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

(b)(6)

DATE: JUN 2 5 2013 OFFICE: CALIFORNIA SERVICE CENTER

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. 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 *gurdwara*, or temple. It seeks to classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R) of the Act, to perform services as a *kirtankar*, or devotional hymn singer and priest. Based upon results of a failed site visit at the petitioning organization, the director determined that the petitioner had not successfully completed the compliance review process.

On appeal, the petitioner submits statements attributed to current and former temple officials and a list of employees.

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,
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> (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
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> (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.

U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. § 214.2(r)(1) state 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 as follows:

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 on August 23, 2011. Section 1, line 1d of the employer attestation accompanying the petition instructed the petitioner to list the "[n]umber of special immigrant religious worker petition(s) (I-360) and nonimmigrant religious worker petition(s) (I-129) filed by the petitioner within the past 5 years." The petitioner stated that it had filed nine (9) such petitions. The petitioner's initial submission consisted primarily of a letter from temple president background information about the religion, and a 121-page member list showing 3,860 names.

On February 7, 2012, the director issued a notice of intent to deny the petition, stating:

> The petitioner has failed verification for suspected fraud. On July 21, 2008 a compliance review site visit was conducted at the address of record. The signatory [of an earlier petition] was not present so the investigating officer left. A follow up telephone call was made to the President of the organization. He was also the Signatory. The officer noted several individuals with petitions submitted for them [by] this organization[,] however, did not recognize many of the names that were read. He stated that they change Presidents every two years and that many individuals have used his organization to file fraudulent petitions. He also stated that many people for who[m] they have petitioned were not religious workers but worked in construction. Further, on Form I-129 Supplement R the petitioner indicates that it has filed only nine (9) petitions for religious workers in the past five years. USCIS records show more than 25.

In response to the notice, stated:

> It has been noted that [USCIS] conducted some on-site inspections in the past but due to non-availability of some responsible officials from the organizations, some incorrect and confusing information has been passed on the visiting USCIS officials, which resulted in some negative findings.
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> [USCIS] repeatedly has been giving reference to compliance review site visit on July 21, 2008 when was the president of this organization. Since then has furnished multiple sworn statements in support of our subsequent R-1 petitions verifying the fact that due to his limited English proficiency, some confusing and misleading information had been passed on to the USCIS official during the telephonic conversation. . . has even offered to testify again (through an interpreter) in order to clarify this misconception but [USCIS] has been ignoring this move.
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> However, we request [USCIS] to conduct another on-site inspection in order to obtain the correct information regarding our organization and magnitude of the operation that we carry out. . . . We strongly recommend that [USCIS] conduct a fresh on-site inspection in coordination with our office. It is more prudent to have some prior [notice] of any proposed inspection so that an authorized & competent official is present for help and a competent translator can be arranged to overcome any language barrier and avoid any further misconception.

The director denied the petition on March 30, 2012. In the decision, the director repeated information from the notice of intent to deny the petition, and stated:

> has indicated that the petitioner has no real control over who can petition for religious workers within the organization[,] thus, there is no reasonable expectation that it can guard against immigration fraud. Where the petitioner has lost

> control over the immigration process, it becomes extremely susceptible to fraud and merely a gateway into the United States; circumventing immigration laws.

Regarding the petitioner's response to the notice of intent to deny the petition, the director stated: "The petitioner did not submit a rebuttal from Avtar Singh Pannu or a copy of the multiple sworn statements he is said to have made. Furthermore, it offered no evidence demonstrating the efforts made by the organization to guard [against] the obvious fraud indicated by ."

On appeal, the petitioner submits photocopies of two notarized statements by In the first statement, dated May 26, 2009, (by that time the former president of the petitioning temple) stated:

> The whole conversation took place in English. Although my proficiency in understanding and speaking English is limited, but [*sic*] I tried my best to provide the truthful and factual information in my capacity as the president.
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> During [the] conversation, I confirmed that [one beneficiary] was a legitimate and deserving applicant for the benefit under I-360 Petition and he has been employed with the [petitioning organization] as a salaried employee. I further confirmed that he has been performing religious duties as a Kirtankar (Devotional Hymns singer). Further I deny having any information regarding other petitions filed by the [petitioner] on behalf of [two other beneficiaries] since these were not in my knowledge.
>
> However, to my shock, USCIS . . . concluded that [the first beneficiary] does not qualify for the benefits sought under I-360 Petition because as per my statement given to them over the phone, he is engaged in cleaning the temple and does not perform religious duties. I believe that there has been a serious misinterpretation and miscommunication during my telephonic conversation with the USCIS official. . . . I state under oath that I never meant to say that [the first beneficiary] has been employed to clean the temple. Further I stated that [the] other two petitions . . . were out of my knowledge. It may be possible that due to my poor English, I was unable to explain what I meant to say. . . .
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> I am willing to speak to any official again, preferably through an interpreter.

