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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: **APR 02 2012** Office: CALIFORNIA SERVICE CENTER FILE:

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:

SELF-REPRESENTED

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 on September 24, 2009. On appeal, the Administrative Appeals Office (AAO) withdrew the director's decision and remanded the record for additional action and consideration. On remand, the director initially approved the petition. On further review, however, the director determined that the beneficiary was not eligible for the visa classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the petition and her reasons for doing so and subsequently exercised her discretion to revoke approval of the petition on June 16, 2011. The matter is now before the AAO on appeal. The AAO will withdraw the director's decision and will again remand the petition for further action and consideration.

The petitioner is a church. It seeks to extend the beneficiary's status as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as a pastor. Based on the results of a compliance review verification visit to the petitioner's premises, the director concluded that the petitioner did not operate in the capacity claimed in the petition and that therefore the beneficiary was not eligible for the visa classification sought.

The petitioner submits a letter and additional documentation in support of the appeal.

The regulation at 8 C.F.R. § 214.2(r)(18) provides that the director may revoke a petition at any time, even after the expiration of the petition, for the following reasons:

1. The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;
2. The statement of facts contained in the petition was not true and correct;
3. The petitioner violated terms and conditions of the approved petition;
4. The petitioner violated requirements of section 101(a)(15)(R) of the Act or paragraph (r) of this section; or
5. The approval of the petition violated paragraph (r) of this section or involved gross error.

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.

In its April 27, 2009 letter submitted in support of the petition, the petitioner, through its senior pastor and international field director, [REDACTED] stated that the beneficiary "will continue to serve as the Pastor of our branch in Miami." The petitioner submitted a copy of the beneficiary's R-1 nonimmigrant religious worker visa indicating that he was approved for R-1 status to work for the petitioner "to establish [a] new church in Rockville MD." The visa was valid from May 2, 2007 to April 30, 2009. The petitioner also provided a copy of the beneficiary's Form I-94, Arrival/Departure Record, reflecting that he arrived in the United States pursuant to the R-1 visa on January 7, 2009 with an authorized period of stay until January 7, 2012.

In a request for evidence (RFE) dated August 6, 2009, the director instructed the petitioner to submit documentation of the beneficiary's prior employment in R-1 status, including documentation of compensation and work history. On September 24, 2009, the director denied the petition, finding that the petitioner had failed to provide all documentation requested in the RFE. On July 15, 2010, the AAO withdrew the director's denial of the petition, determining that the decision was based on the petitioner's failure to provide evidence of the beneficiary's past employment and maintenance of status which are application for extension issues, over which the AAO has no jurisdiction, rather than petition issues. The AAO remanded the record to the director to provide a separate adjudication of the petitioner's petition for nonimmigrant status for the beneficiary.

In an August 11, 2010 RFE, the director instructed the petitioner to submit documentation of the beneficiary's employment, including compensation and work schedule, documentation of the petitioner's financial status, evidence of the beneficiary's prior employment, copies of his Form I-94, and passport information.

In its September 8, 2010 response, the petitioner stated that the beneficiary began working at its church in Trumbull, Connecticut in August 2009. The petitioner further stated that the beneficiary received a compensation package that included a monthly stipend of \$600 and a housing allowance of \$1,800 monthly. The petitioner submitted copies of three IRS Form 1099-MISC, Miscellaneous Income, indicating that it paid the beneficiary nonemployee compensation of \$7,849.22 and \$11,220 in 2007 and \$16,821.75 in 2008. The petitioner provided a copy of the beneficiary's IRS tax transcript for 2007 reflecting that he reported the income as self-employment. The petitioner also submitted copies of checks that it made payable to the beneficiary in 2008 and a copy of the beneficiary's 2008 IRS Form 2010, U.S. Individual Income

Tax Return, which is dated August 27, 2010. For 2009, the petitioner stated that it had failed to provide the beneficiary with a timely IRS Form 1099, and that the beneficiary was unable to timely file his tax return. However, although the petitioner's response to the director's RFE is dated in September 2010, it provided no documentation of any compensation provided to the beneficiary in 2009. The AAO notes, however, that in its original appeal, the petitioner provided copies of checks that it wrote to the beneficiary from January 2009 to July 5, 2009. The evidence in the record did not indicate that these checks were processed by the bank. Copies of checks made payable to the beneficiary provided in response to the September 2010 RFE begin in February 2010 and are drawn on the petitioner's banks in Miami and Hartford, Connecticut. The petitioner also submitted copies of its unaudited balance sheet, income statement, and statement of cash flow for 2009.

