

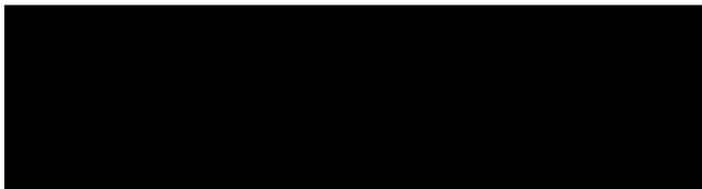
Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



D13

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

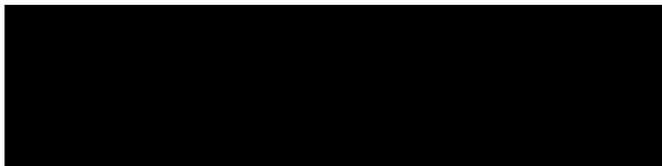


IN RE: Petitioner:
Beneficiary:



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.

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 AAO will withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further action and consideration.

In this decision, the term "prior counsel" shall refer to [REDACTED] who represented the petitioner at the time the petitioner filed the petition. The term "counsel" shall refer to the present attorney of record.

[REDACTED] denomination also known as the [REDACTED] movement. It seeks to classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act, to perform services as a brahmana (priest). The director determined that an investigation had discredited some of the documentation submitted in support of the petition.

On appeal, the petitioner submits a brief from counsel and various statements and exhibits.

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.

U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. § 214.2(r)(1) state 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.

The petitioner filed the Form I-129 petition on February 26, 2007. The petitioner indicated that the beneficiary entered the United States on June 8, 2006. In a letter accompanying the initial submission, [REDACTED] the petitioner's president, stated:

[The beneficiary] has worked in the religious vocation of a Hindu minister of religion for ISKCON since 1990. He served full time at the ISKCON World Headquarters in Sri Dham Mayapur, Nadia, West Bengal, India . . . prior to coming to the United States in June 2006 to serve as a Hindu priest at the ISKCON temple in Berkeley, CA. It is now proposed that he be transferred to our ISKCON branch in New Orleans to continue his religious vocation.

An April 12, 2006 letter from [REDACTED] reads, in part:

I am a member of the ISKCON Governing Body Commission and am responsible for Eastern India as well as other places and an Initiating Guru for ISKCON world-wide.

This is to certify that [the beneficiary] has been serving ISKCON as a full time member in Mayapur since 1990. . . . [H]e was ordained as a priest on 24th March, 1997.

. . . . ISKCON Berkeley, California is inviting him to their temple.

The regulation at 8 C.F.R. § 214.2(r)(16) reads, in part:

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. . . . An inspection may include the organization headquarters, 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.

On December 14, 2009, the director advised the petitioner of the director's intent to deny the petition, based on information obtained during efforts to verify the petitioner's claims. The director stated:

On March 28, 2007, [USCIS] received an overseas wire from the Consulate General of the United States in Kolkata India. A field investigation was conducted to verify the beneficiary's religious work in India at the ISKON [*sic*] Temple in West Bengal. The consulate found evidence that the [REDACTED] in West Bengal was not associated with the ISKON [*sic*] Temple in New Orleans Louisiana. The Temple letterhead lists a number and address that does not exist.

From the wording of the director's notice (and the wording of the aforementioned cable), it is not clear which temple's "letterhead lists a number and address that does not exist."

The record does not contain a copy of any March 2007 cable from the consulate in Kolkata. A March 28, 2007 electronic mail message (not a cable) from a consulate official referred to a then-ongoing investigation, but mentioned no temples in West Bengal or New Orleans. There is also an excerpt from April 2007 cable from the embassy in New Delhi, referring to findings by the consulate in Kolkata. The embassy cable contains the correct spelling of [REDACTED] the temple in West Bengal. The cable does not specify the allegedly nonexistent address. The cable does not contain any specific information (such as the beneficiary's name or the petitioner's address) to link this particular petition to the findings in the cable. The cable's vague and general reference to "an ISKON [*sic*] temple in New Orleans" does not presumptively discredit every ISKCON petition filed from New Orleans. The materials in the record of proceeding do not show that the petitioner's claimed address "does not exist."

