

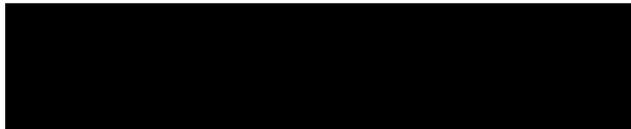
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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Date: **NOV 25 2011** Office: CALIFORNIA SERVICE CENTER FILE: WAC 10 175 50583

IN RE: Petitioner:  
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:



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*  
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 appeal will be dismissed.

The petitioner is a church. 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 pastoral assistant. The director determined that the petitioner had not established that the beneficiary had been a member of its religious denomination for two full years immediately preceding the filing of the petition and that its response to the request for evidence (RFE) was incomplete.

On appeal, counsel asserts that the evidence of record establishes that the beneficiary's church in China and the petitioner are members of the same denomination. The petitioner submits additional documentation in support of the appeal.

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 first issue presented is whether the petitioner has established that the beneficiary has been a member of its religious denomination for two full years immediately preceding the filing of the visa petition.

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.

The petition was filed on June 14, 2010. Therefore, the petitioner must establish that the beneficiary was a member of its denomination for at least the two years immediately preceding that date.

The petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that it is a “nondenominational Christian Church.” In its June 9, 2010 letter submitted in support of the petition, the petitioner stated that the beneficiary began attending “a nondenominational underground or house [REDACTED] in [REDACTED] in China, in 1996.” The petitioner further stated:

[The beneficiary] was formally baptized into the Christian faith in August of 2001 at the same church in [REDACTED]. After that, he started attending another nondenominational house church Think UK in the same city . . . . From 2005 to September 2009, [the beneficiary] attended [REDACTED] another nondenominational Christian house church in [REDACTED] . . . . Since September of 2009, [the beneficiary has been a J-1 exchange visitor in the United States, working as a research scholar . . . . Since he came to the United States, he has been a regular member of [REDACTED] a denominational [sic] Christian church in [REDACTED]. For more than ten years now, [the beneficiary] has been an active member of the nondenominational Christian Church both in China and the United States.

The petitioner submitted no additional documentation to establish that the beneficiary had been a member of its denomination for the two years immediately preceding the filing of the petition. The regulation at 8 C.F.R. § 214.2(r)(3) states, in pertinent part:

*Denominational membership* means membership during at least the two-year period immediately preceding the filing date of the petition, in the same type of religious denomination as the United States religious organization where the alien will work.

*Religious denomination* means a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes one or more of the following:

- (A) A recognized common creed or statement of faith shared among the denomination's members;
- (B) A common form of worship;
- (C) A common formal code of doctrine and discipline;
- (D) Common religious services and ceremonies;
- (E) Common established places of religious worship or religious congregations; or
- (F) Comparable indicia of a bona fide religious denomination.

In a request for evidence (RFE) dated August 11, 2010, the director requested additional documentation regarding the beneficiary's membership in the petitioner's denomination:

**Beneficiary's Membership:** The claim regarding the beneficiary's years of membership in house churches or nondenominational Christian churches is not supported by evidence and membership acceptance in nondenominational Christian churches may be different. Provide evidence that the beneficiary has completed a two-year membership in the petitioning organization. . . .

Additionally, submit evidence showing that the beneficiary's nondenominational Christian churches membership is recognized or governed or administered under a common code of doctrine and discipline with the petitioner's membership procedure. . . .

**Religious Connection:** Submit evidence showing how affiliation or connection exists between the [REDACTED] in Williston, VT, and the [REDACTED] [REDACTED] organization abroad in Kunming city, China and the petitioning organization. . . .

In response, the petitioner submitted a copy of a September 21, 2010 letter from [REDACTED] president of the [REDACTED] in [REDACTED], Washington, who stated that the beneficiary had been a student at the institution since 2005. He further stated that the "[REDACTED] is a non-profit, nondenominational, and web-based Christian distance learning center" and that according to its records, the beneficiary "had served in a nondenominational Christian house church for more than two years prior to his admission at [REDACTED]. The petitioner also submitted a copy of a September 9, 2010 letter from [REDACTED] in [REDACTED] China, stating that the beneficiary had been a regular member of the church from 2005 to August 2009. The petitioner provided documentation that it retrieved from the *Wikipedia* website on September 21, 2010, that purports to define and provide a history of nondenominational Christian churches and Chinese house churches.

