

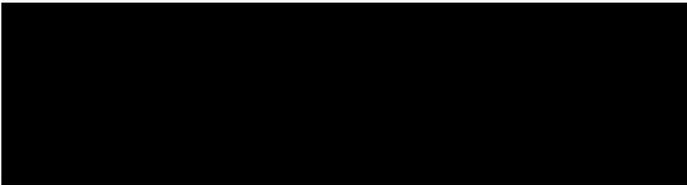
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



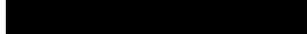
U.S. Citizenship
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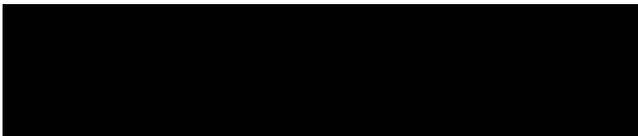


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DATE: **MAY 31 2011**

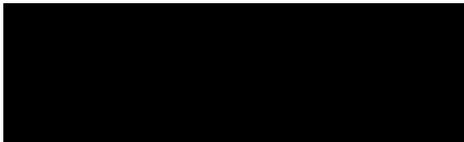
OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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,

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 an Orthodox Jewish 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 mashgiach, or kosher supervisor. The director determined that the petitioner had failed to establish the beneficiary's membership in the petitioner's religious denomination.

On appeal, the petitioner submits a letter from its rabbi, and translated copies of letters and certificates.

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.

The USCIS regulation at 8 C.F.R. § 214.2(r)(1)(i) requires the beneficiary to be a member of the petitioner's religious denomination for at least two years immediately preceding the time of application for admission.

The petitioner filed the Form I-129 petition on April 15, 2010. In an accompanying letter, [REDACTED], executive director of the petitioning organization, stated that the beneficiary "has received Rabbinical ordination from [REDACTED], a world renowned [REDACTED]." The petitioner did not submit evidence from the seminary to support this claim.

Other than [REDACTED] statement, and the petitioner's attestation that the beneficiary possesses the necessary training, the petitioner's initial statement contains little information about the beneficiary's background. One item on the employer attestation reads: "Describe the relationship, if any, between the religious organization in the United States and the organization abroad of which the alien is a member." The petitioner left the response space for this item blank.

The petitioner submitted a copy of a May 1, 1993 letter from [REDACTED], administrator of [REDACTED] of America, listing and describing various Jewish religious occupations. [REDACTED] letter includes a paragraph on the role of the mashgiach in certifying that foods meet kosher standards.

On June 23, 2010, the director instructed the petitioner to submit "evidence that the beneficiary has the two-year membership in the religious denomination or organization." In response, the petitioner submitted a copy of [REDACTED]'s earlier letter, but no new evidence. The petitioner's then attorney of record, [REDACTED], stated: "in the Jewish religion there is no formal membership. There are no baptismal certificates, confirmation or certificates of participation, etc. One is considered to be Jewish based upon their birth to Jewish parents. No formal records are required or kept." The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO notes that [REDACTED] list of Jewish religious occupations included the mohel, “the individual who performs ritual circumcision. This is the first religious function performed for a Jewish male.” Documentation of this event would be analogous to a baptismal certificate. The petitioner did not indicate whether such documentation existed for the beneficiary, or whether the petitioner attempted to obtain it.

Likewise, the petitioner did not submit any first-hand documentation of the beneficiary’s training as a mashgiach. The petitioner did not identify any temples or synagogues where the beneficiary has worshipped either in the United States or abroad. In short, the petitioner’s initial submission contained no evidence that the beneficiary had been an Orthodox Jew for at least the two years immediately preceding the petition’s filing date. The petitioner’s response to the director’s request for evidence did not remedy this deficiency.

The director denied the petition on August 3, 2010, stating: “The Petitioner has failed to submit evidence such as evidence that the beneficiary received a rabbinical ordination or evidence that the beneficiary completed his [REDACTED] etc. The petitioner has not demonstrated that the beneficiary has been a member of the religious denomination or organization.”

On appeal, counsel repeats the claim that “there is no ‘membership’ in the denomination based on dues, certification or other documents.” In a supplement to the appeal, [REDACTED] states that the beneficiary “has all the hallmarks of a committed Jew,” and that “if ‘Orthodox’ Judaism is deemed to be a denomination, [the beneficiary] is clearly a member.”

The petitioner submits translated copies of the beneficiary’s birth certificate, identifying his parents as “Jewish,” and of a certificate commemorating “the laying of phylacteries,” a ritual for adult Jewish males. [REDACTED] (full name not stated) of [REDACTED], stated that the beneficiary “studied [REDACTED] in our [REDACTED]” and “worked in our [REDACTED] as Kitchen Supervisor and Kosher Overseer.”

The petitioner submitted none of these materials with the initial filing of the petition, or when specifically asked for evidence of the beneficiary’s past religious activities. Instead, the petitioner, through its attorney, claimed that no records existed. Even on appeal, the petitioner has submitted no evidence to support the claim that the beneficiary studied at a seminary, resulting in his ordination.

The regulations at 8 C.F.R. §§ 103.2(b)(8) and (12) state that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. The regulation at 8 C.F.R. § 103.2(b)(11) requires USCIS to treat an incomplete response to a request for evidence as a request for a decision on the record. The regulation at 8 C.F.R. § 103.2(b)(14) repeats this requirement, and adds that failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition.

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also Matter of Obaighena*, 19 I&N Dec. 533, 537 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

The director made the correct decision at the time, based on the evidence that the petitioner had chosen to make available to the director. The petitioner's belated submission of further documentation on appeal does not negate its failure to submit such materials upon request, and cannot retroactively show that the director erred in denying the petition.

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.