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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**

[REDACTED]

813

DATE: **AUG 10 2012** OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(i) of the
Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(i)

ON BEHALF OF PETITIONER:
[REDACTED]

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 extend the beneficiary's stay 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 assistant abbot monk/secretary. The director determined that the beneficiary violated the terms of his R-1 nonimmigrant status by engaging in unauthorized employment with the petitioner, and that the petitioner failed to provide evidence of the beneficiary's previous R-1 nonimmigrant religious worker employment.

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 Internal Revenue Service (IRS) documentation if available). The regulation at 8 C.F.R. § 214.2(r)(13) states that an R-1 alien may not be compensated for work for any religious organization other than the one for which a petition has been approved or the alien will be out of status. Under 8 C.F.R. § 214.2(r)(5), extension of status is available only to aliens who maintain R-1 status.

The issue of the beneficiary's maintenance of R-1 status is significant only insofar as it relates to the application to extend that status. An application for extension is concurrent with, but separate from, the nonimmigrant petition. There is no appeal from the denial of an application for extension of stay filed on Form I-129, Petition for a Nonimmigrant Worker. 8 C.F.R. § 214.1(c)(5). Because the beneficiary's maintenance of status is an extension issue, rather than a petition issue, the AAO lacks authority to decide this question.

The grounds provided by the director for the denial of the nonimmigrant petition regarding the beneficiary's eligibility as a religious worker pursuant to section 101(a)(15)(R)(1) of the Act all relate to the beneficiary's extension of status rather than his eligibility for nonimmigrant status. Accordingly, the matter is remanded for a new decision on the nonimmigrant 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. Specifically, the director should inquire into whether the petitioner has established how it intends to compensate the beneficiary as required by the regulation at 8 C.F.R. § 214.2(r)(11). 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.