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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
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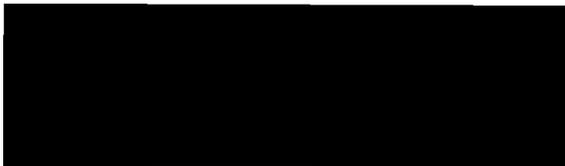
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Date: **JAN 18 2012** Office: CALIFORNIA SERVICE CENTER FILE: 

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 seeks to extend the beneficiary's classification 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 a pastor. The director determined that the petitioner had not established that the beneficiary had the required two years membership in the denomination.

The director also noted that the beneficiary had worked for the Church of the Brethren without prior permission and therefore had violated the terms of his nonimmigrant status. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(12) requires that any request for an extension of stay as an R-1 nonimmigrant religious worker must include initial evidence of the previous R-1 employment (including Internal Revenue Service 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 issues of the beneficiary's prior employment and maintenance of R-1 status are significant only insofar as they relate 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. 8 C.F.R. § 214.1(c)(5). Because the beneficiary's past employment and maintenance of status are extension issues, rather than petition issues, the AAO lacks authority to decide those questions. Therefore, the director's determination that the beneficiary violated the terms of his nonimmigrant status will not be reviewed.

On appeal, counsel asserts that the director "applied an incorrect and inconsistent standard of law, inexplicably departed from established procedures and precedent decisions, and abused [her] discretion by substantially neglecting to consider and review the relevant evidence." [Emphasis omitted.] Counsel submits a brief and additional documentation in support of the appeal.

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 an immigrant 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 the beneficiary has the required two years membership in its denomination.

The regulation at 8 C.F.R. § 214.2(r) provides, in pertinent part:

- (1) To be approved for temporary admission to the United States, or extension and maintenance of status, for the purpose of conducting the activities of a religious worker for a period not to exceed five years, an alien must:
 - (i) Be a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least two years immediately preceding the time of application for admission.

The petition was filed on December 1, 2009. Therefore, the petitioner must establish that the beneficiary was a member of its religious denomination since December 1, 2007.

The petitioner is an organization of the Church of the Brethren. In its November 17, 2009 letter submitted in support of the petition, the petitioner, through [REDACTED] its director of church planting and the official who signed the petition on behalf of the petitioner, stated:

After college, [the beneficiary] started working as a missionary in the inner cities of Nigeria from 1994, evangelizing, discipling and reaching to drug addicts and prostitutes, reconciling them first to God and then society, and finally into new converts who came to Christ. Church of the Brethren in Nigeria accepted [the beneficiary] and the new converts to the Christian faith. As such, his relationship, membership, and affiliation with the Church of the Brethren is over 13 years.

In 2007, [the beneficiary] came to the United States as a missionary and to provide pastoral counseling, evangelism and pastoral services for Youth with a Mission (Church of Brethren). . . .

On June 21, 2009, [the beneficiary] was officially ordained as a Minister in the Church of Brethren by the Illinois/Wisconsin District Ministry Commission, Church of Brethren. Presently, he is serving as a Pastor with Rockford Community Church, Church of Brethren congregation in Rockford, Illinois and volunteers as Chaplain to Rockford Police Department.

As discussed above, [the beneficiary] has been a member of the Church of Brethren for more than 13 years. . . . Additionally, he has continuously worked for 2 years as [REDACTED] immediately preceding this petition.

The petitioner submitted certificates of completion from the University of Nations, Youth with a Mission (YWAM), indicating that the beneficiary completed courses with that organization in June 2001, September 2001, August 2003, and April 2004. The petitioner also submitted a copy of the ministerial license that it issued to the beneficiary on June 21, 2009. It submitted no documentation to establish the beneficiary's continuous association with the Church of the Brethren prior to that date and no documentation to establish a relationship between the Church of the Brethren and YWAM.

In response to the director's June 2, 2010 request for evidence (RFE), the petitioner submitted an undated letter from [REDACTED] of the Church of the Brethren in Nigeria, in which he confirmed that the beneficiary was a member of the church by virtue of his parents' membership and his own confirmation in 1996. [REDACTED] stated that the beneficiary remained a leader in the church "until his departure to join [YWAM] in South Africa 2001." A "religious participation history" provided by the beneficiary also reflects that the beneficiary worked with the Church of the Brethren from 1994 to 2001 and with YWAM from 2001 to 2010.

In a June 17, 2010 letter, [REDACTED] wrote "to confirm the relationship and affiliation between the [REDACTED] including our programs and initiatives for New Church Development, and [YWAM], an independent mission and training and deployment organization." [REDACTED]

[YWAM] is an international missionary and educational organization which shares common Christian faith and practices with Church of the Brethren. Particular commonalities include the practice of lovefeast and footwashing, adherence to the teachings of Jesus Christ, and active membership and participation in the National Council of Churches of Christ (NCCC) and the

World Council of Churches (WCC). [YWAM] also offers discipleship and pastoral education through the University of Nations which shares the same basic tenets of faith.

