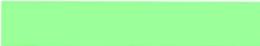


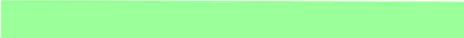


U.S. Citizenship  
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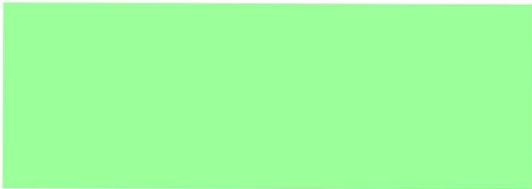


Date: JUN 12 2013 Office: CALIFORNIA SERVICE CENTER FILE: 

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.

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 extend the beneficiary's status as a nonimmigrant religious worker pursuant to section 101(a)(15)(R) of the Act to perform services as an associate pastor. The director, based on the results of a compliance review verification visit at the petitioning organization, determined that the petitioner had not established that it is "operating in the capacity claimed on the petition and [is] a bonafide religious organization that can support the beneficiary."

On appeal, counsel states that the director erred in a decision that was "likely influenced, in a large part, by an incorrect date given . . . by the property owner of" the petitioner's previous address. Counsel submits a brief and 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 first issue is whether the petitioner has established that it operates as a bona fide nonprofit 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.

The petitioner explained on the Form I-129, Petition for a Nonimmigrant Worker, filed on March 30, 2012 that:

The . . . Petitioner filed Form I-129 for the beneficiary originally in August of 2010. That petition was approved on November 18, 2011. However, the validity dates for the approval notice were only from 11/09/2011 to 03/31/2012, which would be extremely short for this type of visa; almost certainly a typographical error by CIS.

The present petition is being filed so that the validity dates for the I-94 for the principal applicant and his accompanying family members can be corrected.

In his March 28, 2012 letter accompanying the petition, counsel stated that his office had questioned USCIS about the short approval time for the beneficiary's visa and that an officer at the "CIS 800#" "concurred that it appeared that there was an error of the validity date on the approval notice." Counsel also stated:

Since we have not received any firm assurances from CIS to date that the error will be corrected, we felt we had no other option than to recommend to the petitioner that they file another I-129 so that the beneficiary would not fall out of status. . . .

At this time, we are submitting technically complete applications without all of the usual supporting documentation, as it seems quite clear that the original I-129 approval notice was issued with incorrect dates due to CIS error. The documentation should not be required since the case was just approved last November and the beneficiary has been in the U.S. for barely one month. . . .

Counsel provided a copy of a November 18, 2011 Form I-797C, Notice of Action, advising counsel that the petition filed on behalf of the beneficiary by the petitioner under USCIS receipt number [REDACTED] had been approved for the period November 9, 2011 to March 31, 2012.

The basis for the director's decision is centered on the prior nonimmigrant religious worker petition. On that petition, the petitioner apparently identified its address as [REDACTED], Worcester, Massachusetts.<sup>1</sup> During an onsite inspection of these premises in February 2012, an immigration officer (IO) was advised that the petitioner had vacated the premises in 2010. In response to the director's May 9, 2012 Notice of Intent to Deny (NOID) the petition, the petitioner stated that it had changed suites at the [REDACTED] address in January 2010 but had not vacated the property until 2011, when it moved to an address on [REDACTED] in Worcester, MA. The petitioner also stated that in a July 22, 2011 response to a request for evidence (RFE) in its prior petition, the petitioner provided a copy of an April 2011 fire inspection report for the [REDACTED] address. The petitioner stated that it moved to its current address in January 2012. The petitioner submitted a copy of its 2010 lease agreement for [REDACTED] a copy of the April 2011 fire inspection for the property, and a copy of its 2012 lease for its current location. The director found that the petitioner failed to timely notify USCIS of its change of address and did not provide the notification prior to the time the beneficiary entered the United States on February 28, 2012 pursuant to the previously approved R-1 nonimmigrant religious worker petition.

The director determined, seemingly because of the late notification and the question of whether the petitioner had been evicted from its prior location, that the petitioner had "misrepresented material facts to USCIS in [its] rebuttal" to the NOID. The director acknowledges that an onsite inspection conducted on March 6, 2012, prior to the filing of the instant petition, verified that the petitioner had a valid lease for its current location, with an effective date in February 2012.

The director based her decision, in part, on alleged misrepresentation by the beneficiary in regards to the previous petition, as to the location at which he would work. The petitioner explained that the beneficiary had not been aware of the petitioner's change of address at the time he applied to for his nonimmigrant visa.

The record does not indicate that the director revoked approval of the prior petition. Thus, whether the petitioner has established that it operated as a nonprofit religious organization at the time it initially filed its petition in 2010 and prior to January 2012, when it signed its current lease, is not at issue in the instant petition. The director's findings do not address the petitioner's claims in the instant petition. While the IO who conducted the onsite inspection of the petitioner's address of record did not find anyone present at the time of his visit, he did confirm that the petitioner had a lease. The record does not indicate that the IO attempted a second visit to the petitioner's current address of record, that the premises inconsistent with that of a church, or that he attempted to clarify any issues associated with the petitioner's use of its current

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<sup>1</sup> The prior petition has not been made a part of the record of proceeding in the instant petition.

premises. Accordingly, the AAO will remand the petition for the director to determine whether another compliance review is appropriate for the instant petition.

The director also determined that the petitioner had not established that it can support the beneficiary. This determination appears to be based on the petitioner's alleged eviction from its previous address. The petitioner disputes the implication that it was evicted, and submitted documentation that it states shows it voluntarily left its prior location because of a rent increase. Although the petitioner submitted none of the supporting documentation required by the regulations at 8 C.F.R. § 214.2(r)(9)-(11) when the petition was filed on March 30, 2012, such documentation was submitted in response to the director's May 9, 2012 NOID. In its response, the petitioner submitted documentation reflecting that it had paid the beneficiary \$671.17 in March, April and May 2012, a June 4, 2012 statement from its bank indicating that it had a current balance of \$8,151.46 in a savings account, and a statement from a church member indicating she was providing lodging for the beneficiary and his family. The petitioner alleged on the Form I-129 that the beneficiary's compensation would consist of \$150 per week plus room and board. The regulation at 8 C.F.R. § 214.2(r)(11) requires the petitioner to "state how the petitioner intends to compensate the alien [and] submit verifiable evidence explaining how the petitioner will compensate the alien." The regulation does not allow the petitioner to discharge this responsibility by arranging for third parties to compensate the beneficiary. On remand, the director shall address whether the petitioner has provided sufficient documentation to establish how it will compensate the beneficiary.

The documentation presented also fails to establish that the beneficiary has been a member of the petitioner's religious denomination for two full years immediately preceding the filing of the visa petition.

The 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.

As discussed previously, the petition was filed on March 30, 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.

In Section 1, question 4 of the Form I-129 Supplement R, the petitioner alleges that the both the petitioner and beneficiary's church, [REDACTED] "are both churches in the Protestant branch of the Christian faith." In a May 17, 2012 letter, [REDACTED] head pastor of [REDACTED] states that the organization "is Pentecostal in practice and faith" and that the beneficiary has been a member since May 8, 2002. The regulation at 8 C.F.R. § 214.2(r)(3) provides that:

*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.

While the petitioner and [REDACTED] may be of the same branch of Christianity, the petitioner has not established that they are of the same denomination. On remand, the director shall address whether the petitioner has established that the beneficiary has the requisite membership in its denomination.

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.