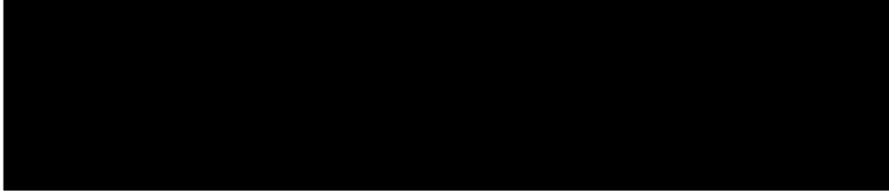


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



D13

Date: **AUG 01 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. 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 Buddhist temple. 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 monk. The director determined that the petitioner has not fully responded to the request for evidence (RFE) and therefore had not established that the beneficiary was qualified for the proffered position.

On appeal, the petitioner states that the individual (an "officer" in its organization) who completed the Form I-129, Petition for a Nonimmigrant Worker, was incompetent and the petitioner asks not to be "penalized" because of this fact. The petitioner resubmits documentation previously submitted in support of the petition.

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 fully responded to the director's RFE.

In Section 1, question 4 of the Form I-129 Supplement R, the petitioner stated:

This organization is related with the other Buddhist Religious Organization as members for assisting in religious activities and communication. It's a member of [REDACTED] But not affiliated with [sic] All Buddhist religious organizations must follow the same practices and religious rules and regulations. When we have special religious events and festivals we are inviting all monks throughout United States and from other Asians [sic] Countries And to participate.

In question 5.d. the petitioner, stated:

The alien is holding a position that is non-salaried Compensation. It is an uncompensated missionary work, which is part of broader International program of mission work sponsored by the denomination. And the most important fact is that all Buddhist monks in United States and around the world and all Asians [sic] Countries that believes and practice Buddhist never been compensated. It is a traditional of Buddhist religious worker. All missionary works and works in the temple are based on a volunteer works by Buddhist monk. Since Monks were lived-in the temple which food and monetary being donated by the public and charities, philanthropies and generosity individuals on a daily basis. Monks have duties to bless, worship, pray and chanting for those who donated their food and money.

The petitioner stated that the duties of the proffered position would be to:

Teach and review Dhamma lessons for prospective members, Buddhist disciples and newly ordain[ed] monks. Lead meditation to groups and individuals as request [sic]. Decipher and educate Dhamma for all public to change their way of living to be better citizens. Counsel and console visitors who seek happiness in lives. Baptize and ordain new monks and new born babies and pray in funeral. Lead ritual and festival activities.

With the petition, filed on February 23, 2011, the petitioner submitted *inter alia* (1) a copy of an October 10, 2008 letter from the Internal Revenue Service (IRS) granting it tax-exempt status as a religious organization under section 501(c)(3) of the Internal Revenue Code (IRC); (2) a copy of its December 28, 2006 articles of incorporation filed with the Secretary of State for the State of Texas; (3) copies of its monthly bank statements for October 2010 through January 2011 and a statement of its account as of February 17, 2011; (4) a copy of a warranty deed for the property located at [REDACTED] (4) a list of the "annual duties of [REDACTED] ministers; (5) a daily and weekly work schedule for "the Buddhist monk; (6) information regarding the beneficiary's education; and (7) a November 10, 2010 "certificate of ordination" in which the beneficiary asks for ordination "for study Dhamma and discipline of the Buddhism and the Lao tradition or custom."

In a May 11, 2011 RFE, the director sought additional information regarding the petitioner, instructing the petitioner to submit information regarding the size of its congregation, employees or volunteers, "work location," and its affiliation with the "Laos Buddhist denomination or the Laos Buddhist organization abroad which the beneficiary is a member."

In response, the petitioner submitted a membership list, a list of its volunteers, copies of its utility bills, and copies of its monthly bank statements for February 2011 through June 2011. In a July 28, 2011 statement, the petitioner, through its chairman [REDACTED] stated:

Our denomination is an independent religious denomination established in USA. We do not have any affiliation in US nor abroad. We are not registered to be affiliated with anyone or with any LAOS BUDDHIST ORGANIZATION EITHER IN US OR ABROAD. We are just a member of the same Buddhist religious but not affiliated with. [sic] We not operated under any body's umbrella. We do not have a head-quarter either in US or in LAOS. Some Asian country has affiliated around the world. For Example, [REDACTED] established in Thailand and spread throughout Europe and USA. They operated as a corporation. They have Head Quarter in Thailand. Each temple that they established in USA or in Europe would set a sequence as temple number 10 or 20 or 30.

