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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: **JAN 10 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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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, denied the employment-based nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an Islamic center. It seeks to extend the beneficiary's stay as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act so he may continue to perform services as an imam. The director determined that beneficiary has reached the statutory maximum period for which he can qualify as an R-1 nonimmigrant religious worker.

On appeal, counsel asserts that the "adjudicating officer erred and abused his discretion by failing to follow 8 C.F.R. 214.2(r)(6) which allows an alien to recapture time spent outside of the United States." Counsel stated on the Form I-290B, Notice of Appeal or Motion, that he would submit a brief and/or additional evidence within 30 days. As of the date of this decision, however, more than five months after the appeal was filed, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

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).

The regulation at 8 C.F.R. § 214.2(r)(6) provides:

Limitation on total stay. An alien who has spent five years in the United States in R-1 status may not be readmitted to or receive an extension of stay in the United States under the R visa classification unless the alien has resided abroad and has been physically present outside the United States for the immediate prior year. The limitations in this paragraph shall not apply to R-1 aliens who did not reside continually in the United States and whose employment in the United States was seasonal or intermittent or was for an aggregate of six months or less per year. In addition, the limitations shall not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. To qualify for this exception, the petitioner and the alien must provide clear and convincing proof that the alien qualifies for such an exception. Such proof shall consist of evidence such as arrival and departure records, transcripts of processed income tax returns, and records of employment abroad.

The petition was filed on February 18, 2011. The petitioner submitted copies of Forms I-797A, Notice of Action, indicating that the beneficiary had been approved for R-1 nonimmigrant religious worker status from March 15, 2006 to February 28, 2009 and again from February 28, 2009 to

February 28, 2011. The director denied the petition, finding that the beneficiary had reached the five-year limit for R-1 status and was not eligible for any more extensions.

In his letter of February 17, 2011, counsel stated that the petitioner “would like to extend” the beneficiary’s status “an additional 90 days . . . which is time recaptured by absences from the United States of 90 days [The beneficiary] and his wife took congregation members on spiritual journeys overseas during the last five years.”

The petitioner did not allege, and provided no evidence, that the beneficiary did not reside continually in the United States and was physically present outside of the United States for the immediate past year, that his employment in the United States was seasonal or intermittent, or that he worked for an aggregate of six months or less per year and engaged in seasonal or intermittent work for the petitioner. The beneficiary’s travel outside of the United States does not indicate, without more, that he did not maintain his U.S. residency. Accordingly, the petitioner has not established that the beneficiary qualifies for the exception provided at 8 C.F.R. § 214.2(r)(6).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.