the beneficiary to be the "main speaker" at an August 26-31 seminar on "God versus Science," copies of two e-mails to the beneficiary commenting on books that he has written, two church programs showing the beneficiary as responsible for the opening prayer, and copies of four "intercessory ministry prayer schedules" that include the beneficiary as one of those responsible for giving a prayer. None of these documents identify the beneficiary as a minister or provide any information that would indicate that he serves in a ministerial capacity.

The petitioner also stated in its August 11, 2006 response to the NOIR that:

The fact that the beneficiary would represent members with Immigration issues, in addition to his ministerial duties has actually been communicated to your office in the past. We therefore honestly did not see this as a violation of his status.

The petitioner included a copy of its November 22, 2004 letter submitted in support of its Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, (USCIS receipt number SRC 05 048 51333), in which it stated that as part of the beneficiary's duties, he would "[b]e the representative of the church in its non profit duties, especially as it affects members with immigration related issues."

The petitioner's argument is without merit. First, the AAO notes that the Form I-360 petition was denied by the Director, TSC. Additionally, the proffered position for the Form I-360 petition was that of minister in charge of tracts and publications. The list of duties did not include any of the duties that the petitioner alleged the beneficiary would perform when it filed the Form I-129 petition that is the subject of this appeal. The director determined that the petitioner had not established that the position of minister in charge of tracts and publications is a religious occupation within the meaning of the regulation.

The AAO further notes that a Form I-129 petition (USCIS receipt number [REDACTED] for the beneficiary in the proffered position of minister in charge of tracts and publications was approved by the Director, TSC on November 25, 2002. In addition to the NOIR and the revocation of the instant petition, the petitioner was also advised that the Director, TSC intended to revoke approval of the 2002 petition. The Director, CSC revoked approval of the 2002 petition in a separate decision on December 20, 2010, and the petitioner's appeal of that decision is addressed in a separate decision by the AAO.

In revoking approval of the instant petition, the director stated that the petitioner had failed to respond to the NOIR. However, the petitioner's August 11, 2006 was a combined response to both the petition that is the subject of this appeal and the petition bearing receipt number [REDACTED]. Nonetheless, the AAO does not find that the petitioner has been prejudiced by the director's failure to consider its response to the NOIR. First, the AAO reviews all appeals on a *de novo* basis and has considered all of the evidence of record. *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). Second, and more importantly, the petitioner admitted in response to the NOIR and again on appeal that the beneficiary has not been, and is not currently, working solely as a minister in the United States as required by the regulation at 8 C.F.R. § 214.2(r)(1)(iii).

The petitioner asserts on appeal that the beneficiary "now works for the petitioner as [an] immigration attorney and he heads Household of [REDACTED]. However, the petitioner did not petition for the beneficiary to work as an

immigration attorney nor did USCIS previously find that an immigration attorney is a religious occupation within the meaning of the regulation.

Further, the petitioner's statement regarding the beneficiary's work with the organization is suspect. A Google search of the beneficiary's name reveals that he owns his own law practice.¹

The petitioner has failed to establish that the beneficiary worked and continues to work solely as a minister. Further, the petitioner has failed to establish that the beneficiary works in a qualifying religious occupation or vocation in the United States.

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.

¹ See www.google.com, www.findlaw.com, accessed on November 29, 2011, copies of which have been incorporated into the record of proceeding.