



U.S. Citizenship
and Immigration
Services

[REDACTED]

813

Date: **NOV 15 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, 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration (USCIS) policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

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 AAO affirmed the director's determination that the petitioner had not established that the beneficiary had the required two years membership in the denomination.

On motion, counsel again asserts that the director "applied an incorrect and inconsistent standard of law, inexplicably departed from the established procedures and precedent decisions, and abused [her] discretion by substantially neglecting to consider and review the relevant evidence." Counsel also argues that the beneficiary did not engage in unauthorized employment. However, as discussed in the AAO's prior decision, the issue of the beneficiary's failure to maintain his R-1 nonimmigrant religious worker status is not within the AAO's jurisdiction and was not a basis of the AAO's dismissal of the appeal and is not an issue in the instant motion. Counsel submits a brief in support of the motion.

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 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.

Counsel asserts that the “Service’s failure to consider the relevant evidence which was submitted is an abuse of discretion.” Counsel then refers to the director’s decision but does not point to any evidence that he believes the AAO failed to consider. Counsel specifically refers to the June 17, 2010 letter from [REDACTED] executive director for [REDACTED] of the [REDACTED] and an excerpt from the 2009 directory for the [REDACTED]. The AAO addressed both of these documents in its decision.

Counsel also states:

We fail to understand how the AAO has determined that “similar practices do not alone provide evidence that the organizations belong to the same denomination” . . . The regulation at 8 C.F.R. § 214.2(r)(2) clearly states that “one or more of the following,” . . . a common form of worship . . . a recognized common creed or statement of faith shared among members . . . The evidence provided by the establishes [sic] all these criteria. AAO’s interpretation of the regulation is going beyond the legislative intent and imposing the burden substantially more than what is required by the law itself.

Counsel, however, ignores the full text of the regulation at 8 C.F.R. § 214.2(r)(3), which states:

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

[Emphasis added.]

Thus, the regulation provides that the petitioner must establish that it is part of a religious group “that is governed or administered under a common type of ecclesiastical government” in addition to establishing that it meets one of the criteria outlined in subsections (A) through (F).

Counsel also states:

Furthermore, we fail to understand why the AAO is assuming that the beliefs and practices of the [petitioner] and ██████████ are different than the teachings and practices of Christianity. They are not different. . . . We do not understand why the AAO is placing the burden on the petitioner to establish that the petitioner’s beliefs are different from the beliefs of Christianity. We deeply regret that AAO has taken such a narrow view of Christianity.

Counsel’s characterization of the AAO’s “narrow view” is misplaced. In its decision, the AAO noted the petitioner’s argument that it is of the same denomination as ██████████ because they share the same religious practices of baptizing their converts, anointing their members, holding communion, and washing feet. While these practices are similar to many Christian denominations, it cannot be reasonably argued that all Christians are part of a single denomination.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. As the petitioner has failed to establish that the decision was based on an incorrect application of law, the previous decisions of the AAO and the director will be affirmed. The petition is denied.

ORDER: The AAO’s decision of January 18, 2012 is affirmed. The petition is denied.