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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

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DATE: DEC 28 2011 OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(i)

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,

2 Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal from that decision. The petitioner has filed a motion to reopen and reconsider. The AAO will grant the motion and affirm the dismissal of the appeal.

The petitioner is a Pentecostal Christian 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 "pastor assistant and worship pastor." The director determined that the petitioner had failed to establish the beneficiary's required membership in the petitioner's religious denomination for at least two years immediately preceding the filing of the petition. The director also determined that the petitioner had submitted insufficient documentation regarding the beneficiary's compensation. The AAO, in dismissing the appeal, affirmed the director's findings.

On motion, the petitioner submits a brief from counsel, an affidavit from its president, and various supporting documents.

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 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;
- (ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);
- (iii) Be coming solely as a minister or to perform a religious vocation or occupation as defined in paragraph (r)(3) of this section (in either a professional or nonprofessional capacity);
- (iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and
- (v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

Counsel, on motion, states:

USCIS based its denial on the erroneous finding that the evidence on record is insufficient to establish that the beneficiary has been performing full-time religious work as described in 8 C.F.R. 204.5(m)(2) for at least the two-year period immediately preceding the filing of the petition. The original petition, RFE response and appeal all contained sufficient evidence demonstrating [the beneficiary's] religious work experience. However, petitioner now submits the notarized affidavit of [REDACTED] President of the [petitioning church] as additional corroborating evidence of the beneficiary's religious work history.

(Emphasis in original.) The above discussion is not an accurate description of the grounds for denial. The two-year employment requirement at 8 C.F.R. § 204.5(m)(2) relates to special immigrant worker petitions, filed on Form I-360. The matter under consideration here is a nonimmigrant religious worker petition, filed on Form I-129.

Later in the brief on motion, counsel correctly describes one of the issues as “whether the petitioner has established the beneficiary[’s] required membership in the petitioner’s religious denomination for at least two years immediately preceding the filing of the petition.”

Section 101(a)(15)(R)(i) of the Act and the USCIS regulation at 8 C.F.R. § 214.2(r)(3) require that the beneficiary must have belonged to the petitioner’s religious denomination for at least two years immediately preceding the filing of the petition.

The AAO's entire January 13, 2011 dismissal notice is incorporated by reference, but a brief summary follows. The petitioner filed the Form I-129 petition on May 8, 2009. In an accompanying religious denomination certification, asked to specify the name of its religious denomination, the petitioner stated its own name.

The beneficiary had previously worked for [REDACTED] and the petitioner therefore had to establish denominational affiliation with that church. The petitioner submitted a five-sentence creed attributed to [REDACTED] but no evidence to show the creed's provenance. The petitioner later submitted an unsigned one-page document, entitled "What We Believe," on the letterhead of [REDACTED]

A "Narrative Description of Church's Activities" indicated that the petitioner "has operated as an affiliate of the Church of God," but there are several distinct denominations that each use the name "Church of God." The "Narrative Description" document did not specify which "Church of God" is affiliated with the petitioner.

The petitioner's constitution, over 30 pages in length, contains repeated references to the Assemblies of God (AG) denomination. The constitution refers to the petitioner not as a single church or congregation, but rather as "a cooperative fellowship of Pentecostal, Spirit-baptized saints from local bilingual or Hispanic churches of like precious faith throughout the United States." The document refers to the entity's "districts," "district offices" and "National Ministries."

In notice dated October 13, 2010, the AAO instructed the petitioner to "submit evidence from an identified official of [REDACTED] with contact information, attesting to the creed [the petitioner] submitted previously." The AAO also informed the petitioner that its constitution appeared to be the AG's constitution, with most references to the AG removed and replaced with references to the petitioner or to an association of Pentecostal, Hispanic churches. In the notice, the AAO stated:

Please submit verifiable documentary evidence that your church is (or is part of) a national organization with districts, district offices, and national ministries. Verifiable evidence can include, but is not limited to, a published directory containing names, addresses, and contact information for officials in various districts. If there is no cooperative fellowship with districts, district offices, and national ministries, the AAO will dismiss your appeal based, in part, on your submission of an alleged governing document that contains false claims about the nature of your religious organization.

The petitioner's response to the notice did not address the AAO's concerns. The petitioner submitted nothing from [REDACTED] and no explanation for the omission, and a more complete copy of the disputed constitution did not overcome the issues that the AAO had raised.

The AAO, in dismissing the appeal, stated that the petitioner's constitution contains "numerous references to a national, hierarchical organization, but [the petitioner] has been either unwilling or unable to submit any evidence at all that such a national organization actually exists." The petitioner's response also repeated the claim that the petitioner "has operated as an affiliate of the Church of God," which contradicts the constitution's repeated references to the Assemblies of God. The AAO concluded:

The petitioner's latest submission does not resolve the AAO's concerns. Instead, it compounds them. The petitioner has claimed affiliation with two different religious denominations, but produced no credible evidence regarding either denomination."

