

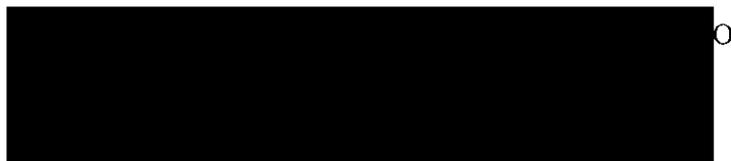
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

PUBLIC COPY



**U.S. Citizenship
and Immigration
Services**



D13

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.

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.

The petitioner is a Buddhist temple. It seeks to classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(i) of the Act, to perform services as a nun. The director determined that the petitioner had not established that the beneficiary was a member of the petitioner's religious denomination for at least two years immediately preceding the filing of the petition. The director also stated that the beneficiary was inadmissible to the United States owing to a finding of fraud and willful misrepresentation of a material fact.

On appeal, the petitioner submits a brief from counsel.

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 first issue the AAO will consider in this proceeding concerns the petitioner's religious denomination. The USCIS regulation at 8 C.F.R. § 214.2(r)(1)(i) requires the beneficiary to have belonged to the petitioner's religious denomination for at least two years immediately preceding the petition's filing date.

The petitioner filed the Form I-129 petition on May 11, 2010. In the accompanying employer attestation, the petitioner stated that the beneficiary has been "[a]n active member of the Buddhist organization since 2001," the year in which the beneficiary received a "Certificate of Ordination as

The record includes a copy of the beneficiary's 2001 ordination certificate from the [REDACTED]. The petitioner also submitted letters from four [REDACTED] temples in China and Canada, attesting to the beneficiary's experience dating back to March 2005.

In a copy of a November 23, 2009 letter, [REDACTED], director of the petitioning temple, stated that the beneficiary had volunteered at the petitioning temple since summer 2007 "in valid visa waiver status while waiting for the R-1 petition . . . to be approved." The petitioner apparently wrote this letter in support of an earlier Form I-129 petition, which the director denied in March 2010.

The director denied the petition on August 17, 2010, stating:

The petitioner indicates in a letter dated November 23, 2009 that from the summer [of] 2007 to the present, the beneficiary was a volunteer [REDACTED] with their organization in a valid visa waiver status waiting for approval of the Form I-129 petition. Please be advised that being in a valid visa waiver status limits the stay in the U.S. for only 90 days and does not allow change of status or extension of stay. It

is noted from the beneficiary's passport that she was admitted as a "B2" visitor on more than one occasion (i.e., December 2, 2006; November 9, 2007; and June 6, 2008). Further, USCIS records indicate that the beneficiary's last application for admission (October 28, 2009) to the U.S. was withdrawn due to fraud and willful misrepresentation, [which] poses a lifetime bar for readmission to the United States. Evidently, the beneficiary has not been 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.

On appeal, counsel states:

The director, in the denial notice, did not address the merits of the R-1 nonimmigrant petition.

The director found only that the beneficiary is not eligible for admission in R-1 status. More specifically, the director found that the beneficiary had failed to maintain her previous visitor status and had subsequently been denied admission. This issue is not a valid basis for denying a petition for R-1 classification; it is only a ground for denying a concurrent application for change of status that is not applicable to this filing.

. . . The allegation that the beneficiary violated her visitor status would affect eligibility for change of status, but it does not directly address the merits of the underlying R-1 petition. The allegation that the beneficiary has been denied entry for immigration fraud would affect her eligibility for admission, but, again, it does not directly address the merits of the underlying R-1 petition. The alien can make another admission application and seek a waiver of inadmissibility and obtain a nonimmigrant visa at a consulate or port of entry. . . .

With respect to the director's assertion that "Evidently the beneficiary has not been a member of a religious denomination . . . ," it is not clear what the director meant. The director did not elaborate on this finding. The director did not dispute the letter from the Temple official attesting to the beneficiary's membership in a church here.

Furthermore, this finding by the director is essentially a conclusory statement within a paragraph that is devoted to the issue of status. It is, therefore, not clear what the legal basis for denial is. . . .

Neither the INA nor the regulations disqualify the two-year membership in a denomination because the beneficiary is out of status during the period of membership.

The AAO finds itself essentially in agreement with the above arguments. The director made various arguments and claims about the beneficiary's status and admissibility, before abruptly concluding that the beneficiary fails to satisfy the two-year denominational membership requirement. The director did not rebut the evidence of record (such as the beneficiary's 2001 ordination certificate) that appears to contradict that conclusion, nor did the director explain how the beneficiary's status and admissibility affect the question of whether the beneficiary has been a Buddhist since at least 2008.

The director stated "the beneficiary's last application for admission (October 28, 2009) to the U.S. was withdrawn due to fraud and willful misrepresentation." The director did not elaborate, and the record before the AAO contains no documentation or evidence about the fraud and misrepresentation. If there exists evidence to show that the beneficiary belonged to a different religious denomination less than two years before the petition's filing date, then her attempt to enter the United States as a Buddhist religious worker might involve fraud or misrepresentation, but the record does not show that this is the case.

The AAO agrees with counsel that the beneficiary's admissibility is a separate question from the merits of the nonimmigrant petition, and that the director did not sufficiently explain the grounds for denial of the petition.

The AAO will therefore withdraw the director's decision. The director must issue a new decision on the merits of the petition. If evidence exists to contradict the petitioner's claims, then the regulation at 8 C.F.R. § 103.2(b)(16)(i) requires the director to allow the petitioner an opportunity to explain or rebut that evidence. The director must also incorporate the derogatory evidence into the record.

If the director determines that the petitioner meets all of the applicable requirements (for example, by passing a compliance review as described at 8 C.F.R. § 214.2(r)(16)), then the director must approve the petition. As counsel acknowledges on appeal, the approval of the petition does not guarantee the beneficiary admission into the United States. It is at the point that the beneficiary seeks admission at a port of entry or consulate that her admissibility comes into consideration. The visa petition procedure is not the forum for determining substantive questions of admissibility under the immigration laws. When eligibility for the claimed status is established, the petition should be granted. *Matter of O*, 8 I&N Dec. 295 (BIA 1959).

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.