In denying the petition, the director discounted the information provided from *Wikipedia*, stating that because of “the nature of [its] user editable contents and openness . . . the information . . . is helpful but can not be considered as reliable.” The director further stated that although the petitioner had submitted documentation to show that the beneficiary was a member of two separate churches since 2005, it provided no documentation to establish that the beneficiary was a member of the petitioning organization during the two-year statutory period.

On appeal, counsel asserts that he “disagree[s]” with the director’s assessment of the information from *Wikipedia*; however, he does not offer any explanation or reason why information from *Wikipedia* should be considered reliable. A general disclaimer on the website indicates that *Wikipedia* makes no guarantee of the validity of the information contained on the site and that “the content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.” See also *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8<sup>th</sup> Cir. 2008) regarding the unreliability of information from *Wikipedia*.

The petitioner submits an October 20, 2010 letter from the [REDACTED] in Kunming City stating that the beneficiary has been a member of its church since 2005 and did not relinquish his membership when he came to the United States as a student in 2009. The letter indicates that [REDACTED] is a nondenominational Christian church and that “it follows the same set of Christian beliefs, principles and form of worship as most Christian churches within the Chinese language speaking community in the United States, including [the petitioning organization].”

The petitioner also submits a copy of a report from the [REDACTED]. The report indicates that for purposes of the study, a nondenominational congregation was defined as “a Protestant Christian congregation which does not have a direct tie to a recognized major denominational body.” The petitioner submits an “introduction” to the [REDACTED] that recounts its history but provides no additional information about its principles and form of worship. The petitioner also submits a document identifying the types and times of the services provided by the [REDACTED].

Counsel’s argument appears to be that all nondenominational churches meet the regulatory definition of a denomination because they are a nondenominational denomination. The documentation submitted by the petitioner, however, does not establish that all Christian nondenominational churches form a denomination as that term is defined by the regulation. The documentation indicates that these churches are independent of any denominational affiliation. Counsel argues that the petitioner and the [REDACTED] “share a common statement of faith, a common form of worship . . . and a common governing structure with a major Pastor leading the congregation.” However, the record does not support counsel’s interpretation. The record does not contain a statement of faith from either organization or any documentation to establish that the petitioner shares its statement of faith with the [REDACTED]. Additionally, while the organizations may have a similar form of worship, the record does not establish that they have the same form. Similarly, each has a pastor but there is no evidence that they have a similar form of religious services and ceremonies.

The petitioner has not established that the beneficiary was a member of its nondenominational organization, and therefore of its religious denomination, for the two years immediately preceding the filing of the petition.

The director further determined that the petitioner did not provide a complete response to the RFE.

In her RFE of August 11, 2010, the director instructed the petitioner to submit, *inter alia*, a copy of its bylaws. In response, the petitioner submitted a copy of an amendment to its certificate of incorporation and to the bylaws. The petitioner submitted a copy of its articles of incorporation with the petition; however, that document did not indicate that it also served as the petitioner's bylaws.

The regulation states 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. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). On appeal, the petitioner does not contest the director's findings for this issue or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

Beyond the decision of the director, the petitioner has not established how it intends to compensate the beneficiary. The petitioner stated that it would compensate the beneficiary with an annual salary of \$15,000 plus free housing

The regulation at 8 C.F.R. § 214.2(r)(11) provides:

*Evidence relating to compensation.* Initial evidence must state how the petitioner intends to compensate the alien, including specific monetary or in-kind compensation, or whether the alien intends to be self-supporting. In either case, the petitioner must submit verifiable evidence explaining how the petitioner will compensate the alien or how the alien will be self-supporting. Compensation may include:

(i) *Salaried or non-salaried compensation.* Evidence of compensation may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. IRS [Internal Revenue Service] documentation, such as IRS Form W-2 [Wage and Tax Statement] or certified tax returns, must be submitted, if available. If IRS documentation is unavailable, the

petitioner must submit an explanation for the absence of IRS documentation, along with comparable, verifiable documentation.

The petitioner submitted an unaudited copy of its December 31, 2009 statement of cash receipts and disbursements accompanied by an accountant's compilation report. As the compilation is based primarily on the representations of management, the accountant expressed no opinion as to whether they fairly present the financial position of the petitioning organization. In light of this, limited reliance can be placed on the validity of the facts presented in the financial statements that have been submitted. No further supporting documentation, such as corresponding bank statements, is included in the record to reflect the assertions made by the accountant in the financial documentation, or contained within the unaudited financial statements. The petitioner submitted none of the documentation listed in the above-cited regulation.

The petitioner has failed to submit competent and verifiable documentation of how it intends to compensate the beneficiary.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.