Being an affiliate is not the same as a member. We are a member of the same religious [sic] that practices Buddhist religious [sic] the same regulations and rules or same Bible. Being a member, we just have to communicate with certain Buddhist religious denomination throughout LAOS.

The petitioner also stated that when it needs a monk, it has to request one from a temple in Laos. The abbot of the temple then sends information and profiles of prospective monks who meet the organization's expectations. In another letter of the same date, the petitioner stated that it had "agreed to sponsor, petition and provide all supports such as room and board, health insurance, travel allowance and coverage of all incidental expenses for [the beneficiary] to perform and provide the religious service in our organization." The petitioner further stated that "[t]his monk will receive non-salaried compensation; religious service is performed under a volunteer missionary work basis."

In denying the petition, the director stated that the petitioner had failed to respond to specific requests in the RFE. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.2(b)(8) provides:

Request for Evidence: Notice of Intent to Deny—

- (i) *Evidence of eligibility or ineligibility.* If the evidence submitted with the application or petition establishes eligibility, USCIS will approve the application or petition, except that in any case in which the applicable statute or regulation makes the approval of a petition or

application a matter entrusted to USCIS discretion, USCIS will approve the petition or application only if the evidence of record establishes both eligibility and that the petitioner or applicant warrants a favorable exercise of discretion. If the record evidence establishes ineligibility, the application or petition will be denied on that basis.

- (ii) *Initial evidence.* If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.
- (iii) *Other evidence.* If all required initial evidence has been submitted but the evidence submitted does not establish eligibility, USCIS may: deny the application or petition for ineligibility; request more information or evidence from the applicant or petitioner, to be submitted within a specified period of time as determined by USCIS; or notify the applicant or petitioner of its intent to deny the application or petition and the basis for the proposed denial, and require that the applicant or petitioner submit a response within a specified period of time as determined by USCIS.

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).

In her RFE, the director instructed the petitioner to:

Submit evidence to establish how the petitioning organization is affiliated with the Laos Buddhist denomination or the Laos Buddhist organization abroad which the beneficiary is a member. Provide proof in the form of a corresponding registry/directory and evidence verifying such commonalities and cooperation as the same ecclesiastical government or organizational connection. The registry or directory should be formally published or made from the governing body of the religious denomination for members of the religious denomination.

In denying the petition, the director stated:

[T]he response did not provide evidence of how the petitioning organization and the Laos Buddhist organization abroad which the beneficiary is a member are connected. The petitioner initially submitted the beneficiary's birth certificate, identification booklet, passport, certificate of singleness, religious branch comment, course transcripts, and university certification; however, the petitioner

has not explained how these [sic] evidence established the beneficiary's membership in the petitioner's organization. The petitioner also attested that the beneficiary has been a member of the petitioner's denomination for at least two years immediately before the filing on [sic] the petition In the response, the petitioner submitted photos and no evidence supporting the petitioner's denomination. However, the photos did not have date and place annotation and did not explain the connection between the two organizations. Therefore, the membership of the beneficiary during at least the two-year period immediately preceding the filing date of the petition, has not been shown.

On appeal, the petitioner stated:

All Buddhist Religious denominations in USA are not affiliation [sic] to one another but they are being only members just to follow the same Buddhist laws and religious practice. Not only the Buddhist temple in USA but around the world. The temples or denomination that affiliated to one another is only Thai Dhammakya Temple. They are a corporation temple, which they have their own corporation and produced all Buddhist materials and teaching materials to sell for profit and they are not non-profit.

The petitioner's evidence indicates that the beneficiary is an ordained Buddhist monk who shares the same religious tenets of the petitioning organization. The petitioner states that it is not "affiliated" with any organization but is a member of all Buddhist temples. The petitioner's initial submission supports the claim that the Buddhist organization in Laos provides the organization with its ministerial support. The AAO finds that the petitioner has submitted sufficient documentation to establish that the beneficiary has been a member of its religious denomination for two full years immediately preceding the filing of the petition and that the petitioner sufficient responded to the director's instructions in the RFE regarding this issue.

In the RFE, the director instructed the petitioner to:

Submit verifiable evidence showing the size of the petitioner's congregation claimed. Describe how the membership is considered and maintained.

In addition, submit the organization's requirements to qualify for and to maintain active membership in the organization. If there is no requirement, please state so.

