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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JAN 07 2011

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:

[REDACTED]

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,

W. Beadnick
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 and will remand the petition for further action and consideration.

The petitioner is [REDACTED]. 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 monk. The director denied the petition based on the determination that the beneficiary had violated his R-1 nonimmigrant religious worker status by engaging in unauthorized employment.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 248.3(a) states that an employer seeking the services of an alien as an R-1 nonimmigrant religious worker, must, where the alien is already in the United States and does not currently hold such status, apply for a change of status on Form I-129, Petition for a Nonimmigrant Worker. Thus, the petition form is also the application form for change of status, but the petition and the application are separate proceedings. An application for change of status is concurrent with, but separate from, the alien's eligibility for a nonimmigrant petition. While the determination regarding an alien's eligibility may be appealed, there is no appeal from the denial of an application for a change of status filed on Form I-129. 8 C.F.R. § 248.3(g). Because the beneficiary's current immigration and maintenance of status are change of status issues rather than petition eligibility issues, the AAO lacks authority to decide those questions.

Although the director found the beneficiary ineligible for nonimmigrant classification based upon an issue regarding his current immigration status, the issue relates to the change of status request and not the beneficiary's eligibility for benefits under section 101(a)(15)(R)(1) of the Act.

Accordingly this matter will be remanded for the director to address the beneficiary's eligibility under 101(a)(15)(R)(1) of the Act. The director may request any additional evidence deemed warranted and if so, 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.