

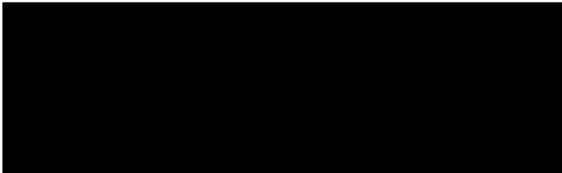
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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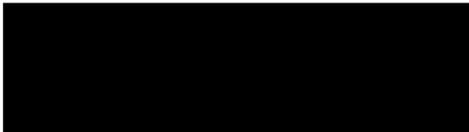
JAN 19 2012

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 a 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 minister. The director determined that the petitioner had not established that "the position in question meets the compensation standards for religious workers," that the beneficiary's tax returns indicate that he does not earn enough money to provide for his living expenses, or that the beneficiary is qualified for the proffered position.

On appeal, counsel asserts that the Act "does not establish a prevailing wage for religious workers" and that the petitioner has submitted sufficient documentation to establish the beneficiary's qualifications for the position.

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 a nonimmigrant 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 director first determined that the petitioner had not established that "the position in question meets the compensation standards for religious workers" and that the beneficiary does not earn enough money to provide for his living expenses. The director cites the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(12), which provides:

Evidence of previous R-1 employment. Any request for an extension of stay as an R-1 must include initial evidence of the previous R-1 employment. If the beneficiary:

- (i) Received salaried compensation, the petitioner must submit IRS [Internal Revenue Service] documentation that the alien received a salary, such as an IRS Form W-2 [Wage and Tax Statement] or certified copies of filed income tax returns, reflecting such work and compensation for the preceding two years.
- (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available. If IRS documentation is unavailable, an explanation for the absence of IRS documentation must be provided, and the petitioner must provide verifiable evidence of all financial support, including stipends, room and board, or other support for the beneficiary by submitting a description of the location where the beneficiary lived, a lease to establish where the beneficiary lived, or other evidence acceptable to USCIS.
- (iii) Received no salary but provided for his or her own support, and that of any dependents, the petitioner must show how support was maintained by submitting with the petition verifiable documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other evidence acceptable to USCIS.

The regulation cited above 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 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, Petition for a Nonimmigrant Worker. 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 decision to deny the beneficiary's extension of stay will not be reviewed, and the issues related to the beneficiary's extension of stay will not be addressed.

The regulation at 8 C.F.R. § 214.2(r)(1) provides that to be approved for temporary admission to the United States for the purpose of conducting the activities of a religious worker, an alien must "[b]e coming to the United States to work at least in a part time position (average of at least 20 hours per week)." The regulation does not impose any specific compensation requirements for the nonimmigrant religious worker. On the Form I-129, the petitioner stated that the beneficiary

would work full time and receive wages in the amount of \$30,212, which included a housing allowance and "clergy benefits." In its job offer, the petitioner indicated that the position would require approximately 40 hours per week. In a December 12, 2007 letter, the [REDACTED] stated that the beneficiary's salary is paid by [REDACTED]. The petitioner provided copies of IRS Forms W-2 indicating that the [REDACTED] paid the beneficiary wages of \$17,992 (\$28,652 in Social Security wages) in 2005 and \$4,152 (\$6,972 in Social Security wages) in 2006. The petitioner also submitted copies of processed checks indicating that [REDACTED] paid the beneficiary \$422.11 for each week of November 2007.

In a September 17, 2010 Notice of Intent to Deny (NOID) the petition, the director advised the petitioner that:

According to the I-129 application, the beneficiary[s'] . . . residency address upon arrival was listed as [REDACTED]. However, the I-94 admissions records for the beneficiary shows [REDACTED]

[REDACTED] Due to the inconsistency in regards to work and residency, the Service did a public records search on the beneficiary. No available information was found in regards to the beneficiary living and working in Lexington, South Carolina. All available information indicated the beneficiary lives in Richmond Hills New York, and has resided there since 2004.