With respect to this specific petitioner, located on Esplanade Avenue, New Orleans, a compliance review report indicates that a USCIS officer "conducted a site visit on June 26, 2007. The petitioner exists and is functioning as a Krishna Consciousness temple." USCIS has, therefore, verified the existence of the Esplanade Avenue temple.

The director instructed the petitioner to "[s]ubmit original documentation from an affiliated temple in India to verify the beneficiary's original status is valid" and "an explanation as to the invalid documents originally submitted in support of the beneficiary's R-1 status in June of 2006."

In response, the petitioner submitted copies of letters previously submitted in support of the Form I-129 petition and a related Form I-360 petition [REDACTED] and an earlier nonimmigrant visa application. Prior counsel observed that the petitioner had never claimed "any connection whatsoever

between the beneficiary and the [REDACTED] in West Bengal.” A copy of an ISKCON publication shows that there is also a [REDACTED] temple in Vrindavan, Uttar Pradesh, India ([REDACTED] is an alternate spelling of [REDACTED]. Prior counsel asserted that the beneficiary worked at the Uttar Pradesh temple, not the similarly-named temple in West Bengal. Prior counsel protested that the director intended to deny the petition “on the basis of information that is completely inapplicable to the beneficiary.”

The director denied the petition on January 28, 2010. In the denial notice, the director stated that the petitioner “submitted another copy of a letter from [REDACTED]. . . It is this letter that the embassy [sic] in Kolkata India has determined is without merit and does not establish the beneficiary’s religious experience.” The excerpt from the embassy’s cable does not identify Jayapataka Swami; it refers only to “the [REDACTED] West Bengal,” a temple that is not named anywhere in [REDACTED] letter. [REDACTED] had mentioned an unnamed temple in Mayapur, West Bengal, but the ISKCON materials submitted by the petitioner show that there is another temple in [REDACTED] that is affiliated with the petitioner in New Orleans.

On appeal, the petitioner submits declarations and other documents attesting to the beneficiary’s prior experience at [REDACTED]. Counsel repeats the claim that the embassy cable contains irrelevant information that does not warrant denial of the petition.

Upon review of the record of proceeding and the investigative materials presented, the AAO finds that the director has not established that the information in the embassy cable relates to the present petition. That cable contains vague and ambiguous assertions that may conceivably relate to the petitioner and to the beneficiary, but then again may not. If more specific evidence exists, it is not part of the record of proceeding. The materials presented thus far show specific conclusions arising from general evidence, with no persuasive link between the two. The AAO will therefore withdraw the director’s finding in this regard. Because that finding was the only stated ground for denial, the AAO will also withdraw the denial decision as a whole.

The director may not deny the petition based on inferences or conclusions that the record does not support. Observations contained in an investigative report that are conclusory, speculative, equivocal, or irrelevant do not provide good and sufficient cause for the issuance of a notice of intent to revoke the approval of a visa petition and cannot serve as the basis for revocation. *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988). By the same logic, these factors are also not adequate grounds for denial.

If further evidence exists that specifically links this petition to disqualifying findings, the director must add that evidence to the record of proceeding and issue a new decision, describing that evidence in specific detail rather than simply concluding that the evidence discredits the petitioner’s claims.

At the same time, the AAO notes a number of deficiencies and potential disqualifying factors that the director has not yet addressed and which preclude approval of the petition. The AAO may address these factors even if the director did not list them among 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 terms of deficiencies that apply directly to the present proceeding, the regulation at 8 C.F.R. § 214.2(m)(8) requires the petitioner to submit a detailed attestation regarding the petitioner, the beneficiary, and the job offer. The regulation at 8 C.F.R. § 204.5(m)(11) requires the petitioner to submit documentation (including Internal Revenue Service documentation, if available) to show how the petitioner intends to compensate the beneficiary. At this time, the record lacks the evidence that these cited regulations require. Unless remedied, these deficiencies amount to additional grounds for denial of the petition.

For the reasons discussed above, the director's decision cannot stand and the AAO hereby withdraws that decision. At the same time, however, the record as it now stands does not permit approval of the petition. Therefore, the AAO will remand this matter to the director. 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 Administrative Appeals Office for review.