

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

**PUBLIC COPY**



813

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

JAN 11 2011

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 on March 30, 2009 and dismissed the petitioner's motion to reopen and reconsider on October 1, 2009. On April 12, 2010, the director reopened the petition pursuant to 8 C.F.R. § 103.5(a)(5)(ii) and again denied the 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 pursuant to section 101(a)(15)(R)(1) of the Act, to perform services as a pastor. The director determined that the petitioner had not established it qualifies for the immigration benefits sought.

On appeal, counsel asserts that the director's decision was "based on a misreading of the record and a conclusion of inconsistencies that are not there and extremely trivial." Counsel submits a brief in support of the petition.

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 it has submitted sufficient documentation to establish that it qualifies for immigration benefits under section 101(a)(15)(R)(1) of the Act.

The director's decision is three-pronged, finding that: the petitioner has not resolved the issue of the name of the beneficiary's prior employer, the petitioner has provided inconsistent evidence of

the number of its weekly services, and the petitioner has not submitted sufficient documentation to establish where the beneficiary will work.

Regarding the first prong of the director's decision, we note that the regulation at 8 C.F.R. § 214.2(r)(12) requires that any request for an extension of stay as an R-1 must include initial evidence of the previous R-1 employment (including Internal Revenue Service (IRS) documentation if available). The issue of the beneficiary's prior employment is significant only insofar as it relates to the application to extend that status. An application for extension is concurrent with, but separate from, the nonimmigrant petition. There is no appeal from the denial of an application for extension of stay filed on Form I-129, Petition for a Nonimmigrant Worker. 8 C.F.R. § 214.1(c)(5). Because the beneficiary's past employment is an extension issue, rather than petition issue, the AAO lacks authority to decide this question, and we will not discuss here.

As it relates to the second prong of the director's decision, the regulation at 8 C.F.R. § 214.2(r)(1) provides, in pertinent part:

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:

- 
- 
- 
- (ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week).

Additionally, the regulation at 8 C.F.R. § 214.2(r)(8) provides that the petitioner must attest to the title of the position offered to the alien, provide a detailed description of the alien's proposed daily duties, attest that the alien will be employed at least 20 hours per week and identify the specific location(s) of the proposed employment.

The director determined that the petitioner had submitted inconsistent evidence of the number of weekly services that it held and where the beneficiary was to work.

With the petition, filed on August 4, 2008, the petitioner submitted a copy of a July 22, 2008 residential lease indicating that it leased the premises of [REDACTED]. Although the lease indicated that the agreement did not include the petitioner's use of "Harmony House" or the offices, the agreement does not specify that the petitioner would share the premises, particularly the sanctuary, with [REDACTED] and did not, other than as mentioned, impose other restrictions on the petitioner's use of the premises, such as specific time frames or days of use.

In a request for evidence (RFE) dated January 29, 2009, the director instructed the petitioner to:

Submit the present schedule of the church[’s activities] at the work location showing the opening hours and schedule of services weekdays and weekend days. Also, submit the opening and closing days schedule of the organization for the year 2009.

The director also instructed the petitioner to:

Submit [a] job schedule of the beneficiary showing the working hours. Please indicate the weekdays or weekend days and the times and the complete address and contact information of where the beneficiary reports to work.

In response, the petitioner submitted photographs of the church, including a sign indicating that [REDACTED] had worship services at 10:30 am and that the petitioner held services at 12:30 pm. The sign does not indicate on which day or days services were held for either church. The petitioner also submitted a copy of its activities and “program schedule” for 2009. While the schedule included committee meetings, training and special events, the only worship services indicated were on January 4, July 19, August 9, December 6 and December 27. A February 22, 2009 Sunday church bulletin purports to provide the following weekly schedule:

Evangelism/Discipleship Training:

District Upper Floor:

Monday 7PM La Mesa

Wed 1PM Ocean Beach

Mission Home:

Wed. 9AM Mira Mesa

College Group:

Thurs. 11AM Mira Costa College

Fri. 11AM SDSU

College Evangelism School:

Thurs. 7:30 UCLA

Worship Schedule:

Sunday Mair Service 12:30

Second Service 2:30

Wed. Evening 7:30

Sunrise Worship

Mon-Sat 5:00 A.M.

The regulation at 8 C.F.R. § 103.2(b)(3), provides:

*Translations.* Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

In contravention of the regulations, the petitioner provided only a partial translation of the church bulletin. Without the full and proper translation required by the regulation, we are unable to determine whether it supports the petitioner's claims. Accordingly, we cannot accord any weight to the evidence.