The petitioner also provided an excerpt from the 2009 directory for the Church of the Brethren. The document is entitled [REDACTED] and indicates that it is of "Agencies of interest to Brethren with a wider constituency beyond our denomination." YWAM is one of the organizations listed under "Ecumenical Agencies."

In a June 8, 2010 letter, [REDACTED] a leadership developer and mentor with YWAM, stated that:

[O]n June 21, 2009, [the beneficiary] was officially ordained as a Minister in the Church of Brethren After his ordination he was temporarily assigned as a Pastor to offer his services for [REDACTED] congregation in Rockford, Illinois. Even though he was temporarily assigned to offer his services in Rockford, Illinois, as previously indicated in a letter he is still an employee of [YWAM].

In regulation at 8 C.F.R. § 214.2(r)(3) provides:

Denominational membership means membership during at least the two-year period immediately preceding the filing date of the petition, in the same type of religious denomination as the United States religious organization where the alien will work.

The regulation also provides that:

Religious denomination means a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes one or more of the following:

- (A) A recognized common creed or statement of faith shared among the denomination's members;
- (B) A common form of worship;
- (C) A common formal code of doctrine and discipline;
- (D) Common religious services and ceremonies;
- (E) Common established places of religious worship or religious congregations; or

(F) Comparable indicia of a bona fide religious denomination

The director denied the petition, finding that while the petitioner alleged that the Church of the Brethren and [YWAM] shared similar doctrinal beliefs, the evidence of record did not support the statement. The director determined that:

The petitioner submitted the beliefs and practices from the Church of the Brethren however[] no evidence was submitted by the petitioner to show what the beliefs and practices [are] that [YWAM] follows.

. . . The evidence shows that the two organizations are of separate denominations and that there is no documentary evidence to establish that a connection exists between them. The petitioner has not established that there is an institutional relationship or a common governing body shared by the petitioner and the beneficiary's previous church abroad as required.

Counsel asserts on appeal:

The Service's contention that [YWAM] is a separate independent organization is incorrect. The Service's incorrect assumption that the organizations are separate is [sic] the Service simply chose to review the information on the website rather than relying on the evidence presented. Please note that the letter from [REDACTED] clearly stated in his letter that [YWAM] is an international missionary and educational organization which shares common Christian faith and practices with the Church of Brethren [REDACTED] further states that "while the relationship is not clearly apparent from the simple review of information on the websites, collaborative missionary work involves spreading the Church of Brethren's beliefs" The Service completed [sic] ignored this evidence. [Emphasis omitted.]

Counsel alleges that the director acknowledged but did not review the documentation submitted by the petitioner and "simply dismissed the evidence." Counsel highlights that portion of [REDACTED] letter in which he states:

[YWAM] is one of many organizations through which members of the Church of the Brethren can participate in missionary work throughout the world. While this relationship is not clearly apparent from the simple review of information on the websites, collaborative missionary work involves spreading the Church of the Brethren's beliefs that arise from the New Testament as the record of the life, ministry, teaching, death, and resurrection of Jesus Christ, and of the beginnings of the life and thought of the Christian church. These very fundamental beliefs are also taught to aspiring pastors and disciples through the University of Nations, [YWAM].

Neither [REDACTED] nor the petitioner explains how the beliefs and practices of the Church of the Brethren and YWAM are distinguished from other denominations that recognize the teachings and practices of Christianity; other denominations baptize their converts, anoint their members, hold communion, and wash feet. These similar practices do not alone provide evidence that the organizations belong to the same denomination. There are other interdenominational organizations, similar to YWAM, that accept members from any denomination. The practice of accepting members from other denominations is insufficient to establish that such an organization is of the same denomination of all those from which it accepts members.

While the beneficiary may have been allowed to maintain his membership in the Church of the Brethren while working with YWAM, the record does not establish that he did so. According to the letters from Reverend [REDACTED] and [REDACTED], the beneficiary joined YWAM in 2001. The record indicates that all of his training with YWAM occurred in 2001 and later. Nothing in the record indicates that he received any training from YWAM under the auspices of the Church of the Brethren, and there is nothing in the record to establish that the beneficiary continued his association with the Church of the Brethren prior to becoming licensed to minister on June 21, 2009. The acceptance of the beneficiary's experience with YWAM as a qualification for his Church of the Brethren ministerial license does not establish, without more, that the two organizations are of the same denomination. The regulation does not require specific training for classification as a minister and only requires that the petitioner establish that the beneficiary meets the qualification requirements of its denomination. *See* 8 C.F.R. § 214.2(r)(3).

Despite assertions to the contrary by the petitioner and counsel, the record does not establish the beneficiary's continuing relationship with the Church of the Brethren. Furthermore, the record does not establish that the Church of the Brethren and YWAM share a common ecclesiastical government, and although they may have similar forms of worship, they do not share a specific form of worship.

The record does not establish that the beneficiary has been a member of the petitioner's denomination for two full years immediately preceding the filing of the visa petition.

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.