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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

Date: **JAN 31 2013** 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 (the 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.

Thank you,


f 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 classification of the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as a priest. Based on the results of an onsite inspection of the petitioner's premises, the director determined that the petitioner had not established that it is "operating in the capacity claimed on the petition and [is] a bonafide [sic] religious organization that can support the beneficiary."

The director stated that the beneficiary signed the Form I-129, Petition for a Nonimmigrant Worker, and therefore was petitioning on his own behalf. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(7) permits only "[a]n employer" to file a petition for an R-1 nonimmigrant religious worker. However, a review of the Form I-129 reveals that while the beneficiary improperly signed the employer attestation required by the regulation at 8 C.F.R. § 214.2(r)(8), Part 7 of the Form I-129, certifying to the truth and correctness of the petition, was signed by [REDACTED]. Therefore, the AAO withdraws this statement by the director.

The director also determined that the beneficiary had violated terms of his B-2 nonimmigrant visitor's visa in that he was not authorized to work in the United States. An alien who is present in the United States pursuant to a B-2 visa is not authorized to work in the United States. 8 C.F.R. § 214.1(e). Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act.

The issues of the beneficiary's prior employment and maintenance of his B-2 status are significant only insofar as they relate 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. 8 C.F.R. § 214.1(c)(5). Because the beneficiary's past employment and maintenance of status are extension issues, rather than petition issues, the AAO lacks authority to decide those questions, and they will be addressed only as they impact the nonimmigrant petition.

On appeal, counsel asserts that the director "selectively excerpted comments from written statements, thereby failing to consider the totality [of] the evidence submitted in support of the R-1 petition and in response to the NOID." In support of the appeal, counsel submits a brief and additional documentation as well as copies of previously submitted documentation.

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

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(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 it operates as a bona fide nonprofit tax-exempt religious organization.

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 [U.S. Citizenship and Immigration Services] 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.

On the Form I-129, filed on November 10, 2011, the petitioner stated that it was established in 1993 and that it currently had two employees. The petitioner also stated that the beneficiary would be working at [redacted] Cabin John, Maryland, the petitioner's address of record. In Part 5, the petitioner stated that it had a gross income of \$201,464.75 and net income of \$58,195.14. In section 1 of the Form I-129 Supplement R, the petitioner stated, "The church will fully support the alien by covering all the alien's medical expenses, provide for food, room, place of [worship], all necessities

for any work to be done, as well as any personal needs.” As discussed earlier, the attestation was signed, not by an authorized official of the petitioning organization, but rather by the beneficiary.

In a November 22, 2011 request for evidence (RFE), the director requested additional documentation regarding the petitioner, including information on its congregation, employees, and location. In response, the petitioner submitted an undated statement from [REDACTED] who identified himself as a board member, and stated that the beneficiary is the only employee of the petitioning organization. The petitioner also submitted a copy of an August 12, 2009 letter from the [REDACTED] and a July 28, 2009 “certificate and affidavit of satisfaction” from the Circuit Court of Montgomery County reflecting that the petitioner had paid the last installment on its mortgage on the property located at its address of record. The petitioner provided copies of its utility bills, bottled water bills, and a bill from [REDACTED] in the name of [REDACTED] at the petitioner’s address. The petitioner also provided a copy of a capacity certificate from the [REDACTED], a copy of a Maryland sales and use tax exemption certificate, documentation from the organization’s website, a flyer advertising an event at the church, and photographs of services at the church.

On January 25, 2012, an immigration officer (IO) visited the petitioner’s premises for the purpose of verifying the petitioner’s claims in its petition. The IO reported that while a sign indicated the existence of the church, she found the exterior “unkempt” with “[s]ome doorways and windows . . . boarded. The general appearance of the building and land is neglected.” The IO also reported that the entrances to the building were locked but that in viewing the interior through the front glass doors, she was unable to see anyone and “no lighting or power seemed to be turned on.” The IO reported that when she attempted to call [REDACTED] who signed the petition on behalf of the petitioner, the contact number listed on the petition was answered by [REDACTED] the receptionist at prior counsel’s law firm.¹ The IO reported that the receptionist “would not provide any additional phone number for this Officer to call” and stated that she would connect the IO to [REDACTED] via a three-way call. The IO reported that she attempted to call the numbers listed on the petitioner’s website but no one answered and the mailbox was full.

The IO reported that, via the three-way call, [REDACTED] stated that “except for late evenings, the church is open all day” and that the church’s website “shows a schedule of services for weekdays and weekends with times ranging from 5:45am to 9pm.” The IO noted that she “visited the church at approximately 12pm and no employees or members were seen at this site.” The IO further reported that [REDACTED] stated that the beneficiary has worked for the church since January 2011, that he earns \$5,500 per month, and that the church provides him with no other compensation.

In a March 2, 2012 Notice of Intent to Deny (NOID) the petition, the director advised the petitioner of the IO’s findings and provided the petitioner with an opportunity to submit evidence in rebuttal.

¹ Different counsel represented during the previous stages of this proceeding and will be referred to as “prior counsel” in this decision. Part 8 of the Form I-129 indicates that [REDACTED] of prior counsel’s office prepared the petition for the petitioner.

In response, the petitioner submitted a copy of its March 2012 weekend schedule and a copy of its weekly schedule for March 1 through April 6. In a March 26, 2012 letter, Said [REDACTED] stated, "We have liturgy service three times a week, spiritual meetings twice a week; additionally we have many summer activities. Our Church is a very active Church with over 170 members" [REDACTED] also classified the beneficiary as "a visitor." In a March 28, 2012 unsigned statement, [REDACTED] stated that he is a member of the petitioner's board of deacons, that the "main activity of the Church takes place on Sundays and about 120-160 persons attend the Liturgy," that [REDACTED] was the petitioner's assigned priest until he became a bishop in 2009, that "[s]ince 2009, the Church was served by several priests from other churches or by visiting priests," and that "[a]t the present time, [the beneficiary] is serving the Church during his visit to the USA."

