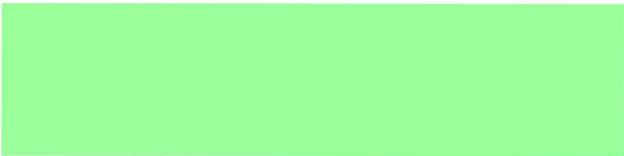
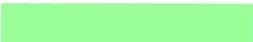




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **APR 12 2013** Office: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)

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 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,

Ron Rosenberg
Acting 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 an Islamic cultural center. It seeks to extend the beneficiary's classification as a special immigrant religious worker pursuant to section 101(a)(15)(R) of the Act to perform services as an imam. The director determined that beneficiary has reached the statutory maximum period for which he can qualify as an R-1 nonimmigrant religious worker.

Counsel asserts on appeal that the petitioner has "submitted evidence that the Beneficiary did not remain in the United States permanently and that his previous R-1 stay was intermittent." Counsel also asserts that "TNA 101(a)(15)(R) does not contain a prohibition on extending a period of stay in the U.S. for a R-1 religious worker." Counsel stated on the Form I-290B, Notice of Appeal or Motion, that he would submit a brief and/or additional evidence within 30 days. As of the date of this decision, seven months after the appeal was filed, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

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)(6) provides:

Limitation on total stay. An alien who has spent five years in the United States in R-1 status may not be readmitted to or receive an extension of stay in the United

States under the R visa classification unless the alien has resided abroad and has been physically present outside the United States for the immediate prior year. The limitations in this paragraph shall not apply to R-1 aliens who did not reside continually in the United States and whose employment in the United States was seasonal or intermittent or was for an aggregate of six months or less per year. In addition, the limitations shall not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. To qualify for this exception, the petitioner and the alien must provide clear and convincing proof that the alien qualifies for such an exception. Such proof shall consist of evidence such as arrival and departure records, transcripts of processed income tax returns, and records of employment abroad.

In denying the petition, the director stated:

USCIS [U.S. Citizenship and Immigration Service] records show that the beneficiary was first admitted in R-1 status on January 18, 2005 and remained in the United States until April 15, 2005. Beneficiary was again admitted in R-1 status on July 15, 2005 and departed the United States on July 13, 2008. Beneficiary was last admitted in R-1 status on November 7, 2008 until November 7, 2011. The beneficiary has reached the five-year limit; therefore, no more extensions may be granted.

On appeal, counsel asserts that the beneficiary's "prior employment was intermittent." However, despite counsel's statement to the contrary, the petitioner submitted no documentation that the beneficiary's "stay was intermittent" and no documentation to establish that, even with the alleged intermittent stay, the beneficiary has not exceeded the five-year statutory limit for stay in the United States.

Counsel also asserts:

INA 101(a)(15)(R) does not contain a prohibition on extending a period of stay in the U.S. for a R-1 religious worker. INA 101(a)(15)(R) only prohibits entering the U.S. for a period . . . not to exceed 5 years. 8 C.F.R. § 214.2(r) impermissibly extends the plain meaning of the statute.

Counsel cites to no regulation or case law to support his assertion that an alien may be approved for R-1 status an unlimited number of times provided that any stay is for less than five years. Despite counsel's assertion, such an interpretation is not within the plain meaning of the statute, which states that an alien may enter the United States for a period not to exceed five years. The beneficiary has spent more than five years in the United States in R-1 status, and the petitioner has not established that the regulatory limitation on total stay does not apply in this case. As a result, this petition cannot be approved.

(b)(6)

Page 4

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.