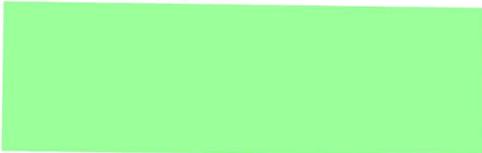




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: DEC 03 2013

OFFICE: CALIFORNIA SERVICE CENTER

FILE:



IN RE:

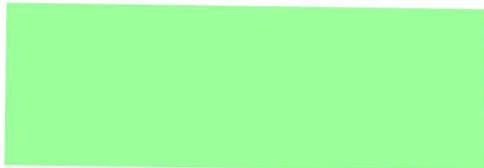
Petitioner:

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
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 AAO will withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further action and consideration.

The petitioner is a church. It seeks to classify the beneficiary as a nonimmigrant 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), to perform services as a "children's ministry/worship leader/college ministry." The director determined that the petitioner failed to overcome the negative findings of a compliance review site visit.

On appeal, the petitioner submits a brief from counsel, a letter of resignation from Eun Kyung Shin, and copies of documents already in the record.

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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(1) states 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;
- (ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);
- (iii) Be coming solely as a minister or to perform a religious vocation or occupation as defined in paragraph (r)(3) of this section (in either a professional or nonprofessional capacity);
- (iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and
- (v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

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

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 filed the Form I-129, Petition for a Nonimmigrant Worker on October 11, 2012, seeking to employ the beneficiary in the full-time position of "children's ministry/worship leader/college ministry." The petitioner indicated that it currently has a congregation of 120 members, an annual income of \$164,937.43 for 2011, and that it will compensate the beneficiary with an annual salary of \$19,200 per year (or \$1,600 per month). In a letter accompanying the petition, the petitioner described the beneficiary's proposed duties in a weekly schedule which included a total of 40 hours. The petitioner stated that it presently uses the premises of [REDACTED] "rent-free," but that it has purchased land on which it plans to build a future church. The petitioner also asserted that it had not previously employed the beneficiary, but that he had been involved as a member and volunteer at the petitioning church since August 2008, and that he completed a Master's degree in Divinity in May 2012.

At the time of filing, the petitioner submitted a letter from [REDACTED] confirming that it "has been allowing [the petitioning church] to use our [REDACTED] facility rent-free." The petitioner also submitted a title insurance policy dated April 28, 2011 regarding a property owned by the petitioning church. Additionally, the petitioner submitted financial statements relating to the first and second quarters of 2012, and copies of recent bank statements from a Bank of America checking account held by the petitioning church. The bank statements covered the months of January, February, April, May, June, and July of 2012, and listed "Average Ledger Balances" of \$26,830.01, \$29,391.46, \$31,553.55, \$34,213.27, \$36,707.32, and \$46,540.05, respectively. The petitioner submitted Forms 941, Employer's Federal Quarterly Tax Returns, for the first and second quarters of 2012, listing one employee receiving \$7,350.00 in compensation for each quarter.

On October 30, 2012, USCIS issued a Notice of Intent to Deny the petition (NOID). In the notice, the director discussed the negative findings of a November 28, 2006 site investigation of the petitioning church, conducted in connection with a petition filed on behalf of a separate beneficiary, [REDACTED]. At the time, the petitioner sought to hire Ms. [REDACTED] as a full-time music director with a monthly salary of \$800. The NOID, in part, stated the following regarding an interview with the petition's signatory, Pastor [REDACTED] of the petitioning church, [REDACTED].

LEE stated that his congregation has fifty (50) to sixty (60) members, all of whom are Korean decent. LEE does not have member registration documents. [REDACTED] holds a service on Sundays from 10:00 am to approximately 3:00 pm, including a luncheon after the service, and daily morning prayer from 5:30 am to 6:30 am with no more than five (5) or 6 (six) persons attending. There is no church bulletin listing service and activities. Lee stated that [REDACTED] is working as a volunteer and described [REDACTED] activities on Sunday Service in details but [REDACTED] was not able to describe [REDACTED] proposed activities to account for full-time forty hours work week. [REDACTED] stated that [REDACTED] also conducts choir/signing group on most Friday nights at her house. [REDACTED] agreed that [REDACTED] proposed salary of eight hundred dollars a month is quite low but [REDACTED] is unable to pay more than that. [REDACTED] stated that [REDACTED] pays him approximately three thousand dollars a month in salary including housing supplemental. [REDACTED] could not immediately produce evidence of church income for 2005. ... [REDACTED] could not immediately produce payroll or church expansive for the year of 2005 or 2006. According to [REDACTED] in addition to revenue generates from [REDACTED] registered members, [REDACTED] also receives financial assistance from [REDACTED] and [REDACTED] which is approximately eight hundred dollars a month from each organization.

The director stated that the findings of the visit called into question the petitioner's ability to provide compensation and its need for a full time religious worker. The NOID instructed the petitioner to submit additional documentation regarding its ability to compensate the beneficiary, including tax and payroll documentation for 2010 and 2011 and quarterly wage reports for the last four quarters. The petitioner was also instructed to submit its hours of operation and a work schedule for the beneficiary, as well as information about the proffered position and evidence of the beneficiary's work history during the past two years.

In a letter responding to the NOID, counsel for the petitioner noted that the petition on behalf of Ms. [REDACTED] was approved on April 17, 2007, and asserted that she was employed by [REDACTED] until August 31, 2008. The petitioner submitted a copy its letter supporting Ms. [REDACTED] petition, a copy of Ms. [REDACTED] approval notice, and Forms W-2 indicating that the petitioner paid Ms. [REDACTED] \$3,200.00 in 2007 and \$7,276.67 in 2008. The petitioner submitted copies of its Forms W-3 for 2010 and 2011, indicating that it paid \$29,400 in wages during each of those years. The petitioner resubmitted copies of its Forms 941 for the first two quarters of 2012 and additionally submitted Forms 941 for the fourth quarter of 2011 and the third quarter of 2012, which showed wages of \$7,350 for one employee and \$10,550 for two employees respectively. The petitioner also submitted additional bank statements for the months following the filing of the instant petition.

