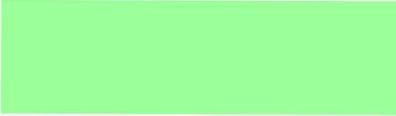


(b)(6)

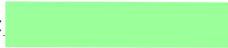
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



Date: **FEB 08 2013**

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, 8 U.S.C. § 1101(a)(15)(R)(1)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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,

  
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 AAO will withdraw the director's decision and 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 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 missionary. The director determined that the petitioner has not established that the beneficiary had been a member of its religious denomination for two full years immediately preceding the filing of the petition.

The petitioner states on appeal that it had submitted evidence of the beneficiary's qualifying membership in its denomination. The petitioner submits 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) 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.

The petition was filed on May 23, 2012. Therefore, the petitioner must establish that the beneficiary was a member of its denomination for at least the two years immediately preceding that date.

The regulation at 8 C.F.R. § 214.2(r)(3) provides:

*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 Part 9 of the Form I-129, Petition for a Nonimmigrant Worker, the petitioner, stated that the beneficiary was a follower of [REDACTED] and [REDACTED] "two leading brothers of the [REDACTED]" and that he was a member of the Church in Shanghai. The petitioner also explained that members of the church, including the beneficiary, had been persecuted (and prosecuted) by the Chinese government for their religious beliefs. In Section 1, question 4 of the Form I-129 Supplement R, the petitioner further stated, "The [petitioning organization] and the

Church in Shanghai are member churches of a religious denomination . . . known as [REDACTED]. There are approximately 3,000 local churches throughout the world that are identified as the [REDACTED].”

In its May 21, 2012 letter submitted in support of the petition, the petitioner stated:

The [REDACTED] are a religious group of Christian believers that are governed by a group of ecclesiastical principals, co-workers from some of our affiliated [REDACTED]. Each [REDACTED] also has its own local administration comprised of a group of elders who oversee the church members and church affairs. They manage the financial affairs of the church and maintain fellowship with the other [REDACTED].

The petitioner submitted a copy of an April 1, 2012 letter signed by [REDACTED] and [REDACTED] in Shanghai.” The letter confirmed that the beneficiary “has been an active member of the Church in Shanghai, from October 1994 until December 2011.” The letter contained the following handwritten note:

Due to the restriction, even persecution of Christians by the Chinese government, the church in Shanghai, one member of the [REDACTED] does not have a public, registered meeting place, or any public contact information. Neither does the church in Shanghai have a general list of all the members.

The record is not clear as to who authored the note. The petitioner submitted documents with translations of two court records reflecting that the beneficiary had received terms of imprisonment in China for practicing his Christian beliefs.

In a July 20, 2012 Notice of Intent to Deny (NOID) the petition, the director, citing to a July 2007 onsite compliance review verification conducted at the petitioner’s premises in connection with a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, filed on behalf of another beneficiary, sought additional information about the petitioner and the proffered position, including tax documentation for the beneficiary and the petitioner, the petitioner’s location, and the beneficiary’s prior work history. In her NOID, the director erroneously cited to the superseded regulations at 8 C.F.R. § 204.5(m) governing immigrant religious workers.

In denying the petition, the director, again citing to the erroneous immigrant religious worker regulation, noted that the petitioner had satisfactorily responded to all of the issues raised by the director in the NOID except the question of the beneficiary’s qualifying membership in the petitioner’s denomination. The director alleged:

In the Request for Evidence [RFE], the petitioner was clearly advised to submit evidence of previous R-1 employment indicating he has been 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 record does not, however, reflect that the director issued the petitioner an RFE requesting additional information about the beneficiary's membership in the denomination. On appeal, the petitioner reiterates the problems that the Church in Shanghai has experienced with the Chinese government, stating:

Even till now, the Church in Shanghai cannot legally register with the government, although they meet in around 200 homes, scattered all over Shanghai, for Sunday worship of the Lord Jesus, they cannot have a public meeting hall. The leading ones of the Church in Shanghai, as well as the homes open for meetings are still under constant risk of being bothered by the government. There is not surety or confirmation from the government that the believers of the [REDACTED] in Shanghai can meet securely without interference from the government. That is the reason why the Church in Shanghai cannot keep a record of the names and contact information of the believers (showing membership; as what we do in the western free world), neither can they publically announce their financial report, or have large-size students meetings (junior high, high school, and college-level).

The petitioner resubmits the documents indicating the beneficiary had been imprisoned in China for his religious beliefs and the letter from the [REDACTED] from the Church in Shanghai attesting to the beneficiary's membership. The petitioner also submits a November 1, 2012 letter from the Church in Pasadena, certifying that the beneficiary had been "an active member" of that organization from December 2011 to April 2012, when he moved to the petitioning organization.

The AAO will withdraw the director's decision. The petitioner has submitted sufficient documentation to establish that the beneficiary was a member of its religious denomination for the two years immediately preceding the filing of the visa petition. The petitioner has provided sufficient explanation and documentation as to why no official records of the beneficiary's membership exists; the letters from the [REDACTED] sufficiently attest to his membership.

Nonetheless, the petition cannot be approved as the record now stands.

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

*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 record does not establish that the petitioner has satisfactorily completed an inspection or other compliance review. The record is therefore remanded to the director to determine if another review under the above-cited regulation is appropriate.

The matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**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 AAO for review.