Submit documentation to show the beneficiary's physical address

In response, the petitioner submitted a copy of an October 10, 2010 letter in which [REDACTED] stated that the address at 2275 Two Notch Road in Lexington was the "church office location" and that no church services were held at that location. He further stated that the address was also used as a parsonage owned by him. In a letter dated October 15, 2010, counsel stated that the beneficiary had been assigned to work in the "New York/New Jersey area as an evangelist and pioneer church planter among Hindi and Punjabi speaking immigrants."

The petitioner submitted a copy of a September 1, 2007 lease for an apartment at [REDACTED] [REDACTED] for the beneficiary for the period September 1, 2007 to August 31, 2008, and a copy of the beneficiary's September/October 2010 utility bill for the same location. The petitioner also provided copies of the beneficiary's IRS transcripts for 2004 through 2009, reflecting income as follows:

2005	\$17,992
2006	4,152 (W-2, which also shows Social Security wages of \$6,972)
2007	12,110
2008	17,992
2009	12,110

The transcripts indicate that the beneficiary listed his address as [REDACTED] in Lexington, South Carolina. The IRS transcripts include only one Form W-2, which is for the year 2006.

In denying the petition, the director concluded:

The inconsistency within the record regarding the source of earnings, the fact the beneficiary is not working full time, and the inconsistency regarding the residency of the beneficiary leaves doubt on the record as a whole as being a viable qualified petition.

Counsel asserts on appeal:

The INA does not establish a prevailing wage for religious workers. The applicant was a salaried employee who provided verifiable evidence relating to compensation. It is evident that the reviewing officer overlooked the structure of Forms W-2 for the years in which the applicant was employed. In first regard, the denial indicates a salary for 2009 of \$12,110, when in reality, the form indicates monetary wages of \$12,110 and social security wages of \$20,335. The applicant has had virtually all living expenses subsidized, which includes room and board and transportation.

While counsel is correct that the Act does not set a “prevailing wage for religious workers,” he errs in stating that the petitioner provided sufficient documentation to explain the beneficiary’s compensation package. As discussed earlier, the petitioner provided copies of IRS Forms W-2 for the beneficiary for 2005 and 2006. While the 2005 IRS Form W-2 indicates that the beneficiary received compensation of \$28,652, the 2006 IRS Form W-2 indicates income of only \$6,972. Furthermore, the beneficiary’s tax account transcripts include IRS Form W-2 information only for 2006. On appeal, the petitioner submits copies of IRS Forms W-2 for the beneficiary for the years 2009 and 2010.

The record contains conflicting documentation about where the beneficiary actually works and who is responsible for his compensation. The petitioner made no entry in block 5 of Part 5 of the Form I-129, thus implying that the beneficiary would work at the petitioner’s address at [REDACTED]. However, [REDACTED] stated that that address was a church office and that church services were not held there. When notified in the NOID that the beneficiary’s entry records indicate that he was to reside in Richmond Hills, New York, the petitioner then stated that the beneficiary had been assigned to the New York/New Jersey area and submitted documentation of the beneficiary’s residency in New Jersey. However, the IRS Forms W-2 and the IRS transcripts reflect the beneficiary’s address as [REDACTED] in Lexington, South Carolina, and the petitioner submitted no documentation to establish the presence of a church at which the beneficiary works in the New York/New Jersey area.

In his December 12, 2007 letter, [REDACTED] stated that the beneficiary would receive his salary from [REDACTED]. However, the beneficiary's IRS Forms W-2 indicate that he was paid by [REDACTED] in West Columbia, South Carolina in 2005 and 2006, and by [REDACTED] South Carolina in subsequent years. Each of these organizations has a different employer identification number (EIN) which is different from the EIN shown on the Form I-129, and differed from the EIN shown for the "mother church" on its IRS Form 990, Return of Organization Exempt from Income Tax.

