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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



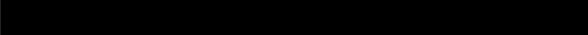
U.S. Citizenship  
and Immigration  
Services

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DATE: JAN 12 2012      OFFICE: CALIFORNIA SERVICE CENTER      FILE: 

IN RE:      Petitioner:   
Beneficiary: 

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:



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 remand the petition for a decision on its merits.

The petitioner is a [REDACTED] 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 pastor. The director found that the petitioner had not submitted sufficient evidence of past employment.

The U.S. Citizenship and Immigration Services regulation at 8 C.F.R. § 214.1(c)(1) states that an employer seeking the services of an alien as an R-1 nonimmigrant religious worker must petition for an extension of stay on Form I-129. Thus, the petition form is also the application form for an extension of stay, but the petition and the application are separate proceedings.

Under the USCIS regulation at 8 C.F.R. § 214.1(c)(5), there is no appeal from the denial of an application for extension of stay filed on Form I-129. The director, on January 24, 2011, issued two simultaneous decisions. One decision denied the application for extension of stay, and correctly informed the petitioner that there is no appeal from that denial. In the other decision, the director denied the underlying petition, but the only stated basis for the denial was the petitioner's purported failure to submit evidence of the beneficiary's past compensation as required by the regulation at 8 C.F.R. § 214.2(r)(12), which states that any request for an extension of stay as an R-1 nonimmigrant must include initial evidence of the previous R-1 employment.

The director, in the denial notice, did not address the merits of the R-1 nonimmigrant petition. The director found only that the beneficiary is not eligible for an extension of stay. The issue of past compensation is not a valid basis for denying a petition for R-1 classification; it is only a ground for denying the concurrent application for extension of stay. As such, the cited basis for denial pertains not to the R-1 nonimmigrant petition itself, but to the accompanying request for extension of stay, an issue that lies outside the AAO's appellate jurisdiction.

The allegation that the beneficiary does not qualify for extension of stay does not directly address the merits of the underlying R-1 petition. Because an alien can obtain a nonimmigrant visa without an approved application for extension of stay (by traveling overseas and receiving the visa at a consulate), the director cannot simply assert that the beneficiary is ineligible for extension of stay and leave it at that. The director must issue a decision on the merits of the R-1 nonimmigrant petition. The AAO hereby remands the matter to the director for that purpose.

**ORDER:** The appeal of the denial of the application for extension of stay is rejected. The matter is remanded to the director for a decision on the merits of the nonimmigrant petition. If the director's decision is unfavorable to the petitioner, the director must certify that decision to the Administrative Appeals Office for review.