The director approved the petition on September 14, 2010. On January 21, 2011, an immigration officer (IO) visited the petitioner's premises at [REDACTED] for the purpose of conducting a post adjudicative verification of the petitioner's claims in the petition. The IO reported that although signs clearly reflected the petitioner's name, the facilities were closed and she was unable to make contact with anyone associated with the petitioning organization. The IO spoke with individuals at two of the neighboring businesses and both denied knowing of [REDACTED] the beneficiary, or the filing of the instant petition. The IO stated that she sent an email to [REDACTED] asking for verification of the beneficiary's employment. [REDACTED] was asked to provide his response within two business days; the petitioner did not respond to the IO's request.

On April 25, 2011, the director notified the petitioner of the results of the IO's visit and of her intention to revoke approval of the petition based on that visit. In its May 16, 2011 response, the petitioner stated that it did not receive a phone call or visit to its main office at [REDACTED]. The petitioner also stated that it had notified USCIS in its September 2010 letter that the beneficiary had transferred to Trumbull, Connecticut. The petitioner advised USCIS that its facilities located at [REDACTED] moved to [REDACTED] in February 2011. The petitioner denied providing USCIS with an e-mail address and stated that it did not receive an e-mail from USCIS.

The director revoked approval of the petition, stating that the petitioner's headquarters had not been identified as the beneficiary's work location and thus the IO did not visit the petitioner's administrative offices, that the petitioner's neighbors at [REDACTED] would have been aware of any activities held at the petitioner's site, that the petitioner moved from the site after the IO's visit, that the petitioner failed to provide an address for the beneficiary in Trumbull, Connecticut, and that the petitioner had indeed provided an e-mail address.

On appeal, the petitioner states that it conducted a survey of its e-mail account and could not find an e-mail from USCIS. The petitioner also states that it held services at the [REDACTED] address from 6:00 to 10:00 pm on Monday, Wednesday, and Friday, and held special prayer times from 5:00 am to 7:00 am on Tuesday, Thursday, and Friday. Accordingly, the petitioner states, it was not open during the IO's visit. The petitioner submits affidavits from five

individuals who state they are members of the church and attest that the beneficiary worked at the petitioner's church in Miami from 2007 to 2009, when he transferred to Connecticut, and affidavits from three members who attest to the beneficiary's work in Connecticut. The petitioner provides the address in Connecticut where it states that the beneficiary now works.

The petitioner also submits for the first time on appeal a copy of the beneficiary's tax transcripts for 2008 and 2009. The 2008 transcript indicates that the beneficiary filed his return on September 7, 2010 and the 2009 transcript indicates that he only reported the \$1,273.38 that he received in housing allowance for the year. The AAO notes that while the petitioner submitted copies of checks made payable to the beneficiary throughout 2009 ranging in amounts from \$65.95 to \$2,000, the petitioner submits a copy only of the IRS Form 1099-MISC that reports the housing allowance of \$1,273.38. Many of the checks issued in 2009 do not indicate that they have been processed by the bank. The petitioner also submits a copy of an IRS Form 1099-MISC for the year 2010 on which it reported nonemployee compensation of \$19,400.

The IO's report indicates that she e-mailed her request for information to the petitioner's e-mail address of record. However, there is no documentation in the record to confirm that the petitioner received the request for additional evidence. Furthermore, the record reflects that the petitioner had notified USCIS that the beneficiary no longer worked at the [REDACTED] location. Thus, the IO could not have been expected to verify the beneficiary's employment at that location. Additionally, there is no reason to believe that the petitioner's neighbors would have necessarily known [REDACTED] the beneficiary or have knowledge of the petition. The record reflects that the petitioner notified USCIS prior to the approval of the petition that the beneficiary had transferred to its church in Trumbull, Massachusetts. The record does not reflect that the director sought any additional information about the location or the fact that the location was different from that listed in the petition.

Nonetheless, the petitioner has failed to provide sufficient documentation of the beneficiary's compensation for 2009. As previously discussed, not all of the copies of the checks for 2009 reflect that they have been processed for payment by the bank. Additionally, the petitioner provided no documentation that it had reported the beneficiary's compensation for 2009 to the IRS or to the Social Security Administration. The record reflects that the petitioner provided the beneficiary with an IRS Form 1099-MISC only for his housing. The record will be remanded to the director to further develop whether the petitioner has abided by the terms of the approved petition by compensating the beneficiary in the amount indicated.

Additionally, 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 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.

USCIS records reflect that the petitioner successfully completed an onsite inspection at the [REDACTED] address in July 2008. The record also reflects that the beneficiary had been reassigned from that location in 2009 prior to the IO's visit in January 2011. The record is therefore remanded for the director to determine if a compliance review, onsite inspection or other verification of the location where the beneficiary works is appropriate for the instant petition.

The record is remanded to the director to address the above issues. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. 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 AAO for review.