The petitioner's submission in answer to the AAO's October 2010 notice is substantial in size, but not in relevant content. The petitioner's essentially unresponsive submission leads us to conclude that its claims of affiliation with the Church of God, Assemblies of God, and [REDACTED] are unsubstantiated and lacking in credibility.

The AAO already gave the petitioner an opportunity to explain the origin of its constitution. Any new attempt at this late date to provide such an explanation falls outside the regulatory definition of a motion to reopen and/or reconsider.

On motion, counsel cites the regulatory definition of a "religious denomination" and states that the petitioner meets that definition:

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.

8 C.F.R. § 214.2(r)(3). Counsel observes that the petitioner has established its own status as a religious denomination, and that the prior approval of [REDACTED] R-1 nonimmigrant petition establishes that the beneficiary's "prior employment was at a bona fide religious denomination." Counsel does not explain how this evidence shows that the two churches belong to the same religious denomination.

Counsel asserts that "Pentecostal churches do not contain a centralized governing body. . . . (counsel's emphasis).

It may be true that there is no single governing body with authority over all Pentecostal churches, but the term "Pentecostal" refers not to a single denomination, but to a broader category that includes several distinct denominations. To cite an example named in the record, the Assemblies of God is a Pentecostal denomination – one that does have a "centralized governing body," as described in its constitution. As previously noted, there are also several Pentecostal denominations that each use variations of the name "Church of God."

Counsel, on motion, acknowledges that the AG's constitution and bylaws formed the model for the petitioner's own constitution. Thus, the petitioner's own constitution and bylaws refer to a denominational governing body, including a "Board of Administration" and various "Executive Officers."

Article VII, "Membership," of the petitioner's constitution states: "The membership of the [REDACTED] shall consist of all ordained and licensed ministers holding a current fellowship certificate and local churches and all other persons who are members of churches affiliated with The [REDACTED]. The petitioner has not established that [REDACTED] is "affiliated with [REDACTED]"

Counsel argues that the above provisions in the petitioner's own constitution – repeatedly submitted as though it were definitive evidence of the petitioner's denominational status – "are merely aspirational in nature" because "[t]he Petitioner expects to be a large Pentecostal church in the United States, but has yet to obtain such a status." To support this claim, the petitioner submits a new affidavit from [REDACTED] who states:

Both the [REDACTED] and the [petitioning church] are independent, non-denominational, Pentecostal churches with the basic Christ-centered, Trinitarian beliefs. . . . Although there is no centralized governing body over the Pentecostal church, *all Pentecostal churches share a common goal, common form of worship, common code of doctrine and discipline, and common religious ceremonies and services.* . . .

When we drafted our constitution . . . , we used the Assemblies of God's constitution as our model. Not being completely fluent in English, we mistakenly left in references to the Assemblies of God. . . .

[I]n the AAO's dismissal letter, the AAO officer indicates that our constitution has numerous references to a national, hierarchical organization and that we have "been unwilling or unable to submit any evidence at all that such a national organization actually exists." In response, it is our prediction and goal that our church grows to become a national organization. Currently . . . we do not [yet] have a national organization. Moreover, our lack of mastery of the English language has contributed to the inconsistency.

The AAO previously gave the petitioner the opportunity to explain its constitution's references to the Assemblies of God and to a national organization. That opportunity took the form of the AAO's October 2010 notice. The petitioner could have offered the above explanations at that time, but it did not do so. Instead, the petitioner merely resubmitted the constitution, containing the problematic references to a national organization and to the AG denomination.

Having failed to address this issue at the AAO's request while the petition was on appeal, the petitioner's belated explanation on motion is not grounds to reopen or reconsider the AAO's decision. Furthermore, assertions about the petitioner's "lack of mastery of the English language" does not alter the AAO's prior findings about the constitution's usefulness as an instrument of corporate governance. [REDACTED] does not explain how the petitioner's officials intend to follow the rules of a document that they admittedly do not fully comprehend.

By signing the Form I-129 petition, [REDACTED] certified under penalty of perjury "that this petition and the evidence submitted with it is all true and correct." The petitioner has repeatedly submitted excerpts of its constitution and bylaws as evidence of the nature of the petitioning organization. Now, on motion, the petitioner acknowledges that those documents do not accurately describe the petitioning organization. The resulting impact on the petitioner's credibility is clear. It is no defense to claim that the petitioner's limited English skills led the petitioner to submit a document with no way of knowing whether or not its contents were true.

The AAO adds that, if the petitioner's explanation rests on [REDACTED] poor grasp of English, then a new statement from the same person, entirely in English, is of dubious value.

