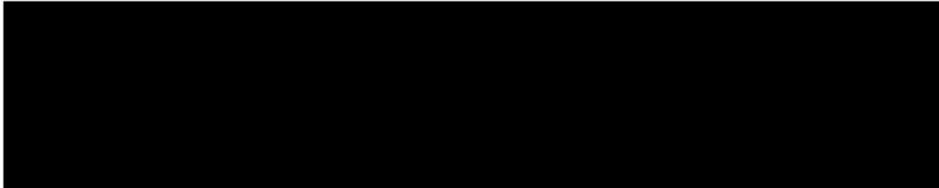


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



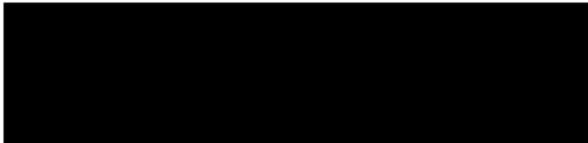
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Date: **AUG 06 2012** Office: CALIFORNIA SERVICE CENTER FILE:

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, initially approved the employment-based nonimmigrant visa petition. On further review, 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) approval of the petition and her reasons for doing so, and subsequently exercised her discretion to revoke approval of the petition on August 1, 2011. The director also denied a subsequent motion to reopen and to reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to extend the beneficiary's status as a nonimmigrant religious worker under section 101(a)(15)(R)(1) of the Act, 8 U.S.C. § 1101(a)(15)(R)(1), to perform services as a monk. Based on the results of an onsite compliance review, the director determined that the beneficiary was working for an employer other than the petitioner and that the petitioner failed to provide evidence of the beneficiary's R-1 nonimmigrant religious worker employment.

On appeal, counsel asserts that the beneficiary did not change employers and was instead working for the petitioner in a different location. Counsel submits a brief and additional documentation in support of the appeal.

The U.S. Citizenship and Immigration Services (USCIS) 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)(I) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(I), pertains to a nonimmigrant who seeks to enter the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination.

On the Form I-129, Petition for a Nonimmigrant Worker, filed on July 12, 2010, the petitioner stated that the proffered position was that of a Buddhist monk and that the duties of the position included:

Daily Morning & Evening chanting, collecting alms, Cleaning & Maintenance of the facility, Home Blessings, Funeral rites / Rituals when invited, Daily Religious studies, Facilitate religious ceremony and give dharma talk and meditation sessions when required.

The petitioner also stated that the beneficiary would be "self supporting. Buddhist Monk taking the vow of poverty, the temple will provide all the monk's needs ie. [sic] Accommodations, food, clothing and medicine." In question 5 of Section 2 of the Form I-129 Supplement Q/R, which asks the petitioner to list the specific address or location at which the beneficiary would work, the petitioner listed only its address of record. The petitioner provided unaudited copies of its 2009 balance sheet and profit and loss statement, a copy of its 2006 financial statements accompanied by an accountant's compilation report, and a copy of its June 2010 bank statement that reflect a balance of \$43,879.91. The petitioner also submitted documentation of its ownership of the property located at its address of record, including photographs of the buildings.

On its July 7, 2010 letter submitted in support of the petition, the petitioner stated:

[The petitioner] has an urgent need for a Religious Worker of [the beneficiary's] caliber and qualifications as it embarks on an extensive expansion campaign and the inauguration of new public service programs such as a [redacted] and [redacted]. At the same time he can assist us in the presentation of ceremonies of the Buddhist liturgical calendar, meditations, and various blessing ceremonies such as home blessings, funerals, memorial services, etc.

In addition to the duties listed above, our temple needs [the beneficiary] to assist our temple with its weekly radio broadcast of Dhamma and Cultural news and activities in its sixth year of broadcast: to help us in the pre-production requirements and actual production of a Cable Television show much like the radio production which is currently in the early planning stage; and a Quarterly Temple Newsletter at the request of the membership in both Lao and English.

On November 15, 2010, an immigration officer (IO) visited the petitioner's premises for the purpose of verifying the petitioner's claims in the petition. The IO reported that she was unable to speak with the beneficiary or [redacted], the petitioner's abbot and the individual who signed the petition on behalf of the petitioner, because they were not on site. On February 3, 2011, the IO e-mailed [redacted] and requested additional documentation about the beneficiary's work, including his employment record, pay stubs and an Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement. The IO asked the petitioner to respond within two

business days; however, as of the date of the IO's report on February 23, 2011, the IO had received no response.