The director determined, based on the evidence of record, that the beneficiary was not engaged in full time employment as alleged in the petition. The AAO concurs with the director's determination. Although the regulation governing nonimmigrant religious worker petitions does not require full time employment to qualify for R-1 status, the petitioner stated that it will provide full time employment to the beneficiary. The evidence presented does not establish full time employment nor does it establish where the beneficiary will work. The petitioner has submitted conflicting evidence of where the beneficiary will work, who is responsible for his compensation, and the nature and extent of any religious work that he performs. The petitioner has failed to establish that it has extended a qualifying job offer to the beneficiary.

The director also determined that the petitioner had not established that the beneficiary was qualified for the proffered position.

The regulation at 8 C.F.R. § 214.2(r)(3) defines religious worker as "an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister." The regulation also defines minister as one who "[i]s fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct religious worship and perform other duties usually performed by authorized members of the clergy of that denomination." Finally, the regulation at 8 C.F.R. § 214.2(r)(10) provides:

Evidence relating to the qualifications of a minister. If the alien is a minister, the petitioner must submit the following:

- (i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and
- (ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological education is accredited by the denomination, or

- (iii) For denominations that do not require a prescribed theological education, evidence of:
 - (A) The denomination's requirements for ordination to minister;
 - (B) The duties to be performed by virtue of ordination;
 - (C) The denomination's level of ordination, if any; and
 - (D) The alien's completion of the denomination's requirements for ordination.

With the petition, the petitioner submitted a copy of a November 22, 1998 certificate indicating that the beneficiary received a Bachelor of Theology degree from the International Bible Academy, which is administered by [REDACTED] and a November 26, 1999 certificate of ordination granted by the same organization. The petitioner also submitted a copy of the beneficiary's transcript from [REDACTED].

In denying the petition, the director stated that "to perform services in a specialty occupation," the petitioner must establish that the beneficiary holds at least a bachelor's degree, holds an unrestricted state license or has the education, specialized training, and/or progressive responsible experience that are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation." The director indicated that the Form I-129 conditioned the beneficiary's employment on his completion of a Bachelor of Theology degree and that the documentation indicates that the beneficiary "has received the required education." The director, however, concluded that the petitioner failed to provide the Service with documents which would show the beneficiary is acting as a minister in full compliance with both the petitioner's requirements "and the requirements in federal regulation for a specialty occupation such as that of a minister."

The director's finding regarding the beneficiary's qualifications appears to be based on H-1B regulations. The regulation governing nonimmigrant religious worker petitions does not require the petitioner to establish that the beneficiary has any specific degree, only that he is fully trained according to the denomination's standards. If the petitioner's denomination requires a specific course of theological education, then the petitioner must submit documentation to establish that the theological education is accredited by the denomination. It is not clear what aspects of the petitioner's requirements and those of federal regulation are lacking in the petitioner's evidence. The director appears to be conflating the requirements of section 214(i) of the Act, 8 U.S.C. § 1184(i), with the requirements of the regulation 8 C.F.R. § 214.2(r)(10).

The petitioner has submitted sufficient documentation to establish that the beneficiary is qualified for the proffered position in accordance with the petitioner's requirements, and the director's decision to the contrary is withdrawn.

The director also concluded that the petitioner had failed a compliance review. In denying the petition, the director informed the petitioner that:

[A] reliable source of information indicated that [REDACTED] but with multiple affiliated churches nationwide, is selling nonimmigrant and immigrant religious worker visa[s]. In exchange for a fee ranging from \$6,000 to \$8,000, this church fraudulently sponsors predominantly Indian workers to perform full-time religious duties for the church when, in fact they are working illegally at Indian-run businesses throughout the community and paid cash "under the table."

The regulation at 8 C.F.R. § 214.2(r)(16) provides:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The petitioner did not address this issue on appeal. The AAO thus considers this issue waived by the petitioner.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.