Furthermore, the excuse that the references to a national organization are "aspirational," referring to the petitioner's future plans rather than to the present nature of the organization, is not persuasive. Article II, "Nature," of the petitioner's constitution states that the petitioner "is a cooperative fellowship based upon mutual agreements voluntarily entered into by its membership." If this was not true at the time the petitioner executed the document, then the constitution fundamentally misrepresents the very nature of the petitioning organization.

With respect to the petitioner's previous references to the Church of God, [REDACTED] states:

Both me and my wife . . . worked together with the "Church of God" to start the [petitioning church] in [REDACTED]. The Church of God allowed us to use their facilities

when we started our church in exchange for our affiliation with them. Eventually, we broke off from the Church of God.

The motion includes a copy of a letter from [REDACTED] and his spouse (also a pastor), to [REDACTED] administrative bishop of the [REDACTED] Church of God. The pastors stated:

Although we met together with [REDACTED] in 2,001 [*sic*], and expressed the desire to work interdenominationally at that time, no formal disaffiliation was effected.

Since 1998, we have continued to receive mailings from the Church of God parent organization, and . . . it appears that we are still considered a daughter church of the Church of God organization.

Because of the interdenominational constituency of our congregation and the interdenominational character of our ministry . . . we would appreciate your blessing on formally becom[ing] a church that is self propagating, self support[ing] and self governing.

In response, [REDACTED] administrative bishop of the Churches of God in [REDACTED] stated: "this letter is to officially notify you that your credentials with the Church of God, [REDACTED] have been revoked effective October 8, 2010 for Voluntary Surrender to Pursue Independent Ministry."

The petitioner's letter to [REDACTED] is dated March 28, 2010; [REDACTED] response is dated October 8, 2010. Prior to this exchange of correspondence, [REDACTED] and therefore his church, remained formally affiliated with the Church of God, [REDACTED]. The petitioner belonged to that denomination in 2009, when it filed the petition, and it belonged to that denomination when it executed a constitution that referred to the petitioner as its own independent association of churches. A previously submitted "Attachment to Form 1023" identified the petitioner as "an integrated auxiliary of . . . the Church of God."

The petitioner submits no evidence that [REDACTED] ever belonged to the Church of God, [REDACTED].

The regulatory definition of "religious denomination" is flexible to accommodate independent churches with shared doctrines and practices, but no formal denominational affiliation. In instances where a given church does, in fact, belong to a formal denomination, the petitioner cannot reach outside of that formal denominational structure. The meaning of the term "religious denomination" erodes significantly if it does not take into account the existing boundaries between actual, recognized denominations.

In the present instance, at the time the petitioner filed the petition in 2009, the petitioner belonged to the Church of God, [REDACTED] claimed to be the headquarters of a fictitious national

organization of its own; and asserted *de facto* denominational affiliation with [REDACTED]. The AAO reaffirms its prior finding that the petitioner has not met its burden of proof with respect to the denominational membership issue.

On motion, counsel states: "The only genuine issue is whether the petitioner has established the beneficiary[']s required membership in the petitioner's religious denomination for at least two years immediately preceding the filing of the petition." The denial and subsequent dismissal, however, both concerned a second issue, relating to the petitioner's ability to compensate the beneficiary.

The USCIS regulation at 8 C.F.R. § 214.2(r)(11)(i) states:

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.

The AAO, in its January 2011 dismissal notice, stated:

In denying the petition, the director observed that the petitioner's claimed end-of-year fund balances for 2006 through 2008 were each lower than the beneficiary's proposed salary of \$14,400 per year. The director concluded: "Based on the petitioner's financial records for the last three years, the petitioner will not be able to support the proposed salary offered to the beneficiary."

On appeal, [REDACTED] president of the petitioning entity, claims that the petitioner's "congregation has pledged a minimum of \$1500 monthly in donations to supplement the Church's current savings in order to maintain the [beneficiary's] employment." Given the petitioner's general lack of credibility, as discussed earlier in this decision, we give little weight to the petitioner's claim that its members will donate more money than they have in the past in order to cover the beneficiary's salary. Doubt cast on any aspect of the petitioner's proof may 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. We agree with the director's finding that the petitioner has not submitted sufficient evidence regarding the beneficiary's intended future compensation.

Counsel does not address this issue at all on motion. [REDACTED] in his new affidavit, states that the petitioner "will provide housing, transportation and meal expenses in addition to a monthly salary of \$1,200." [REDACTED] does not address any of the director's or the AAO's specific concerns. Simply

stating proposed terms of compensation does not demonstrate the petitioner's ability to meet those terms. Therefore, the findings of both the director and the AAO stand undisturbed on that point.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will affirm its prior decision to dismiss the appeal.

ORDER: The AAO's decision of January 13, 2011 is affirmed. The petition is denied and the appeal is dismissed.