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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

[Redacted]

Date: **JAN 24 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)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1)

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.

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 classify the beneficiary 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 been a member of its religious denomination for two full years immediately preceding the filing of the petition.

On appeal, counsel asserts that the petitioner “is affiliated with the Southern Baptist Convention because they are ‘the same type of religious denomination.’” 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 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 issue presented is whether the petitioner has established that the beneficiary has been a member of its religious denomination for two full years immediately preceding the filing of the visa petition.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(1) provides that, 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 June 14, 2010. Therefore, the petitioner must establish that the beneficiary was a member of its denomination for at least the two years immediately preceding that date.

In its June 3, 2010 letter submitted in support of the petition, the petitioner, through its lead pastor, stated that it "is an affiliated church of the . The petitioner submitted a copy of a February 22, 2010 letter from the senior vice president of finance and operations for the in which he verified that the petitioning organization was a subordinate organization of and included in the group tax exemption granted to by the Internal Revenue Service (IRS).

The petitioner provided a copy of the beneficiary's résumé, on which he indicated that he had graduated in 2009 from the Baptist University of the Americas in San Antonio, and had worked for the in 2007, the from 2008 to 2010, and the in 2009 and 2010. The petitioner also submitted a copy of the beneficiary's May 16, 2009 Bachelor of Arts in Biblical/Theological Studies from the Baptist University of the Americas and a copy of the beneficiary's May 1, 2010 minister's license granted by the petitioning organization.

The regulation at 8 C.F.R. § 214.2(r)(3) states, in pertinent part:

*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.

*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.

In a December 22, 2010 request for evidence (RFE), the director instructed the petitioner to provide evidence that the beneficiary had the required two years membership in its denomination or organization. The director also instructed the petitioner:

Explain how the affiliation exists between the beneficiary's religious denomination or organization and the petitioner's religious organization. Provide proof in the form of a corresponding registry, directory or association showing the connection between the religious organizations. Submit a letter from a Principal or Superior of the governing body of the religious denomination or organization in the United States verifying such commonalities as the ecclesiastical government, a recognized creed and form of worship, a formal code of doctrine and discipline; religious services and ceremonies; established places of religious worship, and religious congregations.

In response, the petitioner, through [REDACTED] stated in a January 5, 2011 letter:

We are denominationally different from [the beneficiary's] previous church affiliation (we are Evangelical Free Church; he was previously in a Baptist Church), however, the fundamental Christian doctrines and beliefs of the two denominations are nearly identical. In other words, [the beneficiary's] previous church experience will make him a good fit here.

In a January 12, 2011 letter, [REDACTED] stated that he has been a pastor with the petitioning organization for ten years and that prior to that he had been a pastor at two different Baptist churches. He stated that he was able to do this because the two organizations had the same doctrine. The petitioner also submitted a copy of the statement of faith for the [REDACTED] and a "Report of Committee on Baptist Faith and Message," first printed in the 1963 *Southern Baptist Convention Annual*. The petitioner did not indicate any specific language or information in the documents that it wished USCIS to consider; however, documents indicate that each organization identifies a belief in one God, Jesus Christ, the Bible, and the Holy Spirit. The petitioner has not shown that these beliefs are not common to all Christian religious denominations.

The director denied the petition, stating:

[T]he petitioner has not submitted a letter from a Principal or Superior of the governing body of the religious denomination or organization in the United States

verifying such commonalities as the ecclesiastical government, a recognized creed and form of worship, a formal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, and religious congregations.

The evidence show[s] that while the two organizations may share similar doctrinal beliefs they are of separate denominations with 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 as desired.

On appeal, counsel argues that the [REDACTED] the petitioner's denomination, and the [REDACTED] denomination are "affiliated," and therefore the beneficiary meets the requirements of the regulation. Counsel first asserts that "[t]here is no meaningful difference between" the petitioning organization and the Southern Baptist Convention. In a May 3, 2011 letter, [REDACTED] states that the Southern Baptist denomination and the [REDACTED] "share the same core doctrinal beliefs" and compares the different "categorical terminology" in the petitioner's statement of faith and the statement provided by the Southern Baptist Convention to conclude that the two denominations "share strongly similar views and beliefs in regard to these fundamental doctrines." Significantly, the petitioner fails to submit any documentation from a senior official in either the [REDACTED] or Southern Baptist Convention that the two organizations are denominationally linked or constitute a religious denomination as that term is defined by the regulation and as requested by the director in the RFE. Furthermore, the petitioner submitted no documentation to establish that the two organizations share a common type of ecclesiastical government as required by the regulation.

Counsel asserts that "[t]he regulations at 8 C.F.R. § 214.2 strongly suggest that this affiliation of common practice and relationship satisfies these requirements." Counsel argues that the regulation at 8 C.F.R. § 214.2(r)(1)(i) "could have been drafted to read" that the alien must be 'a member of *the petitioning* religious denomination . . . .' The fact is that the regulation does not *explicitly* require that the petitioner and beneficiary share the same denomination." [Emphasis in the original.]

