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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



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



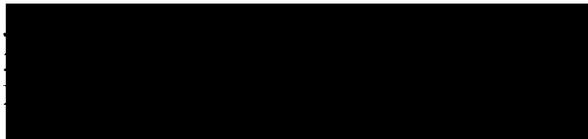
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Date: **APR 03 2012** Office: CALIFORNIA SERVICE CENTER FILE:

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:



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 and will remand the petition for further action and consideration.

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 an associate pastor. The director determined that the petitioner had failed to fully respond to the request for evidence (RFE), had filed an untruthful petition, and had failed to establish that it qualifies as a bona fide nonprofit religious organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code (IRC).

On appeal, counsel submits a letter of explanation and additional documentation.

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 fully responded to the director's RFE.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.2(b)(13)(i) provides:

Failure to submit evidence or respond to a notice of intent to deny. If the petitioner or applicant fails to respond to a request for evidence or to a notice of

intent to deny by the required date, the application or petition may be summarily denied as abandoned, denied based on the record, or denied for both reasons.

In support of the appeal, filed on July 29, 2011, the petitioner provided an unaudited copy of its 2009 profit and loss statement, which reflects total income of \$296,118.23, including \$221,358.10 in "direct public support." The statement reflects a net income of \$102,042.37.

In her March 1, 2011 RFE, the director instructed the petitioner to:

Provide evidence showing ability to pay compensation. Submitted budget does not have accompanied evidence supporting the budget. Submit evidence of compensation paid for similar positions and of approximately \$290,000 dollars income receiving [*sic*] from public support as shown in the submitted budget January through December 2009.

Evidence of paid compensation includes W-2s of similar positions, medical/transportation/housing records, audited financial statements, banking statements If room and board and transportation will be provided, submit verifiable documentation that they will be provided. 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.

In response, the petitioner submitted partial copies of its monthly bank statements for December 2010 and February through April 2011. The December statement reflects an ending balance in excess of \$287,000. The February, March and April statements reflect similar ending balances, while the April 2011 statement reflects an ending balance of \$887,981.28. The petitioner submitted a summary of the offerings it received from five different sources for the year 2009; copies of IRS Form W-2 issued to [REDACTED] in 2009 and 2010, reflecting wages of \$24,000 in each year; and copies of IRS Form 1099-MISC, Miscellaneous Income, in 2009 and 2010 issued to [REDACTED]

In denying the petition, the director stated:

The RFE requested evidence supporting approximately \$290,000 dollars income from public support as shown in the submitted 2009 budget. The response provided list of names and contribution amounts However, there has been no verifiable contribution record and evidence submitted to show that these amounts have been deposited into the petitioner's possession or has been added up to the amount \$290,000. Although the amount was in 2009 [*sic*] as a different year, as an example, submitted Bank of America monthly banking statement, ending March 31, 2011 shows that the petitioner has only two deposits in March 2011 . . .

- \$815.74 on March 21, 2011 and
- \$9,000 in online money transfer on March 25, 2011.

On appeal, the petitioner submits copies of its monthly bank statements for January through December 2009, reflecting closing balances ranging from approximately \$125,205 to approximately \$228,839 and a list of all of its deposits for the year.

The AAO notes that the director refers to the profit and loss statement for 2009 as a budget. In response to the RFE, the petitioner submitted documentation to reflect that it had funds in excess of \$290,000 in 2011, provided copies of tax documentation indicating that it paid three different individuals in 2009 and 2010, and submitted a list of some of its contributors for 2009. The AAO finds that the petitioner sufficiently responded to the RFE regarding how it will compensate the beneficiary.

The director also found that the petitioner did not fully respond to the RFE regarding its address and that its response created more questions regarding its location.

