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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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U.S. Citizenship  
and Immigration  
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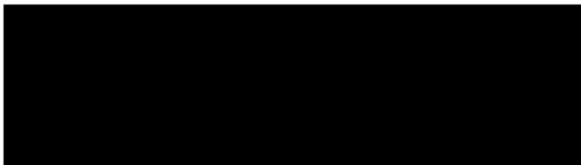
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Date: **AUG 06 2012** Office: CALIFORNIA SERVICE CENTER FILE:

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 on January 30, 2009. The director reopened the petition on January 31, 2011 pursuant to 8 C.F.R. § 103.5(a)(5) and again denied the petition on November 8, 2011. 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 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 senior pastor. Based on the results of an onsite compliance review of the petitioner's premises, the director determined that the petitioner had not established that it is operating as a bona fide nonprofit religious organization and in the capacity claimed in its petition.

On appeal, counsel asserts:

[T]he government's decision fails to set forth any cogent discussion as to any ineligibility to favorably adjudicate the instant Form I-129. Rather, the government denied Petitioner's Form I-129 without providing clear evidence supporting this decision. Likewise, the government violated Petitioner's right to due process by not affording Petitioner with the opportunity to respond to the primary reason alleged for the denial in prior correspondences such as the NOID and RFEs.

Counsel submits a brief and 29 exhibits consisting of several hundred pages that are not tabulated or otherwise delineated for easy reference.

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 operates as a bona fide nonprofit tax-exempt religious organization.

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.

In Part 1 of the Form I-129, Petition for a Nonimmigrant Worker, filed on April 12, 2007, the petitioner entered its mailing address as [REDACTED]. In its April 5, 2007 letter submitted in support of the petition, the petitioner stated that its [REDACTED] had held services at the [REDACTED] each Sunday since July 2003, and that the beneficiary maintained a home office at [REDACTED]. The petitioner's letterhead indicated that its mailing address was the [REDACTED] location and that the church location was [REDACTED]. In question 5.e. of the Form I-129 Supplement R, submitted in response to the director's Notice of Intent to Deny (NOID) the petition, the petitioner stated that the beneficiary would be working at [REDACTED]. On page 31 and 32 of the Form I-129 Supplement R, the petitioner identified its address as [REDACTED].

With the petition, the petitioner submitted a copy of a November 1, 2006 letter from the [REDACTED] signed by [REDACTED] in which she "confirm[ed] that since July 13, 2003," the petitioner, "represented by" the beneficiary "has been using the [REDACTED] . . . located at [REDACTED] [REDACTED] for their weekly Sunday services." The letter did not identify [REDACTED] position with [REDACTED] or her access to any records of the petitioner's use of its facilities.

On July 22, 2008, an immigration officer (IO) visited the petitioner at the [REDACTED] address. The IO reported that "Accurint, Autotrack databases and Google map searches clearly indicate this is a single family home owned by the petitioner [sic] and his wife [REDACTED]." The AAO notes that [REDACTED] signed the petition on behalf of the petitioner and identified himself as pastor of "[REDACTED]." The IO reported that calls to the phone number listed on the petition were unanswered and messages were not returned. The IO also reported:

In the petition is a letter submitted by the petitioner claiming the beneficiary is holding worship services each Sunday at the [REDACTED]. The letter claims 60 to 100 members attend weekly. FDNS spoke with [REDACTED]

██████████ Sales associate ██████████ . . . on July 17, 2008. ██████████ stated that his records show [the beneficiary] booked the ██████████ . . . on approximately 10 occasions since 2002, the most recent being February 13, 2008. Prior to that was in 2007 July 1<sup>st</sup>, 15<sup>th</sup>, 29<sup>th</sup> and June 10<sup>th</sup>, 17<sup>th</sup>, 24<sup>th</sup> which are all Wednesdays not Sundays as stated in the petition. This room has the capacity to hold approximately 60 people. ██████████ claimed no further information as to what was being conducted in the ██████████ was available. The letter also claims the beneficiary is maintaining a home office at ██████████ According to Accurant, this is the home address of the beneficiary where she lives with [her husband].

In a February 9, 2011 NOID, the director notified the petitioner of the results of the IO's visit. The director advised the petitioner that a Form I-360, Petition for ██████████ Widow(er), or Special Immigrant, that it had filed on behalf of the beneficiary "was denied due to suspected tax document fraud by the petitioner." The director instructed the petitioner to submit, *inter alia*, information regarding its location and copies of its most recent federal and state tax returns.

In response, the petitioner's pastor, ██████████ stated that he filed the petition in order for the beneficiary to help him start an Orlando branch of his Miami church. He further stated that he resides at the ██████████ address, and that the address was used for mailing purposes only. He also stated that he does not have a church secretary or receptionist and "considered [it] reasonable to use a residential phone if I did not want to miss any important calls." Pastor ██████████ further stated:

[W]hen I met with the attorney who prepared the Application, I used a residential address just [to] avoid losing important documents since we were constantly moving the location of the church. We had varied leases and did not settle in any location for more than two or three months. However, I want to emphasize that there were not services held at my house since the church always had its own location.

