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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

[redacted]

D13

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 19 2011

IN RE: Petitioner: [redacted]
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,

Mari Johnson

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 dismiss the appeal.

The petitioner is a parachurch organization. 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 minister and international evangelist. The director determined that the petitioner had submitted insufficient evidence about its site of operations and about the beneficiary's past compensation. The director also found that the beneficiary had, in effect, filed the petition on his own behalf.

On appeal, the petitioner submits a statement from an official, as well as copies of various 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.

One of the three cited reasons for denial concerns the regulation at 8 C.F.R. § 214.2(r)(12)(i), which requires that any request for an extension of stay as an R-1 must include initial evidence of the previous R-1 employment. If the beneficiary received salaried compensation, the petitioner must submit IRS documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of filed income tax returns, reflecting such work and compensation for the preceding two years.

The director found that the petitioner did not submit sufficient evidence of the beneficiary's previous R-1 employment. This issue, however, pertains to requests for extension of stay rather than to the underlying petition. When the director denied the petition, the director simultaneously denied the request for extension of stay. There is no appeal from the denial of an application for extension of stay. 8 C.F.R. § 214.1(c)(5). Therefore, this issue lies outside the AAO's appellate jurisdiction.

The first issue we will discuss in detail concerns the beneficiary's role in the petitioning organization.

The petitioner filed the Form I-129 petition on August 24, 2009. Under the regulation at 8 C.F.R. § 214.2(r)(7), the intending employer must file the petition. There is no provision for an alien to file an R-1 petition on his or her own behalf.

The beneficiary did not sign Form I-129. Rather, [redacted], named as a director of the petitioning entity, completed and signed the petition form. Nevertheless, materials submitted by the petitioner identified the beneficiary as the founder and president of the petitioning organization (which bears his name). The director denied the petition on November 12, 2009, stating:

> [T]he beneficiaries filed the petition for themselves. Records indicate that the beneficiary set up [redacted] in Canada and filed the petition for

> himself and his family in the United States. Both the beneficiary and his spouse are officers of the petitioning organization. . . . It does not appear that they will be working in the United States at the request of a separate and independent organization.

On appeal, the petitioner submits documentation showing that the petitioner reorganized its board of directors in 2003, so "that there would be no President, just an operating Board." The petitioner explains that the materials identifying the beneficiary as the president predated its reorganization.

The petitioner has established that it is a *bona fide* tax-exempt religious organization, eligible to file R-1 nonimmigrant petitions on behalf of prospective employees. We will withdraw the ground for denial relating to the beneficiary's status as a founder of that organization.

The second and last ground for denial of the petition concerns the determination that the petitioner failed to provide required information and evidence. The regulation at 8 C.F.R. § 214.2(r)(8)(x) requires the petitioner to identify the specific location(s) of the beneficiary's proposed employment. In the attestation accompanying Form I-129, the petitioner indicated that the beneficiary would work at the petitioner's address as stated on the petition form.

On October 8, 2009, the director instructed the petitioner to submit information about the petitioner's employees, work locations and activities. The director specifically requested "documentary evidence to show activity at the work location" shown on Form I-129, including:

- Copies of the petitioner's lease agreements, rental agreements, and/or mortgage payments;
- A copy of the city or county fire department occupancy permit for the petitioner's location;
- Copies of utility bills and telephone bills for the last three months;
- Color photographs of the work location(s), both inside and outside the building.

The director added: "If requested evidence is not available, please explain and provide supporting documentation."

In response, the petitioner (in an unsigned statement) observed that many of the director's specific requests seemed to reflect a presumption that the petitioner is a church. The petitioner noted that the petitioner "is not a church, nor is it a congregation. It is, in fact, a Parachurch organization, working alongside churches to strengthen them, as we pursue similar goals." The petitioner asserted:

> [The petitioner] is run out of a home office. As such, it thankfully has no lease agreement, no rental agreement and no mortgage payments. It also thus has no need of a city or county fire department occupancy permit. The utility bills and telephone bills for the past three months are in the name of the [beneficiary], because [the petitioner's] office is run out of his domicile. There is no problem whatsoever with providing you with such bills . . . , but since they do not have [the petitioner's] name on the bills, it would not seem helpful in any way with this petition, would it? If you still would like

> these copies, please tell us and we will get them to you right away. We are not trying to avoid complying with your request, we simply don't see how this would help at all.
>
> The same applies for the color photos of the work location, both inside and outside the building. There is no signage on the outside of the property designating it as [the petitioner]. As such, it would appear to us that there would be no advantage to having such photos. Once again, we have no problem at all in complying with your request if you truly do need these photographs to make your final determination. . . .
>
> There is no rule that an R-1 petitioner must have a leased, rented or purchased property. If there was such a rule, we would have complied with it long ago. . . . But . . . there is no such rule, and . . . the day-to-day functioning of [the petitioner] can be carried out just as effectively and much more efficiently by maintaining a home office. . . .
>
> [I]t appears that you believe [the petitioner] to be a church with a congregation. . . . Since your assumption is false, now with this additional explanation it is assumed on our part that you may not require the photos and utility bills.

The director denied the petition on November 12, 2009, stating:

> Although the work location is a home office, there were no photos, utility bills, or lease of the work location submitted. The petitioner explained that the photos are not necessary and there was no regulation[] requiring lease agreement or other documentation, as requested. However, this explanation is not acceptable. The petitioner did not submit the required evidence and did not submit comparable, verifiable documentation showing that the photos and lease agreement are not necessary or prohibited to be requested under federal regulation. Therefore, the petitioner failed to respond to the RFE.

On appeal, the petitioner (in an unsigned letter attributed to Troy Smith) states: "Since we now know that these above documents are integral to the acceptance of the petition, all the documentation is being included with this Appeal." The petitioner submits color photographs of the exterior of the beneficiary's house; interior photographs of his home office; copies of utility bills for the beneficiary's home address; and a copy of the settlement statement for the beneficiary's 2001 purchase of the home.

Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. 8 C.F.R. § 103.2(b)(14). 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. 8 C.F.R. § 214.2(r)(16).

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. The AAO will not consider this evidence for any purpose. *See*

Matter of Soriano, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988).

When the director first requested the evidence in question, the petitioner acknowledged that such evidence was available. Nevertheless, the petitioner declined to submit it, and suggested that the director should request it a second time. In issuing the RFE, the director did not invite the petitioner to debate the relevance or significance of the requested evidence. Rather, the director instructed the petitioner to submit the evidence. The petitioner declined to do so, which impaired the director's ability to evaluate and verify the petitioner's claim that it conducts ongoing business at the beneficiary's home address. The petitioner's belated submission of some of this documentation on appeal does not overcome the director's correct finding that the petitioner did not submit these materials when first instructed to do so. We therefore agree with the director's finding that the petitioner failed to comply with a request for evidence.

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 dismiss the appeal.

ORDER: The appeal is dismissed.