The petitioner also provided a copy of the beneficiary's schedule, which reveals the following:

	Sun.	Mon.	Tue.	Wed.	Thu.	Fri.	Sat.
4:30-6:00Am		Early morning Worship	Early morning Worship	Early morning Worship	Early morning Worship	Early morning Worship	Early morning worship
8:00			Pray meeting				
9:00				Bible study:			
10:00		Bible Study: [REDACTED]	Bible Study: [REDACTED]	[REDACTED]			Bible Study : [REDACTED]
11:00				Bible study:	Mira Cosa College Worship and Evangelism	SDSU College Worship and Evangelism	
12:00	1 <sup>st</sup> Worship	Bible Study: [REDACTED]	Bible Study: [REDACTED]	[REDACTED]			
1:00 PM				Region Group Worship			
2:00	2 <sup>nd</sup> Worship	Bible Study: [REDACTED]	Evangelism Camp				
3:00					Bible study : [REDACTED]		
4:00		Gospel preach					
5:00							
6:00							
7:00		Region Group Worship	Evangelism Seminary Lecture	Wednesday Worship	Worship in College of Evangelism	Bible Study: [REDACTED]	
8:00							

In denying the petition, the director noted that the lease agreement did not make provisions for the shared use of the [REDACTED] and therefore it was unclear as to how the shared arrangements worked to accommodate the petitioner's members. The director also

noted that the church bulletin indicated that sunrise worship services began at 5:00 am; however, the beneficiary's schedule showed that he began services at 4:30 am. Further, there is no indication as to where these sunrise services are held. The director also concluded that the bible studies indicated on the beneficiary's schedule were to be conducted by the individuals shown and did not reflect work actually performed by the beneficiary. The director also determined that the petitioner had provided no verifiable documentation that it was engaged in any religious activity beyond [REDACTED] where the petition stated the beneficiary was to work.

On motion to reopen and reconsider, filed on April 30, 2009, the petitioner submitted an April 9, 2009 letter from [REDACTED] who stated that the petitioner meets at its church at 12:30 pm each Sunday. However, [REDACTED] did not state that the petitioner used the church facilities at any other time. The director dismissed the motion on October 1, 2009, determining that the motion to reopen did not state new facts, was not supported by other documentary evidence, and did "not completely address inconsistencies raised in the denial."

On April 12, 2010, the director reopened the decision to consider the results of an onsite inspection conducted by an immigration officer (IO) on March 30, 2010. As a result of the inspection, the director notified the petitioner of her intent to deny the petition because it appeared that the petitioner was not operating as claimed in the petition. The director notified the petitioner that the onsite inspection "makes no reference to any other days scheduled for religions activities" and that the lease "makes no reference to the time and day of the week the petitioner is allowed to use the church." The director instructed the petitioner to submit documentation of its religious activity at its prior location and to provide a detailed description of the work to be done by the beneficiary, including the number of hours he was expected to work.

In a May 6, 2010 letter submitted in response, the petitioner stated:

In addition to our Sunday service, we hold a Wednesday evening prayer service usually at [the beneficiary's] home or another church member's home. We also hold early morning sunrise service every weekday at the [REDACTED] Church attendance on Sundays is usually 20 to 30 members, on Wednesday evening 10-15 members, and at early sunrise 8-10 members.

In an April 26, 2010 letter, [REDACTED] stated that the issue of the number of worship services held by the petitioner in the facilities of [REDACTED] "was never asked or brought up during the site check." [REDACTED] stated that the petitioner held morning sunrise service at the church every day and that it held "a weekly Wednesday evening prayer service" at another location. [REDACTED] did not state the basis of his knowledge of the petitioner's Wednesday service.

In her June 1, 2010 denial of the petition, the director determined that the petitioner had not explained the discrepancies in its evidence. The director again noted that the lease did not reflect the

petitioner's terms of use for the [REDACTED] facilities and the petitioner failed to clarify the beneficiary's work schedule and location:

The record fails to support the location where the beneficiary will be working. The petitioner submitted a proposed work schedule for the beneficiary. However, the proposed schedule fails to identify the complete work location, address, and contact information/responsibility for the beneficiary in the scheduled activities. In addition, the schedule contradicts the petition information and the rental lease information. For instance, the schedule shows morning worship from 4:30 am to 6:00 am Monday through Saturday. However, the lease does not show that the shared church is reserved for any early morning worship. Moreover, the schedule shows the beneficiary will work away from the work location. However, there is no verifiable documentation to demonstrate the locations where the beneficiary will be working.

On appeal, counsel asserts that “[a] requirement of a description of shared use cannot be permitted as there is no such requirement found in the regulations.” Counsel is correct and the record does not indicate that the director required such an agreement. However, a shared use agreement would provide documentation of when the petitioner conducted its business at the church and assist in determining where the beneficiary would provide his services to the petitioner. Although [REDACTED] stated that he was not asked during the onsite inspection about the petitioner's use of his church facilities on days other than Sundays, he also made no mention of these other days in his April 9, 2009 letter submitted by the petitioner in support of its motion to reopen and reconsider. As the record now stands, the petitioner has submitted inconsistent statements regarding when its morning services are held and provided no verifiable documentary evidence to establish that it holds services or has religious activities in any other location.

Counsel asserts on appeal that the beneficiary's weekly activity schedule “shows the church member's names where and when Bible Study is conducted.” However, the schedule is not as clear as counsel states. The schedule simply indicates that bible study is held in various locations. It does not indicate the beneficiary's role and responsibilities in these studies. Further, the petitioner submitted no documentary evidence to establish that these bible studies and worship activities occur as alleged. Further, the beneficiary's schedule is inconsistent with the activities listed in the church bulletin.

The petitioner has failed to resolve the deficiencies and inconsistencies in its documentation. Accordingly, it has failed to establish that it operates in the capacity alleged in its petition and that the beneficiary will work for at least 20 hours per week.

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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.