The petitioner submitted a March 1, 2011 letter from the ██████████ signed by ██████████ who identified himself as the general manager and stated that the ██████████ had been sold to ██████████ "confirm[ed] that since July 13 of 2003 to 2007," the petitioner "has been utilizing the ██████████ for their weekly services each weekend." Mr. ██████████ also stated that beginning in 2007, "an additional room was rented every Wednesday for leaders meeting and biblical studies." The petitioner submitted copies of receipts and reservations for rooms in the Holiday Inn that are dated from March 14, 2004 to January 7, 2007.

The petitioner also submitted copies of what appears to be church brochures that show the name of the beneficiary and the ██████████ and its address. However, none of the documents is dated and all are submitted in Spanish with no accompanying translation. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. In a March 8, 2011 letter, ██████████ associate pastor of the ██████████ stated: "During the period of 2005 thru 2007 I had the privilege to preach at the church where [the beneficiary] was the Senior Pastor, [the

[REDACTED]  
petitioning organization], which was meeting during that time at the [REDACTED]  
[REDACTED]”

The director denied the petition, finding that the petitioner had not satisfactorily resolved the issues identified in the NOID. The director indicated that the petitioner offered no explanation for its failure to respond to attempts by the IO to contact its representative, Pastor [REDACTED]. The director stated:

Also, the petitioner failed the site inspection due to fraud because of the relating I-360 [REDACTED] for this beneficiary . . . was denied due to suspected tax document fraud by the petitioner. The response made by the petitioner is not sufficient and there are inconsistencies. The petitioner did not submit documentation and failed to submit evidence relating to the suspected tax document fraud by the petitioner.

The director stated that a comparison of the petitioner's tax returns with its claims indicates that the petitioner paid the beneficiary less than it claimed in 2004 and 2005, and that the expenses listed on its tax return for 2004 were calculated differently in separate parts of the return. The director determined that: “Discrepancies encountered in the evidence call into question the petitioner's ability to document the requirement under the statute and regulation.”

On appeal, counsel alleges that the denial “is the first time that the government raised such issue as to the incorrect data contained in documents provided by Petitioner during the course of these proceedings.” Counsel states that the petitioner had amended its returns for the years indicated and the “amended taxes for the pertinent years [] are the ones used by Petitioner in the instant case” and are the ones shown in the public records.

Counsel's assertion is without merit. While the director did not specify in detail the issues associated with the petitioner's tax returns, the petitioner was put on notice that the returns it had provided to USCIS in connection with another petition filed on behalf of the beneficiary were fraudulent. Counsel acknowledges errors with the tax documentation as she stated that the beneficiary had filed amended returns.

The record reflects that the petitioner, located in [REDACTED] was founded by [REDACTED] the individual who signed the Form I-129 on behalf of the petitioner. On the Form I-129, Pastor [REDACTED] listed his address and phone number as the mailing address and contact number of the petitioning organization. The IO attempted to conduct his compliance review at the location listed by the petitioner as its mailing address. The IO was unable to contact Pastor [REDACTED] at the location and he failed to return the IO's phone calls. While Pastor [REDACTED] apologized “if using a personal address and phone number had hindered the process of the application,” the petitioner offers no explanation as to why Mr. [REDACTED] did not respond to the IO's messages. Had he done so, he could have provided sufficient information to the IO so that he could have conducted a more thorough examination of the petitioner's claims.

Pastor [REDACTED] stated that the petitioner wished to continue to employ the beneficiary as pastor of its church in [REDACTED]. As discussed above, the petitioner stated in its April 5, 2007 letter submitted in support of the petition that the Orlando church had held services at the [REDACTED] since

July 2003 and that the beneficiary had a home office at [REDACTED]. The petitioner has submitted documentation to establish that the Orlando church met in the [REDACTED] as claimed. However, it has submitted no documentation of where the church has met subsequent to 2007. The AAO notes that the petitioner alleged in its Form I-129 Supplement R that the beneficiary would work at [REDACTED]. The petitioner submitted no evidence to establish the location of the Orlando Church subsequent to 2007.

The director stated that the petitioner also failed the onsite inspection based on "fraudulent" tax returns that it had submitted in support of a Form I-360 petition that it filed on behalf of the beneficiary. The IO, however, did not base his report of failure on the petitioner's tax returns of 2004 and 2005; rather, the IO determined that there was no evidence that the petitioner "is an actual church." While the issue of the petitioner's 2004 and 2005 tax returns may go to its credibility, the returns are not directly relevant to the instant proceeding.

Although the petitioner did not submit an explanation as to why Pastor [REDACTED] failed to respond to the IO's phone messages, the petitioner provided a reasonable explanation as to why the petition reflects the address and telephone number of its pastor. The record does not indicate that there has been any attempt to conduct an onsite review at the petitioner's main location or at the church in Orlando where the beneficiary will allegedly work.

Accordingly, the record is remanded to the director to determine if another onsite investigation or other compliance review is appropriate for the instant petition.

In denying the petition, the director stated that there was an inconsistency between what the petitioner stated that it paid the beneficiary and that reflected on its public tax returns in 2004 and 2005. While not relevant to the instant petition, the director may wish to investigate whether the petitioner has abided by the terms of its previously approved R-1 nonimmigrant religious worker petition filed on behalf of the beneficiary.

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.