

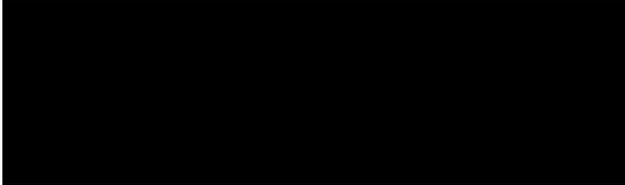
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



D13

Date: **MAR 28 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.

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 sustained.

The petitioner is a diocese of the Roman Catholic 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 an associate pastor. The director determined that the petitioner had failed to fully respond to the director's request for evidence (RFE) in that it failed to provide evidence of the beneficiary's admission into the United States in accordance with the RFE, failed to provide Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, transcripts as instructed in the RFE, and was not truthful in its filing as it did not disclose periods of stay in an R-1 nonimmigrant religious worker status by the beneficiary.

The AAO notes that the first two issues specifically relate to the application to extend the beneficiary's R-1 status. The regulation at 8 C.F.R. § 214.2(r)(12) requires that any request for an extension of stay as an R-1 must include initial evidence of the previous R-1 employment (including IRS documentation if available). Under 8 C.F.R. § 214.2(r)(5), extension of status is available only to aliens who maintain R-1 status.

The issue of the beneficiary's maintenance of R-1 status is significant only insofar as it relates 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 maintenance of status is an extension issue, rather than a petition issue, the AAO lacks jurisdiction to examine this issue.

On appeal, the petitioner's accredited representative states that the issue of credibility is predicated on a typographical error of one day in the beneficiary's entry into the United States. The representative 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 provided false or inaccurate information on the Form I-129.

In Part 3, question 2 of the Form I-129, the petitioner stated that the beneficiary last arrived in the United States on November 12, 2009 in an R-1 status. Section 1, question 2 of the employer attestation on the Form I-129 Supplement R, requires the petitioner to identify the beneficiary's prior periods of stay in the R visa classification for the past 5 years. The instructions also require the petitioner to submit photocopies of the Form I-94, Arrival-Departure Record, Form I-797, Notice of Action, and/or other U.S. Citizenship and Immigration Services (USCIS) documentation identifying these periods of stay. In Part 9 of the Form I-129, the petitioner stated that it had filed a petition (USCIS receipt number [REDACTED]) on behalf of the beneficiary which had been approved, another petition (USCIS receipt number [REDACTED]) which was denied, and a petition (USCIS receipt number [REDACTED]), which was also approved. The petitioner submitted a copy of a Form I-797A for USCIS receipt number [REDACTED] that included a copy of a Form I-94. Nonetheless, in its initial submission, the petitioner indicated that the beneficiary had no previous stays in the United States in an R-1 nonimmigrant religious worker status.

In her RFE, the director advised the petitioner that "the beneficiary has two approved I-129 petitions and was admitted as an R-1 worker" but that the petitioner had neglected to indicate this on the Form I-129 Supplement R and had not submitted a copy of the beneficiary's approval notice for USCIS receipt number [REDACTED]. The director instructed the petitioner to properly complete the Form I-129 Supplement R and to provide an explanation for those items that were not applicable.

In response, the petitioner resubmitted the relevant section of the Form I-129 Supplement R, and indicated that the beneficiary had been present in the United States in an R-1 status from June 20, 2009 to October 2009 and from November 11, 2009 to the date of the petition, January 24, 2011. The petitioner submitted copies of Form I-797, Notice of Action, indicating that the beneficiary was approved for R-1 status from June 20, 2009 to June 20, 2011, and again from June 20, 2009 to December 19, 2011.

In denying the petition, the director stated:

[T]he filing appears not being filed truthfully. In the initial filing, the petitioner did not disclose periods of stays in the R-visa of the beneficiary. In the response, the

petitioner listed periods of stay in R-1 status to include the time from November 11, 2009 to the present. However, the petitioner did not submit a form I-94 to show the beneficiary has been admitted as a religious worker.

On the contrary, USCIS records show that the beneficiary was admitted into the U.S. on November 12, 2009 as a parolee. Moreover, his parolee status was already expired on November 11, 2010. . . . The petitioner is required to submit the original admission form(s) I-94s in the period from November 11, 2009 to the present should the petitioner choose to appeal.

On appeal, the petitioner's representative explained that the beneficiary had entered the United States pursuant to an F-1 nonimmigrant student visa on July 21, 2004, and that following his ordination as a deacon, a Form I-129 petition was filed to change his status to that of R-1. That petition was approved and the beneficiary was granted religious worker status until June 20, 2011. The director denied a second petition for R-1 status for the beneficiary as an ordained deacon. The petitioner stated that it then filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, and a Form I-485, Application to Register Permanent Resident or Adjust Status, and a Form I-131, Application for Travel Document. The petitioner stated that the Form I-131 was approved and the beneficiary issued a Form I-512L which was valid until November 10, 2011. The petitioner's Form I-360 on behalf of the beneficiary was denied; however, another Form I-129 for nonimmigrant religious worker status was approved and was valid until December 19, 2011. The petitioner submits documentation that supports its statements.

The record does not reflect that the petitioner has filed an "untruthful" petition. Although the petitioner did not initially identify any periods of stay in an R-1 status for the beneficiary on the Form I-129 Supplement R, it listed the petitions that it had filed on behalf of the beneficiary in its explanation on the Form I-129. It offered further explanation in response to the RFE and provided copies of the Forms I-797 of the approved petitions. On appeal, the petitioner offers a more detailed explanation and provides supporting documentation.

Although the beneficiary was paroled into the United States pursuant to his authorized travel document, he was also subsequently reinstated in R-1 status valid until December 19, 2011. Thus, the beneficiary was present in the United States in valid R-1 status at the time this petition was filed.

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 met that burden.

ORDER: The appeal is sustained.