In Part 1 of the Form I-129, Petition for a Nonimmigrant Worker, the petitioner listed its address as [REDACTED]. It also identified that address in Section 2 of the Form I-129 Supplement Q/R as the location at which the beneficiary would work. In her RFE, the director instructed the petitioner that its name and address did not match the information accessible to USCIS in its verification database, the Validation Instrument for Business Enterprises (VIBE). The director also noted that the petitioner's address as listed on its petition and on the IRS certification letter are different. The director instructed the petitioner to "[s]ubmit documentation to confirm your organization's official name and address. Additionally, if the location provided on your Form I-129 is used instead of, or in addition to, the official business address, explain." The director provided a list of documents that the petitioner could use to verify its name and address, including leases or mortgage statements, business license, articles of incorporation, tax statements, or a letter from the IRS.

In response, the petitioner submitted the following:

1. A May 3, 2011 letter from [REDACTED] who stated that she volunteers for the petitioning organization and that she serves as a treasurer and administrator. [REDACTED] further stated that she owns her home at [REDACTED] and that she has "been authorized by the church committee to use my address as the church's main administrative office for legal, financial and other administrative corresponding [sic] with the official business existence of [the petitioning organization]. This official business address is listed in the D & B website and in the church's bank and payroll tax reporting to IRS and EDD. The petitioner submitted copies of a letter from the IRS and the State of California Employment Development Department (EDD) addressed to the petitioner at the [REDACTED] address and of its [REDACTED] listing with the [REDACTED] address.

2. A May 1, 2011 from [REDACTED], the petitioner's pastor, who stated that the petitioner's rectory (also referred to as a "pastory"), which is provided as a house for the pastor and pastor associates, is located at the [REDACTED] address and that it is used for bible study, counseling, Mandarin/Chinese classes, youth fellowship and committee meetings.
3. A May 12, 2011 letter from [REDACTED] who identified himself as the trustee of the [REDACTED] and stated that he has been the petitioner's landlord at the [REDACTED] address since August 2007 and that the petitioner was currently in the process of purchasing the property. The petitioner also submitted a copy of an August 2007 lease agreement between [REDACTED], and a married couple whose name is illegible. The lease indicates that the property is to be used as a home for the couple and also identifies [REDACTED] as the landlord to whom the lease payments were to be made.
4. An undated letter from the senior pastor of the [REDACTED] [REDACTED] who confirmed that the petitioner was a tenant at the church located at [REDACTED] and that the petitioner leased the church for its Sunday worship service. The petitioner submitted a copy of the April 30, 2010 lease agreement with the [REDACTED] indicating that the petitioner was authorized to use the church from 9:00 am to 2:00 pm on Sunday.
5. A May 13, 2011 letter from [REDACTED] who stated that he was engaged to file the petitioner's tax exempt application with the IRS and the IRS mailed the certification letter to his address.
6. Photographs of the various locations at which the petitioner conducts business.

In denying the petition, the director stated that "the petitioner did not submit evidence to explain the variance in names and addresses found on the initial submission and discovered in the response." The director further stated that the lease submitted was not between the church and [REDACTED] and that the petitioner provided no evidence that it had been a tenant at the [REDACTED] location.

On appeal, counsel states that [REDACTED] had been in charge of the [REDACTED] property during the illness of his mother, [REDACTED]. The petitioner submits a medical statement confirming [REDACTED] incapacity and documentation from Los Angeles County property tax assessment confirming the ownership of the property as the [REDACTED]. The petitioner also submitted a copy of a grant deed indicating that it had purchased the property in May 2011. The petitioner provides a copy of an August 3, 2011 statement from [REDACTED] who stated that [REDACTED] did not want to lease the property to the church as an organization as he felt that it would be easier for him, legally, in the event that he had to make a claim for unpaid rent. [REDACTED] stated that as treasurer of the petitioning organization, she negotiated the lease and [REDACTED], who was pastor and would occupy the residence, signed the lease.

The record reflects that the petitioner provided a full and reasonable explanation of its different addresses in response to the RFE. The lease agreement indicates that [REDACTED] would be the landlord to whom the rent would be paid. Accordingly, the director's determination that the petitioner failed to respond fully to the RFE is withdrawn.