In response to the director's May 4, 2011 NOIR, in which she advised the petitioner of the IO's findings, the petitioner, through [REDACTED], stated that the beneficiary was "at the time of the inspectors visit, assigned to duties of a visiting monk at a satellite Temple in Elgin Illinois." [REDACTED] certified that the beneficiary still worked for the petitioning organization and reemphasized that the beneficiary, like all monks, "receive no salary or other monetary compensation for the spiritual services they perform. The traditional means of support are free will donations made to the Temple by those who request such services and only collaterally are the monks provided with the traditional requisites of food, robes, medicine and shelter." The petitioner submitted a "certificate of employment" verifying the beneficiary's employment and photographs that it stated were evidence of the beneficiary's employment.

In a March 5, 2011 letter, the petitioner's vice abbot, the Venerable [REDACTED], stated:

[[T]he beneficiary . . . had been sent to Elgin, Illinois to assist in the administration of a satellite Temple of [the petitioning organization] as well as its spiritual director. (final documents are currently in the works) It is customary for Buddhist organizations to provide assistance to other communities when required. He returns to [the petitioning organization] with some frequency to join in specific ceremonies which require a requisite number of monks. For example, he returned just today in order to participate in Ordination ceremonies this evening and throughout the weekend. This has all been duly outlined in our initial documentation for his visa to come to America from Laos. Venerable remains essential to our mission of providing service to the Lao Refugee Community in that he has the experience to perform his religious responsibilities both her, in Elgin, and elsewhere if need be. These off site duties are normally provided on a rotating basis. If [the beneficiary] did not provide this service, another monk in our community would have to do so as our commitment is to the Buddhist community at large. However, [the beneficiary] remains a resident monk of [the petitioner].

In revoking approval of the petition, the director acknowledged that, as the beneficiary is a monk and has taken a vow of poverty, the petitioner could not provide pay stubs or IRS Forms W-2 as evidence of the beneficiary's employment. However, the director determined that the certificate of employment was insufficient to establish the beneficiary's employment, and discounted the photographs provided by the petitioner, stating that the photographs were not dated and contained no identifying information. The director also stated:

Further, R1 classification is to be approved for the beneficiary to be coming to or remaining in the U.S. to work for the petitioner at the request of the petitioner. On the Form I-129, the beneficiary's work location is listed at the petitioner's physical location. The petitioner claims that the beneficiary was assigned to a

satellite Temple in Elgin, Illinois. However, on the form I-129, the petitioner did not indicate that the beneficiary will be working at a different location. Additionally, the petitioner did not submit documentation showing existence and connection of the mentioned [] satellite location.

In a September 1, 2011 letter submitted in support of its motion to reopen and to reconsider, the Vice [REDACTED] alleged:

The tradition of the Buddhist monks is different than that of other religious organizations in several respect[s]. The requests I receive for further evidence of employment and financial support indicates clearly that the those [sic] differences are for the most part ignored by Immigration Services. For example, I have repeatedly stated as evidence that Buddhist monks receive no salaries for the spiritual services they provide; that they receive what is called the Four Requisites from the lay community consisting of their food, their robes, their medicine and their shelter. Another regards being present within the confines of the petitioners organization when as much as even more time is spent in providing religious services in the homes of the lay people upon their request or out of doors as well as to join other monks at other Temples, Centers and Monasteries upon request to augment the required numbers of monks for such specific rites and rituals as ordinations and monthly ceremonies according to the Buddhist liturgical calendar. Many times we must invite monks for special chanting ceremonies which might require a particular expertise that not all monks are qualified to perform nor are all monks required to have a particular expertise that is called for. The invitations, out of necessity are reciprocal.

Vice [REDACTED] then complained about the unannounced visit of November 5, 2010, stating that had the petitioner been advised of the impending visit, it would have ensured that both [REDACTED] and the beneficiary were present. Nonetheless, the USCIS practice of conducting unannounced visits is designed to prevent the "staging" of a petitioner's evidence and is the best way to determine the veracity of a petitioner's claims. Vice [REDACTED] further stated:

In the official's recounting of the evidence which I myself provided, he or she neglected to mention that I said that [the beneficiary] was on temporary assignment . . . It is my understanding that there are no travel restrictions within the boundaries of the United States. [The beneficiary] was in Elgin at that time at the urgent request for the services of a monk by the lay community there and was performing his duties as a Theravadan Buddhist monk in accepting those temporary responsibilities.

The petitioner submitted an August 21, 2011 affidavit from [REDACTED], chairman of the [REDACTED] of IL, who stated that the temple was "fortunate to have [the beneficiary] come help last year during the rains retreat from moon of August to the full moon of

October. In addition, he has been able to help maintain our activities a few times since December. His service to our temple is only temporary.”

