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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

D13



DATE: NOV 03 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 Administrative Appeals Office (AAO) dismissed the petitioner's appeal from that decision. The matter is now before the AAO on a motion to reconsider. The AAO will grant the motion and reaffirm the dismissal of the appeal.

The petitioner is a Christian church affiliated with the Local Churches denomination. It seeks to classify the beneficiary as a nonimmigrant religious worker under section 101(a)(15)(R)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(i), to perform services as a minister. The director determined that the beneficiary was statutorily ineligible for the classification sought. The AAO affirmed that finding.

On motion, counsel repeats the claim that "U.S. Citizenship and Immigration Services offers . . . unique immigration benefits to Chilean nationals . . . [on] humanitarian grounds."

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.

Under the USCIS regulation at 8 C.F.R. § 214.2(r)(6), an alien who has spent five years in the United States in R-1 nonimmigrant status may not be readmitted to or receive an extension of stay in the United States under the R visa classification unless the alien has resided abroad and has been physically present outside the United States for the immediate prior year.

The petitioner filed the Form I-129 petition on June 9, 2010. At that time, the petitioner admitted that the beneficiary had overstayed after his R-1 nonimmigrant status expired in March 2007. The petitioner claimed, however, that the beneficiary qualified for humanitarian relief owing to a February 27, 2010 earthquake in the beneficiary's native Chile, which left the beneficiary's home uninhabitable.

The petitioner also noted the 2008 approval of a Form I-360 immigrant petition, classifying the beneficiary as a special immigrant religious worker. The petitioner acknowledged, nevertheless, that the beneficiary's prolonged unlawful presence in the United States left him ineligible to apply for adjustment of status, and would subject him to a ten-year bar on re-entry if he left the United States to apply for a visa at an overseas consulate.

The director denied the petition on August 5, 2010, because the beneficiary had already spent five years in the United States as an R-1 nonimmigrant religious worker from March 2002 to March 2007, and never left the United States after his status expired. The director concluded that the beneficiary would remain ineligible for R-1 nonimmigrant status until he spent at least one continuous year outside the United States.

On appeal, counsel had argued that the director had failed to take into account the special accommodations available to Chilean nationals affected by the earthquake. The AAO dismissed the appeal on December 28, 2010, stating that the petitioner had not shown that the beneficiary qualified for

special consideration. The AAO observed that USCIS's accommodations after the earthquake did not supersede the statutory five-year limit on R-1 nonimmigrant status.

On motion, counsel acknowledges the AAO's arguments, but maintains that USCIS "offers . . . unique immigration benefit to Chilean nationals in light of the natural catastrophe[']s humanitarian grounds." Counsel does not, however, demonstrate that the beneficiary qualifies for that relief.

The materials in the record do not indicate that every Chilean national who was in the United States on February 27, 2010 automatically qualifies for an extension of stay or other prolonged residence in the United States.

A document in the record, entitled "USCIS Reminds Chilean Nationals of Immigration Benefits Available," states:

If you are a Chilean national and wish to receive special consideration for a late filed extension or change of status application, you must include evidence . . . that you were unable to return to Chile before the February 27 earthquake. If you were in lawful, nonimmigrant status on March 27, you will be excused for filing late up to May 27, 2010. After May 27, 2010, eligibility for delayed filing will be determined on a case-by-case basis.

The petitioner filed the present petition after May 27, 2010, and the petitioner did not submit any evidence to show that the beneficiary was unable to return to Chile between the March 2007 expiration of his R-1 nonimmigrant status and the earthquake nearly three years later. The earthquake cannot and does not retroactively excuse the beneficiary's failure to depart the United States upon the expiration of his nonimmigrant status. The USCIS printout quoted above did not state or imply that long-term overstays would receive special consideration, or that the earthquake would cause USCIS to overlook serious violations of status that had nothing to do with the natural disaster. Rather, USCIS described special provisions intended to aid nonimmigrants with a *bona fide* intention to return to Chile, whose return the earthquake delayed.

Counsel urges consideration for the "unique circumstances Chilean nationals have faced in the past few months," but those circumstances do not erase or explain the beneficiary's prolonged violation of immigration laws before the earthquake, nor do they override the statutory and regulatory requirement that an alien who has been in R-1 nonimmigrant status for five years must leave the United States before once again becoming eligible for that status.

The AAO acknowledges the assertion that the beneficiary desires to adjust status in the United States, based on the 2008 approval of a special immigrant religious worker petition on his behalf. Nevertheless, neither standard USCIS procedure nor the 2010 earthquake compels USCIS to ignore or set aside standard statutory requirements. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa

application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988).

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. The petitioner, on motion, has not demonstrated that the AAO's decision rested on errors of law or fact. Accordingly, the AAO will affirm its prior decision.

ORDER: The AAO's decision of December 28, 2010 is affirmed. The petition remains denied, and the appeal remains dismissed.