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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



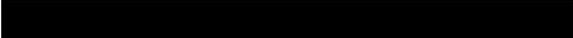
**U.S. Citizenship
and Immigration
Services**

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Date: Office: CALIFORNIA SERVICE CENTER FILE: 
SEP 28 2011

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
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 change the beneficiary's status to that of a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as an education pastor. Based on the results of a verification visit to the petitioner's premises, the director determined that the petitioner had not established that it is operating in the capacity claimed in the petition and that it is a bona fide nonprofit religious organization that can support the beneficiary.

On appeal, counsel offers an explanation as to why no one at the petitioning organization was available during the onsite visits and why the petitioner offered no explanation for this unavailability when it responded to the director's Notice of Intent to Deny (NOID) the petition. The petitioner submitted no 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 issue presented is whether the petitioner has established that it is a bona fide nonprofit religious organization that is operating as claimed in the petition.

The regulation at 8 C.F.R. § 214.2(r)(16) provides:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS [U.S. Citizenship and Immigration Services] through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The Form I-129, Petition for a Nonimmigrant Worker, was filed on November 13, 2006. On April 2, 2008, an immigration officer (IO) visited the petitioner's premises for the purpose of verifying claims made by the petitioner on behalf of the beneficiary in a separate petition. The IO reported that he first visited the church on the afternoon of April 2, 2008 and talked with the church secretary of the [REDACTED]. The IO reported that the building housing the [REDACTED] is very large and "tak[es] up at least half a block." The IO stated that he saw "a few signs advertising" the petitioning organization and that [REDACTED] stated that the petitioner leased space from the [REDACTED]. The IO reported that [REDACTED] led him to an area that contained a small chapel and an office advertising the petitioning organization. [REDACTED] stated that the petitioner held services on Sundays and a few times during the week. The IO stated that he tried unsuccessfully to talk with [REDACTED] the petitioner's [REDACTED] and the beneficiary of the other petition by telephone several times on April 2, April 14, April 23, and May 1 of 2008. The IO stated that the petitioner did not have an answering service; thus he was unable to leave a message.

On August 11, 2010, the director notified the petitioner of the IO's attempts to contact someone at the church and that the IO had not been able to "confirm" the petitioner's "existence and obtain additional supporting documents." The director advised the petitioner that "the petition may be denied based on [this] information and gave the petitioner 30 days in which "to submit evidence and/or a written statement in rebuttal to" the NOID. The director also instructed the petitioner to provide a current list of its paid employees, a membership directory and evidence of its ability to pay the beneficiary.

In response, the petitioner submitted a list showing one employee in the position of associate pastor, an undated membership directory containing 85 names, a copy of its unaudited financial statements for the period September 2008 through August 2009, and copies of its monthly bank statements for the period June 2010 through August 2010. The petitioner also submitted photographs of the church at [REDACTED] however, it is not clear that the photographs depict the facilities occupied by the petitioner.

In denying the petition, the director found that the petitioner had failed to submit any evidence or explanation as to why no one was available to meet with the IO on April 2, 2008 or to answer his calls on the dates indicated.

On appeal, counsel states that members of the petitioner's staff were unavailable to answer the phones on the dates the IO called because they were either at a luncheon, ferrying members home after church services, or the church was closed during the IO's visit. Counsel also stated that "due to the language barrier by almost all the church staff members and the high volume of solicitors, the church policy is not to answer phone calls that have numbers that are not recognizable" and that individual church members have cell phones. Counsel listed the numbers at which the senior pastor and the associate pastor could be reached. Counsel further stated that these individuals "are certainly available to answer any phone calls by the Immigration Officer with prior notice and they are certainly available to meet the Immigration Officer at the church with an appointment." Additionally, counsel stated that the petitioner "was not able to rebut the information before the decision was rendered only because the previous counsel . . . did not effectively communicate the need to provide a rebuttal from the petitioner."

The record contains no documentation to support any of counsel's statements. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaiqbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Additionally, counsel appears to suggest that the petitioner received ineffective assistance from prior counsel. However, the petitioner submitted no affidavit to support the allegation, submitted no statement from prior counsel that he was aware of the allegations, and provided no indication that a complaint against prior counsel has been filed with the appropriate disciplinary authority. *See Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

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. 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).

The record reflects that the petitioner did not provide the director with sufficient documentation to explain why its staff members were unavailable to the IO, either in person or by telephone, as he attempted to verify the petitioner's claims. Accordingly, the petitioner has submitted insufficient documentation to establish that it operates as claimed in its petition.

Counsel states that the petitioner is willing to talk with USCIS officials provided it is given appropriate notice and to meet with an IO by appointment. However, the purpose of the unannounced visits is to determine whether the petitioner operates in the manner described in its petition and thus that it is able to offer the beneficiary the number of hours of work claimed in the petition. An IO cannot make this independent assessment of the petitioner's facilities and organization if he or she is limited to the times approved by the petitioner.

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.