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



U.S. Citizenship
and Immigration
Services

Date: **MAY 16 2013**

Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE:
INC.

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R) of the Immigration and Nationality 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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".
Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition and two subsequent motions to reopen and to reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a nonimmigrant religious worker under 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 sound and music director. The director determined that the petitioner has not established that the beneficiary was a member of its religious denomination for two full years immediately preceding the filing of the petition.

On appeal, counsel disputes the director's determination that Pentecostal evangelism is a branch of Christianity rather than a denomination. Counsel submits a brief and copies of previously submitted 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 had 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, 2011. 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.

Question 4 of section 1 on the Form I-129 Supplement R instructs the petitioner to "Describe the relationship, if any, between the religious organization in the United States and the organization abroad of which the beneficiary is a member." The petitioner answered the question "N/A." On the religious denomination certificate, in section 2 of the Form I-129 Supplement R, the petitioner identified its denomination as "Christian."

In an undated letter submitted in support of the petition, [REDACTED] the petitioner's administrator, stated that the beneficiary "was an active member of the [REDACTED] in

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the Romania; Dominican Republic; from November 22nd. 2002 until February 9th. 2011.” The petitioner also submitted a January 28, 2011 certificate from the [REDACTED] Dominican Republic [] stating that the beneficiary had “served as minister of praise and, pianist in our congregation from 2008 to 2009.” A February 28, 2011 certificate from the [REDACTED] D.R. certifies that the beneficiary “was a member over 7 years of the praise in musical direction, as principal pianist of the choir at our church.”

In a July 26, 2011 request for evidence (RFE), the director asked the petitioner to explain its answer to question 4 of section 1 on the Form I-129 Supplement R and instructed the petitioner to “Provide evidence that the beneficiary has completed a two-year membership in the petitioner’s religious denomination or organization or that the beneficiary’s membership is recognized or governed under comparable indicia of a bona fide religious denomination.”

In an October 15, 2011 letter submitted in response, Ms. [REDACTED] stated:

The relationship between [the petitioner] and the [REDACTED] D.R., where [the beneficiary] previously worked and was a member is through denomination. Both churches fall under the umbrella of Pentecostal Evangelical. Also see letters from the [REDACTED] organization in [REDACTED] confirming denomination and relationship. In addition to the fact that both churches are Pentecostal Evangelical in denomination, we have long shared a strong fellowship with this church as evidenced by our own Head Pastor, [REDACTED] who was also a member of the same church in the Dominican Republic. Again, the answer N/A was an error on our part as we did not understand the question.

In a footnote, Ms. [REDACTED] referenced a website at encyclopedia.com but did not include a copy of the article for the record. She also stated:

Your notice requested information demonstrating that the beneficiary has completed a two year membership in the petitioner’s religious denomination. Please refer to the attached letters where the relationship between [the petitioning organization] and the [REDACTED] is explained. Both churches come under the umbrella of Pentecostal Evangelical and therefore share the same denomination.

In addition to the previously submitted certifications from the churches in [REDACTED], the petitioner submitted a September 29, 2011 certification from the [REDACTED] certifying that the beneficiary “was an active member since 2002.” In a separate certification of the same date, through the pastor and secretary, the church stated:

Through this we state that the [REDACTED] in the city of [REDACTED] Dominican Republic, pastored by the minister and the [REDACTED] for the Nations, pastored by the Rev. [REDACTED] USA, for a period of more than eight (8) years have good relations and share the same belief and doctrinal principle Evangelical Pentecostal Church.

The pastor [REDACTED] God has allowed His Word to minister on several occasions in our congregation, and by virtue of the above said, we gave the blessing to our brothers: [the beneficiary] and [REDACTED] for the same was as they ministered to us, directing the musical area, be with the pastor leading the department Harrigan music is so important in every church.

[Bold emphasis omitted.]

In denying the petition, the director stated:

[F]irst, the petitioner and the [REDACTED] are not under the same governed hierarchy structure. And the submitted Bylaws of the petitioner shows [sic] that that the petitioning organization is independent and autonomous by itself. The petitioner stated that both churches are under the umbrella of Pentecostal Evangelical. However, Pentecostal Evangelism is a Christian branch and not a particular Christian denomination.

Secondly, there was no evidence supporting that both churches has [sic] been sharing a long or strong fellowship. There was no evidence submitted to show how both organizations have shared their fellowship. And the petitioner has not submitted evidence to show that Pastor [REDACTED] is a member of both churches. Even if the Pastor is a member . . . it is not sufficient to establish that both churches are governed under comparable indicia of a bona fide religious denomination. Additionally, the beneficiary's resume shows that he has been a member of another church, [REDACTED] from 2002 to 2011.