Counsel's argument is not persuasive. As discussed above, section 101(a)(15)(R)(1) of the Act, 8 U.S.C. § 1101(a)(15)(R)(1), pertains to an alien who has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States for the two years immediately preceding the filing of the visa petition, and section 101(a)(27)(C)(ii)(I) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(I), pertains to an alien who seeks to enter the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination. Thus the statute requires that the beneficiary must belong to the same denomination as the petitioning organization.

Counsel further argues that “the regulation provides only vague guidance regarding its use of the term *affiliated*” and that “[t]he first proposed draft of 8 C.F.R. § 214.2 required an affiliation “in the subordinate or dependent position.” Counsel quotes 56 FR 66965, which provides:

These commenters worried that the proposed definition might exclude those faiths not organized as formal hierarchies. Organizations may be closely related to such faiths yet not dependent upon them. The proposed definition might likewise exclude inter-denominational organizations, which may not be subordinate to any denomination. The Service wishes to avoid this result. Accordingly, it has revised the definition of bona fide organization which is affiliated with the religious denomination by eliminating the phrase “in a subordinate or dependent position.”

Counsel asserts that this language “strongly suggests that the Service would not require an institutional affiliation between the denomination of the petitioning church and the beneficiary of the petition, as long as the denominations were sufficiently similar.” Counsel further asserts that this interpretation is supported by the language of 8 C.F.R. § 214.2(r)(3), which provides that the beneficiary’s denominational membership must have been in the same type of religious denomination as the United States religious organization. He alleges that this provision “makes sense because it allows for independent or unaffiliated churches to petition for pastors and religious workers who share a common creed and practice of worship.”

Counsel’s argument is again not persuasive. [REDACTED] admits in his January 5, 2011 letter that the petitioner is “denominationally different from [the beneficiary’s] previous church affiliation.” The regulation provides for organizations that are affiliated with a religious denomination; it makes no provision for affiliated religious denominations. The petitioner’s evidence clearly establishes that the petitioning organization has an “institutional” relationship with the [REDACTED] and is recognized under the group IRS tax exemption certificate granted to that organization for its subordinate units.

Counsel asserts that the fact that the petitioner accepts the credentials of the Southern Baptist Convention is evidence that the two denominations are affiliated. As discussed above, however, the regulation does not provide for “affiliated” denominations. It also does not interfere with a petitioning organization’s ability to set the qualifications for its employers. Thus, the petitioner’s acceptance of the beneficiary’s previous education and training from the Southern Baptist Convention does not, without more, establish that the two organizations share the same religious denomination. Counsel’s interpretation of the regulation at 8 C.F.R. § 214.2(r)(3) regarding independent and unaffiliated churches is partially correct. Although the regulation does provide that independent and unaffiliated churches do not have to establish that they belong to any particular denomination, the petitioning independent or unaffiliated church must still establish that the alien for whom it is petitioning as a religious worker must have been a member of the petitioning organization for at least two years prior to the filing of a petition.

The petitioner has not established that the beneficiary was a member of its religious denomination for the two years immediately preceding the filing of the petition.

Beyond the decision of the director, the petitioner has not established how it intends to compensate the beneficiary. The petitioner stated that it would receive financial support in the amount of \$32,500.

The regulation at 8 C.F.R. § 214.2(r)(11) provides:

*Evidence relating to compensation.* Initial evidence must state how the petitioner intends to compensate the alien, including specific monetary or in-kind compensation, or whether the alien intends to be self-supporting. In either case, the petitioner must submit verifiable evidence explaining how the petitioner will compensate the alien or how the alien will be self-supporting. Compensation may include:

(i) *Salaried or non-salaried compensation.* Evidence of compensation may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. IRS [Internal Revenue Service] documentation, such as IRS Form W-2 [Wage and Tax Statement] or certified tax returns, must be submitted, if available. If IRS documentation is unavailable, the petitioner must submit an explanation for the absence of IRS documentation, along with comparable, verifiable documentation.

The petitioner submitted no documentation with the petition to establish how it intends to compensate the beneficiary. In response to the RFE, the petitioner submitted a copy of its IRS Form W-3, Transmittal of Wage and Tax Statements, for 2009 with the accompanying IRS Forms W-2. These documents do not reflect any payment to the beneficiary, and the petitioner does not allege that the beneficiary will be replacing any of the individuals whose IRS Form W-2 it provided.

The petitioner also submitted a copy of its unaudited financial statements for 2009 and 2010. The 2009 "General Fund Expenses/Budget" reflects income in excess of expenses of \$27,275.29, which would not have been enough to pay the beneficiary's proffered salary. Additionally, the petitioner's balance sheet for 2009 reflects a loss of \$36,673.70. The petitioner's 2010 "Profit & Loss Budget Overview" contains a budget item for payroll expenses, but there is nothing in the document or in the record to indicate that the petitioner budgeted for the beneficiary's salary. The petitioner provided a partial copy of its March 2010 bank statement, which reflects an ending balance of \$73,563.60; however, this document alone, especially considering the other evidence of record, is insufficient to establish how the petitioner intends to compensate the beneficiary.

The petitioner has failed to submit competent and verifiable documentation of how it intends to compensate the beneficiary.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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.