The director stated that the petitioner had claimed a membership of over 400 and determined that the petitioner failed to provide a "description of its membership requirements and maintenance condition." The director also stated that it is "unknown if membership on the mailing list can be verified completely." On appeal, the petitioner states that its membership list is updated when it receives new information from its members. The petitioner does not address the director's request for information on its "membership requirements and maintenance condition."

Nonetheless, the failure to provide this information does not foreclose a material line of inquiry. The petitioner states that it has a membership in excess of 400 and provided a membership list that contains more than 400 names. The AAO notes that an immigration officer (IO) conducted an onsite inspection of the petitioner's premises on October 23, 2009. The IO questioned the number of members claimed by the petitioner, finding its facilities seated only about 200. However, the IO determined that the petitioner operated in the capacity claimed.

In the RFE, the director instructed the petitioner to:

Submit names, dates of birth, current name and work location address of special immigrant and nonimmigrant religious workers that were petitioned and approved to work for the petitioner within the past five years. In addition, provide number of immigrant and nonimmigrant religious worker visa petitions filed by the petition in the past five years.

The petitioner provided the requested information in its response; however, it lined out the information for [REDACTED] its head monk, indicating that he had moved out. The information provided indicated that the individual had obtained permanent resident status.

The director found that the petitioner had failed to "provide a work location address of the head monk [REDACTED]. The petitioner simply stated 'MOVE OUT' next to his name and did not provide any explanation of being unable to provide work location address of the monk or indicated when he had moved out." The director noted that the instructions on the Form I-129 requires a petitioner to notify USCIS if an R-1 beneficiary begins working less than the number of hours indicated on the Form I-129 or if the individual's employment is terminated prior to the expiration of his or her R-1 status.

On appeal, the petitioner states that it was not required to notify USCIS regarding [REDACTED] as he had not "moved out permanently it was for temporarily for teaching religious [sic] at another temple because they need the monk who has superior teaching strategy."

The petitioner substantially provided the information requested by the director in her RFE. The only exception was the current location of [REDACTED]. Although the director implied that the petitioner had an obligation to report [REDACTED] location under the R-1 instructions, the petitioner indicated that [REDACTED] had been approved for permanent resident status. Additionally, the petitioner's failure to provide this information does not preclude a material line of inquiry for the instant petition.

Thus, while the petitioner did not provide complete information for one individual and did not provide the requirements for membership in its organization, neither issue is material to the eligibility of the beneficiary under the instant petition. Accordingly, the director's decision is withdrawn.

However, the petition cannot be approved as the record now stands. The petitioner has not established how it intends to compensate the beneficiary.

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.

(ii) *Self support.*

(A) If the alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.

(B) An established program for temporary, uncompensated work is defined to be a missionary program in which:

- (1) Foreign workers, whether compensated or uncompensated, have previously participated in R-1 status;
- (2) Missionary workers are traditionally uncompensated;
- (3) The organization provides formal training for missionaries; and
- (4) Participation in such missionary work is an established element of religious development in that denomination.

(C) The petitioner must submit evidence demonstrating:

- (1) That the organization has an established program for temporary, uncompensated missionary work;
- (2) That the denomination maintains missionary programs both in the United States and abroad;
- (3) The religious worker's acceptance into the missionary program;
- (4) The religious duties and responsibilities associated with the traditionally uncompensated missionary work; and
- (5) Copies of the alien's bank records, budgets documenting the sources of self-support (including personal or family savings, room and board with host families in the United States, donations from the denomination's churches), or other verifiable evidence acceptable to USCIS.

The petitioner alleged that the proffered position is "uncompensated missionary work, which is part of broader International program of mission work sponsored by the denomination." However, it provided no documentation in accordance with the above-cited regulation. The matter is remanded to the director to determine whether the proffered position qualifies as uncompensated missionary work as defined above.

Additionally, the "certificate of ordination" provided by the petitioner does not clearly indicate that the beneficiary has been ordained but is rather a request for ordination. The regulation at 8 C.F.R. § 214.2(r)(3) defines religious worker as "an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister." The regulation at 8 C.F.R. § 214.2(r)(10) requires that, if the alien is a minister, the petitioner must submit:

- (i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and
- (ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological education is accredited by the denomination, or
- (iii) For denominations that do not require s prescribed theological education, evidence of

(A) The denomination's requirements for ordination to minister;

- (B) The duties allowed to be performed by virtue of ordination;
- (C) The denomination's levels of ordination, if any, and
- (D) The alien's completion of the denomination's requirements for ordination.

On remand, the director shall address whether the petitioner has established that the beneficiary is qualified for the proffered position.

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.