In the petitioner's December 13, 2011 motions to reopen and to reconsider, counsel asserted that "the faith of the Pentecostal Evangelicals is absolutely a denomination recognized by all." The petitioner submitted a letter in which Ms. [REDACTED] sought to "explain our faith of Pentacostal [sic] Evangelism. Specifically, we seek to show that the denomination or non-denomination of Pentecostal Evangelicism [sic] is not only a branch of the Christian faith, but is in and of itself a community of believers that share a common faith and worship practices." Ms. [REDACTED] s letter contained a list of "shared code of doctrine and discipline" that she stated are common to the Pentecostal evangelists, including their form of worship, shared statement of faith, and shared services and religious ceremonies.

The petitioner also submitted a letter from the [REDACTED] that stated:

Our church and the [petitioner] do not share a central government, but the two churches share the same faith, doctrine and form of worship. Both churches are independent churches Evangelical Pentecostal recognized as in good faith, Pentecostal Evangelical is not just one branch but our foundation, gospel and Pentecost. Both churches believe that all people can have a direct experience of God through baptism in the Holy Spirit.

The letter then lists the same “shared code of doctrine and discipline” outlined in the petitioner’s letter. The petitioner submitted letters from other nondenominational Pentecostal Evangelical churches who, in letters reproduced word for word, “confirmed” that they are “a community of believers that share a common faith and worship practices.” As with the petitioner’s letter and the letter from the [REDACTED] the letters repeat the same list of shared doctrine and discipline allegedly shared by the organizations.

The petitioner also submitted a document from the [REDACTED] which lists “Large Denominations and Protestant Religious Traditions.” The petitioner highlighted the groups identified as nondenominational, which includes nondenominational evangelical churches, and the group identified as Pentecostal, which included the [REDACTED]. A second, more detailed list of “Evangelical Protestant Churches” includes, under the “Pentecostal in the Evangelical Tradition,” the [REDACTED] and the independent, nondenominational churches. The document, however, does not indicate that the two organizations are of the same denomination; rather, it shows that they are separately recognized denominational groups of a similar religious practice. Furthermore, other documentation submitted by the petitioner from the Association of Religious Data Archives, the National Council of Churches, and the Christian Post fails to support the petitioner’s position. While all of the documentation discusses in some form Pentecostal churches, none suggest that all Pentecostal churches form one denomination.

Counsel also submitted several unpublished decisions of the AAO that counsel asserts “recognized the Pentecostal faith as a denomination.” The AAO notes first that while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. A review of the cases provided by counsel does not support counsel’s assertions that the AAO recognizes a unified Pentecostal “denomination.” The decisions involve specific churches or groups that were of a specific Pentecostal denomination or nondenominational. None of the decisions suggest that all of the churches were of one denomination.

The director dismissed the motions, finding that the petitioner had not met the requirements of a motion as provided in 8 C.F.R. § 103.5(a)(2),(3). On April 5, 2012, the petitioner again moved the director to reopen and reconsider her decision. The AAO notes that while counsel’s

supporting letter and brief stated that the petitioner was filing an appeal of the director's dismissal of the motion, the Form I-290B, Notice of Appeal or Motion, clearly indicated the petitioner was filing a motion to reopen and to reconsider. On June 19, 2012, the director dismissed the petitioner's motions for failure to meet the regulatory requirements of a motion. In dismissing the motions, the director found that the petitioner had not alleged any new facts for consideration of a motion to reopen and had not "state[d] a clear reason for reconsideration nor provide[d] any precedent decision to establish that the decision was based on an incorrect application of law or USCIS policy."

Counsel asserts on appeal that the director's decision dismissing the motion was in error, stating, "Additional documentary evidence was submitted and reasons for reconsideration were stated. Moreover, there is NO requirement in the statute nor the regulations that a precedent decision be cited in order to support a common sense conclusion." [Emphasis in original.]

Counsel's argument is not persuasive. The regulation at 8 C.F.R. § 103.5(a)(2) provides that a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.¹ The regulation at 8 C.F.R. § 103.5(a)(3) provides that a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy.

In its April 5, 2012 motions to reopen and to reconsider, the petitioner resubmitted documentation previously submitted with the petition, in response to the RFE, and on motion. A review of the evidence that the petitioner submitted on motion reveals no fact that could have been considered "new" under 8 C.F.R. § 103.5(a)(2). Counsel's assertion that neither the statute nor the regulation requires citation to a precedent decision as a basis for reconsideration "to support a common sense conclusion" is refuted by the plain language of 8 C.F.R. § 103.5(a)(3). Counsel submits no documentation or cite to a precedent case that supports her assumption that the petitioner's position is a "common sense conclusion." Accordingly, the petitioner failed to establish that the director's decision was based on an incorrect application of law or USCIS policy.