The second issue is whether the petitioner submitted an "untruthful" petition. In her denial, the director stated:

The petition initially listed 182 members and 1 employee on page 19. In the response, the petitioner provided a list of three (3) employees with two are [sic] pastors . . . and provided income/wage report forms W-2s of the three employees. . . . Thus, the employee information provided was not truthful when filing. Secondly, the number of 182 members or 35 volunteers appears being [sic] unreasonable for meeting held in the now pastory location at [REDACTED] . . . There is no occupancy permit submitted to show how the assembly of congregation members or volunteers at the requested location can be accommodated. And submitted photos show that the place inside the building is a living room with approximately 20 chairs.

In its response to the RFE, the petitioner provided a list of its employees and volunteers. It identified its employees as [REDACTED] a part time associate pastor that it paid \$18,600 per year; and [REDACTED] its choir conductor and trainer who it paid \$12,300 annually. As previously discussed, the petitioner submitted copies of the IRS Form W-2 that it provided to [REDACTED] and the IRS Forms 1099-MISC that it provided to [REDACTED]

On appeal, counsel asserts that the petitioner "has been consistent with each representation of the employees in the organization" and that [REDACTED] are contractors and paid for their services as such. Counsel also notes that the [REDACTED] address is not the location where the petitioner holds services and that the facilities at the [REDACTED] address are sufficient for the purpose of counseling, bible study, youth fellowship, and similar smaller groups.

The AAO withdraws the director's determination. The fact that the petitioner provided IRS Forms 1099-MISC to [REDACTED] while providing an IRS Form W-2 to [REDACTED] is consistent with its distinction between its employee and those it considers independent contractors. Additionally, the petitioner's evidence submitted in response to the RFE clearly indicated that the [REDACTED] location was used for small group meetings while its Sunday service was held at the [REDACTED] address. There is no evidence that the petitioner submitted an "untruthful" petition.

Finally, the director determined that the petitioner had not established that it is a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 214.2(r)(3) defines a tax-exempt organization as “an organization that has received a determination letter from the IRS establishing that it, or a group it belongs to, is exempt from taxation in accordance with section[] 501(c)(3) of the [IRC].” The regulation at 8 C.F.R. § 214.2(r)(9) provides:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the IRS showing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or
- (iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3), or subsequent amendment or equivalent sections of prior enactments, of the [IRC], as something other than a religious organization:
 - (A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;
 - (B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;
 - (C) Organizational literature, such as books, articles, brochures, calendars, flyers, and other literature describing the religious purpose and nature of the activities of the organization; and
 - (D) A religious denomination certification. The religious organization must complete, sign and date a statement certifying that the petitioning organization is affiliated with the religious denomination. The statement must be submitted by the petitioner along with the petition.

With the petition, the petitioner submitted a January 19, 2008 letter from the IRS to the petitioner in care of [REDACTED] granting the petitioner tax-exempt status under section 501(c)(3) and 170(b)(1)(A)(i) of the IRC. As previously discussed, [REDACTED] stated in response to the RFE that he prepared the IRS Form 1023 on behalf of the petitioner and the IRS sent the certification letter to his address. The AAO notes

that the IRS often sends the IRS certification letter to the organization's representative rather than to the petitioner's address.

The director also concluded that although the IRS certification letter indicated that the petitioner was tax-exempt, the record indicates that the petitioner had been put on notice that it was delinquent on filing its IRS Form 941 tax return and that the IRS had levied its bank account for \$41.67. The director therefore questioned whether the petitioner could be considered tax exempt. The petitioner's delinquent payment of its payroll tax is not relevant to whether it is recognized as a nonprofit religious organization exempt from federal income tax under section 501(c)(3) of the IRC. Accordingly, the director's decision is withdrawn.

Nonetheless, the petition may not be approved as the record now stands.

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.

The record does not reflect that the petitioner has successfully completed a compliance review. Therefore, the record is remanded to the director to determine if an inspection or compliance review is appropriate for the instant petition.

The matter will be remanded. 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.