In the second statement, dated February 10, 2012 (the final "2" in the date is handwritten over an illegible and partially obscured character), reaffirmed the same basic points from the 2009 statement, focusing on his denial that he had said another beneficiary performed cleaning duties.

Counsel acknowledges that the regulations authorize pre-approval inspections, but states:

> [USCIS] never conducted any pre-approval inspection in this case, although it was requested by the petitioner. Rather than conducting a fresh inspection, [USCIS] preferred to rely on some old erroneous findings from 2008, which have been rebutted by [the] ex-president and the current president [a] number of times. It is completely unfair to deny the petition on the basis of some old erroneous findings and without conducting a fresh inspection. There is a new management in place which is willing to take responsibility [for] every single petition throughout the organization.

Mr. Kang stated:

> In my capacity as the president of [the petitioning temple], I hereby verify that this current petition and few other pending petitions (filed under my signatures) are completely legitimate. There have been several changes in the organization since 2008 and I am the third president after We have ensured that only legitimate petitions are filed.

Review of the derogatory information and evidence upon which the director has relied shows that the information and evidence comes from 2008. This distinction is significant for two reasons. First, on November 26, 2008, USCIS published new regulations governing nonimmigrant religious worker petitions. 73 Fed. Reg. 72276 (Nov. 26, 2008). Before the changes went into effect, there was no petition requirement for R-1 nonimmigrant religious workers; individuals seeking R-1 nonimmigrant status could apply for a visa at a consulate.

Supplementary information published with the new rule stated:

> A nonimmigrant alien seeking R–1 status cannot self-petition, but must have an employer submit a petition (Form I–129) on his or her behalf. 8 CFR 214.2(r)(7). By implementing the petition requirement, USCIS seeks to preserve the integrity of the program at the outset by denying the petition for fraud or other ineligibility factors. It also allows both USCIS and the petitioning religious employer to respond to derogatory information revealed by on-site inspections before the petition is denied.

Id. at 72277. The petition requirement, instituted in 2008, addressed the issue of the filing of petitions without a petitioner's knowledge, authorization, or involvement.

Second, the director has questioned the statements made by Mr. Pannu and found them to be unreliable and contradictory. These statements, however, were made in 2008, at least three years prior to the filing of the instant petition. Mr. Pannu is not the signatory of this petition and his statements were not made in reference to the instant petition and beneficiary.

The director, in denying the petition, also noted a discrepancy regarding the number of petitions filed by the petitioner and those in USCIS records. This discrepancy does not necessarily demonstrate that the petitioner made misrepresentations or that all such petitions are fraudulent or questionable; the petitioner has acknowledged some prior petitions as being filed without its permission, and has identified others such as the present case, as being legitimate.

However, the director's concerns regarding prior petitions filed in the petitioner's name without its authorization, as well as the discrepancy between the numbers of petitions acknowledged as filed by the petitioner and those shown as filed by USCIS, are valid. To address the concerns, the AAO will remand the case for the director to consider whether the petitioner has satisfied the regulatory requirements at 8 C.F.R. § 214.2(r)(16), which may include a site visit.

In addition, review of the record reveals another ground for denial of the petition that should also be addressed on remand. The AAO may identify additional grounds for denial beyond what the Service Center identified 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 USCIS regulation at 8 C.F.R. § 214.2(r)(11) states, in part:

> *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:
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> > (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 or certified tax returns, must be submitted, if available. If IRS documentation is unavailable, the petitioner must submit an explanation for the absence of IRS documentation, along with comparable, verifiable documentation.

In the employer attestation accompanying the petition, the petitioner stated that the beneficiary's compensation would consist of "[f]ree boarding, lodging and food. Monetary benefits in the form of offerings by the congregation/devotees, extra cash income from performing special services outside the Sikh temple at devotees' houses." The petitioner did not provide verifiable documentation that it will provide room and board, as the regulation requires. The petitioner did not specify a location for the beneficiary's intended lodging, an omission that makes it more difficult to verify the petitioner's claims.

For the reasons discussed above, the AAO hereby withdraws the director's decision. At the same time, however, the record as it now stands does not permit approval of the petition. Therefore, the AAO will remand this matter to the director. 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 Administrative Appeals Office for review.