The petitioner resubmitted copies of its utility bills, including a June 26, 2012 power bill that it identifies as its phone bill, and new photographs that counsel states are "pictures taken during prayer/baptism/summer activities." The petitioner did not address the IO's findings regarding the condition of the building and its environment. The director determined that the petitioner's response to the NOID did not overcome the proposed grounds for denial. The director also stated that "it appears the beneficiary filed the petition for himself; as he is the signatory on the petition."

As discussed previously, the director erred in stating that the beneficiary signed the petition. However, the beneficiary improperly signed the attestation. The regulation at 8 C.F.R. § 214.2(r)(8) provides that "[a]n authorized official of the prospective employer of an R-1 alien must complete, sign and date an attestation prescribed by USCIS and submit it along with the petition." As the beneficiary was not lawfully employed by the petitioner, he could not serve as the "authorized official of the prospective employer." Therefore, the petitioner has not submitted a properly executed attestation as required by the regulation at 8 C.F.R. § 214.2(r)(8).

On appeal, counsel does not address the IO's findings that the building contained boarded up windows and doors. Counsel asserts, however, "Even if the exterior of the building is 'unkempt,' in 2009 the church congregation managed to pay-off [sic] a \$500,000 mortgage trust deed with a bank!" Counsel further asserts that the documentation submitted consisting of the utility bills, the petitioner's satisfaction of its mortgage, photographs, and the fact that the IO found a sign for the church is sufficient evidence that the petitioner exists at the given location.

Counsel states that the fact that no one was at the building and no lights were on "at noon on January 25, 2012" has "[m]any plausible explanations," including the fact that it was during "a normal lunch time. The petition does not state that services are held at noon on Wednesdays. This is an inconclusive finding of anything really derogatory." Nonetheless, neither the petitioner nor counsel states the building was closed, locked and without lights because whoever worked there was at lunch at the time the IO visited. Counsel merely speculates on what might have occurred. According to the IO, the petitioner's website "shows a schedule of services for weekdays and weekends with times ranging from 5:45am to 9pm."

On appeal, the petitioner submits additional documentation consisting of photographs which it states depict the beneficiary in performance of his work at the church, a June 8, 2012 proposal for repair of the air conditioner, copies of several pledge cards, copies of insurance documentation on the church's van, and a copy of an invoice for printing 1,300 copies of a newsletter. The latter is billed to an address at [REDACTED] Germantown, MD. The petitioner offers no explanation of this address.

Despite the fact that the petitioner has submitted documentation of the existence of the organization and its recognition as a nonprofit religious organization by the IRS, the question raised by the onsite visit is whether the petitioner is operating as a bona fide religious organization as claimed in its petition. The boarded-up doors and windows, the condition of the property, and the absence of anyone at the petitioner's location during its stated business hours, caused the IO to question the legitimacy of the petitioner's operation. While counsel raises questions on appeal regarding the director's decision, she provides no real answers to explain the IO's inability to verify the petitioner's claims.

The record sufficiently establishes that the petitioner operates in some capacity. However, the record does not establish that the petitioner has successfully completed a verification or onsite review as provided by the regulation at 8 C.F.R. § 214.2(r)(16) during which the IO can verify the petitioner's claims. Accordingly, the matter is remanded to the director to determine if another onsite inspection of the petitioner's premises is appropriate. The petitioner has presented conflicting statements regarding the beneficiary's employment with the petitioning organization. The AAO notes that while the beneficiary's employment while in a B-2 status is outside the AAO's jurisdiction, these conflicting statements raise questions as to the credibility of the petitioner's claims in the instant petition, and any subsequent onsite review should address these inconsistencies.

On remand, the director shall also address whether the petitioner has established how it intends to compensate the beneficiary. The regulation at 8 C.F.R. § 214.2(r)(11) provides:

Evidence relating to compensation. Initial evidence must state how the petitioner intends to compensate the alien, including specific monetary or in-kind compensation, or whether the alien intends to be self-supporting. In either case, the petitioner must submit verifiable evidence explaining how the petitioner will compensate the alien or how the alien will be self-supporting. Compensation may include:

- (i) *Salaried or non-salaried compensation.* Evidence of compensation may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. IRS documentation, such as IRS Form W-2 [Wage and Tax Statement] or certified tax returns, must be submitted, if available. If IRS

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documentation is unavailable, the petitioner must submit an explanation for the absence of IRS documentation, along with comparable, verifiable documentation.

The petitioner did not indicate in Part 5 of the Form I-129 any compensation that that it would provide to the beneficiary. The attestation, signed by the beneficiary, denied that the beneficiary would be self-supporting and stated that he would be fully supported by the petitioner, including food, room, and "all necessities for any work to be done." The petitioner submitted no documentation to establish how it would compensate the beneficiary. In response to the RFE, the petitioner submitted an unaudited copy of its "Profit & Loss" statement for January through December 2010. The document contains line items for clergy services and temporary priests' salaries. The petitioner, however, submitted no supporting documentation to confirm the validity of the figures used in the unaudited financial statement. The petitioner submitted none of the documentation outlined in the above-cited regulation. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Additionally, on remand the director shall address the petitioner's failure to provide a properly completed attestation as required by the regulation at 8 C.F.R. § 214.2(r)(8).

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.