The director denied the motion, stating that while the regulations “do not restrict the beneficiary from traveling . . . prior authorization from USCIS is required if the beneficiary is employed by a different or additional employer.” The director also stated that the petitioner “did not explain and submit documentation to show the connection between the petitioner and the beneficiary’s temporary location.” The director also found that the petitioner had failed to “provide requested evidence of previous R1 employment.”

On appeal, the petitioner submits affidavits from two of its board members and the beneficiary who state that a temple in Illinois requested the petitioner’s assistance when it started losing members and monks. The petitioner’s abbot sent the beneficiary to help the temple as he has sent other monks. Board member [REDACTED] and the beneficiary each reiterated that compensation for a monk’s service is provided by parishioners with housing provided by the temple. In a January 8, 2012 letter, the petitioner’s abbot states that the petitioner and the “Wat [REDACTED] of Illinois have been affiliated since 2009.” The abbot further stated that the petitioner has been assisting the Illinois temple “by providing them with whatever monks they require to perform religious ceremonies, spiritual counseling, and the various administrative duties required of a religious organization.” He also stated that, “because of his experience with the many religious ceremonies and administrative duties required in the early stages of establishing a new Temple, was requested to stay for a longer periods [sic] of time and provide the continuity required in the process.”

Counsel asserts that beneficiary did not change employers, and that the evidence shows “a transparent connection between the [petitioning organization] and [REDACTED] of Illinois,” that the beneficiary “was essentially loaned by Petitioner on a temporary basis . . . to its ‘sister’ temple.”

Counsel’s argument that the beneficiary was merely loaned to another organization is not persuasive. Following counsel’s logic, an employer could petition on behalf of an individual and then immediately loan that person out to another organization with no responsibility for the day-to-day control of the individual’s work or his or her remuneration. In the instant case, although the beneficiary did not sever his employment relationship with the petitioner, the evidence provided indicates that he was also in the employ of the [REDACTED] of Illinois. The record reflects that the [REDACTED] of Illinois is a separate institution from the petitioner and is not a subordinate of the petitioning organization. According to the affidavits, parishioners take care of the monks while the temple provides the lodging. The record does not establish that while the beneficiary worked in Illinois, he was compensated by the petitioner. The beneficiary would have received similar compensation, however, from the Illinois temple and its parishioners as that he received when he worked at the petitioning organization in Massachusetts. The Board of Immigration Appeals ruled that an alien who “receives compensation in return for his efforts on behalf of the Church” is “employed” for immigration purposes, even if that compensation takes

the form of material support rather than a cash wage. *See Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982).

The regulation at 8 C.F.R. § 214.2(r)(1) provides, in pertinent part, that to be approved for R-1 status, the alien:

(iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and

(v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

The regulation at 8 C.F.R. § 214.2(r)(2) provides:

An alien may work for more than one qualifying employer as long as each qualifying employer submits a petition plus all additional required documentation as prescribed by USCIS regulations.

The record indicates that the beneficiary engaged in work for another employer without prior approval of USCIS in violation of the above-cited regulations.

The director also determined that the petitioner had failed to provide evidence of the beneficiary's prior employment.

In response to the director's NOIR, the petitioner submitted an undated "certificate of employment" in which it certified that the beneficiary had worked for the petitioner since November 2009, and photographs that it stated were of the beneficiary performing his duties for the petitioner. The director found that the certificate was not sufficient evidence and that the photographs were not dated and contained no identifying information. On motion, the petitioner submitted additional photographs that were dated and containing dates and captions. In denying the motion, the director determined that the petitioner had failed to provide evidence of the beneficiary's previous R-1 employment as requested.

The regulation at 8 C.F.R. § 214.2(r)(12) requires that any request for an extension of stay as an R-1 must include initial evidence of the previous R-1 employment (including IRS documentation if available). The regulation at 8 C.F.R. § 214.1(e) states that a nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act. Under 8 C.F.R. § 214.2(r)(5), extension of status is available only to aliens who maintain R-1 status.

The AAO notes that the director did not request specific documentation from the petitioner to establish the beneficiary's previous R-1 employment. The petitioner submitted a certificate attesting to the beneficiary's work, photographs that it stated were of the beneficiary performing

his job for the petitioner, and evidence that it provides him with room and board. The AAO finds that the petitioner has submitted sufficient documentation of the beneficiary's previous work under his R-1 visa and therefore withdraws this finding by the director. Nonetheless, as the beneficiary worked in the United States without prior permission of USCIS, the director's decision to revoke the petition is affirmed.

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.