Regarding the request for evidence of the beneficiary's work history during the last two years, the petitioner again asserted that it had not employed the beneficiary, but that he had been a member since August of 2008 and that he had received a Master's degree in Divinity in May 2012. The petitioner submitted a letter confirming the beneficiary's membership in the petitioner's church and denomination, and a copy of the beneficiary's transcript from [REDACTED]. Regarding the proffered position, the petitioner resubmitted the weekly schedule describing 40 hours of duties.

On February 4, 2013, the director denied the petition, again quoting the findings of the 2006 site visit, and stating: [REDACTED] is a qualifying religious entity that petitioned for [REDACTED] but it is doubtful it has financial ability to pay or the need for a full time religious position at the present time." The director did not specifically discuss the evidence submitted by the petitioner in support of the instant petition or in response to the NOID, but found that "[t]he petitioner has not overcome the credibility issues raised."

On appeal, the petitioner submits copies of documents previously submitted as well as a letter of resignation from Ms. [REDACTED] stating that her employment will end on August 31, 2008. In his brief, counsel for the petitioner again notes that the petition filed on behalf of Ms. [REDACTED] was eventually approved, and argues that this indicates that USCIS found that the petitioner had established eligibility. To the extent that counsel argues that USCIS is therefore bound to approve the instant petition, USCIS is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). USCIS need not treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the petition on behalf of a previous beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The petitioner has submitted evidence relating to the petitioner's growth in membership and financial position since the 2006 site visit was conducted. The negative findings of the 2006 site visit focused on the lack of evidence supporting the petitioner's ability to pay Ms. [REDACTED] and the petitioner's inability to sufficiently articulate Ms. [REDACTED] duties to warrant a full-time position. However, in support of the instant petition and in response to the NOID, the petitioner has submitted payroll records, bank statements, and a detailed description of the beneficiary's full-time duties. The director did not discuss these submissions, and has not demonstrated that the concerns raised by the 2006 site visit are still relevant. Similarly, although the director mentions credibility issues raised by the site visit, she does not discuss the submitted evidence regarding Ms. [REDACTED] employment following approval of the petition. Accordingly, the findings of the 2006 site visit are not sufficient to serve as the basis for the denial of the petition.

However, review of the record shows additional grounds of eligibility that have not been established. The AAO may deny an application or petition that fails to comply with the technical requirements of the law 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 (9th 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 findings of a more recent compliance review relating to the instant petition call into question whether the petitioner has established that it qualifies as a bona fide non-profit religious organization. The USCIS regulation at 8 C.F.R. § 214.2(r)(3) states, in pertinent part:

(5) Definitions. As used in paragraph (m) of this section, the term:

Bona fide non-profit religious organization in the United States means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the Internal Revenue Service (IRS) confirming such exemption.

Bona fide organization which is affiliated with the religious denomination means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the IRS confirming such exemption.

Tax-exempt organization means an organization that has received a determination letter from the IRS establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the Internal Revenue Code . . .

The regulation at 8 C.F.R. § 214.2(r)(9) states:

- (i) A currently valid determination letter from the IRS showing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or
- (iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3), or subsequent amendment or equivalent sections of prior enactments, of the Internal Revenue Code, as something other than a religious organization:
 - (A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;
 - (B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;
 - (C) Organizational literature, such as books, articles, brochures, calendars, flyers, and other literature describing the religious purpose and nature of the activities of the organization; and
 - (D) A religious denomination certification. The religious organization must complete, sign and date a statement certifying that the petitioning organization is affiliated with the religious denomination. The statement must be submitted by the petitioner along with the petition.

Accompanying the Form I-129 petition, the petitioner submitted a January 27, 1970 determination letter from the IRS stating that the [REDACTED] was ruled to be tax-exempt under section 501(c)(3) and was granted a group exemption which would apply to its "cooperating churches and institutions." On the letter, the [REDACTED] address appears crossed out and a different address is handwritten. The petitioner also submitted a November 24, 2009 letter from the [REDACTED] stating that the petitioner "is listed as a cooperating church in good standing" and qualifies for tax exemption. The submitted IRS determination letter did not indicate an employer identification number (EIN), but the November 24, 2009 letter from the [REDACTED] listed the number as [REDACTED]

According to a report dated December 13, 2012, a compliance review of documentation submitted by the petitioner found the following:

The submitted determination letter is old and does not list an EIN number for the organization. The previous [compliance review] that was completed December 2006 includes a document in the Attachments Sub-Tab titled TAX- [REDACTED] which is a copy of a determination letter from the IRS dated July 26, 2005 for [REDACTED]

[REDACTED] The letter includes an EIN number of [REDACTED]. The IRS.GOV/charities Select Check Tool shows no tax-exempt organizations match EIN number [REDACTED].

The IRS.GOV/charities Select Check Tool shows that EIN number [REDACTED] is a tax-exempt organization. However, the discrepancy in EIN numbers should be explained ...

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The AAO will remand the petition in order for the director to determine whether the petitioner has established that it qualifies as a bona fide non-profit religious organization. Pursuant to 8 C.F.R. § 103.2(b)(16)(i), the petitioner must be provided an opportunity to respond to the derogatory information described above.

The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its petition within a reasonable period of time. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review