The AAO concurs with the director's decision dismissing the petitioner's motions to reopen and to reconsider. On appeal, the petitioner bears the burden of establishing that the director's most recent decision, the decision dismissing the petitioner's motions, was erroneous. The petitioner has not done so in this proceeding.

Even if the petitioner was able to establish it met the requirements of a motion to reopen or a motion to reconsider, the AAO concurs with the director's underlying determination that the

¹ The word "new" is defined as "1. Having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence> . . ." WEBSTER'S NEW COLLEGE DICTIONARY, (3d Ed 2008). (Emphasis in original).

petitioner failed to establish that the beneficiary was a member of its denomination for two full years preceding the filing of the petition.

The petitioner seeks to establish that nondenominational Pentecostal Evangelical ministries constitute a single denomination because they meet the requirements of the regulation at 8 C.F.R. § 214.2(r)(3) in that they are “a community of believers that share a common faith and worship practices.” The petitioner initially claimed that all Pentecostal Evangelical ministries were of a single denomination because of their faith. However, the documentation submitted by the petitioner does not support this claim. The documentation from the

distinguish between Pentecostal Evangelical denominations. The grouped nondenominational Pentecostal churches together but did not specify that they were viewed as a single denomination.

The petitioner submitted unclear documentation regarding whether the church is a member of the a separate Pentecostal Evangelical denomination. The record reflects that the beneficiary served the congregation of the D.R. from 2008 to 2009 as a pianist and “minister of praise.” D.R. certified in February 2011 that the beneficiary “was a member over 7 years of the praise in musical direction, as principal pianist of the choir at our church.” In her letter submitted in support of the petition, Ms. stated that the beneficiary “was an active member of the”

In her decision denying the petition, the director clearly understood that the were both associated with the denomination, stating “the petitioner and the are not under the same governed hierarchy structure.” The petitioner did not clarify the matter on motion, asserting that all Pentecostal Evangelicals constituted a single denomination and submitting documentation that included information about both independent ministries and the denomination. While counsel stated there may have been confusion regarding the names of the churches in the D.R. and that the beneficiary had been a member of the counsel again stressed that the two organizations were of the same denomination because they were both Pentecostal Evangelicals. At no time did the petitioner, counsel or the disavow any relationship of the latter organization with the.

On motion, the submitted a letter in which it claimed to be an independent church. However, the letter parroted the letters submitted by the petitioner and other organizations. These letters were submitted in conjunction with the petitioner’s new position that as independent nondenominational Pentecostal Evangelical organizations, the churches formed one denomination because of their shared discipline, doctrine and forms of service. had not initially made a claim of such independence and made no affirmative statement of non-affiliation with the denomination on motion. The new claim is unsupported by documentary evidence.

Regardless, the petitioning organization claims to be a nondenominational organization and by this claim it is, de facto, not a member of another denomination. As such, it must establish that the beneficiary has been a member of its organization for the two years immediately preceding the filing of the petition on May 23, 2011. According to its undated letter submitted with the appeal, the petitioner states that the beneficiary was an active member with the [REDACTED] in the Dominican Republic from November 22, 2002 until February 9, 2011. The petitioner has therefore failed to establish that the beneficiary was a member of its organization, and thus its religious denomination, for the two years prior to filing the petition.

Beyond the decision of the director, the petitioner has failed to establish how it will 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 [Internal Revenue Service] documentation, such as IRS Form W-2 [Wage and Tax Statement] 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.

The petitioner indicated on the Form I-129 that it would pay the beneficiary a weekly salary of \$500. The petitioner stated that it had an annual gross income of \$199,000 and an annual net income of \$16,000, an amount that would be insufficient to pay the beneficiary the proffered salary of \$26,000 per year.

With the petition, the petitioner submitted copies of its monthly bank statements for January and February 2011, which reflect ending balances of \$10,139.91 and \$5,125.79, respectively. In response to the RFE, the petitioner submitted copies of its monthly bank statements for July, August and September 2011, reflecting ending balances of \$6,439.76, \$14,172.79, and \$6,456.43, respectively. The petitioner also submitted an uncertified copy of its unsigned and undated IRS Form 990, Return of Organization Exempt from Income Tax, for the year 2010, on which it reported in Part 1 revenue of \$214,144 and no expenses. In Part III, the petitioner reported total program expenses of \$474,961. The petitioner also provided a copy of an

unaudited profit and loss statement for 2010, which reflects a net loss of \$31,160.85. The documents do not support the petitioner's statements on the Form I-129 regarding its annual gross and net income. On their face, the bank statements support the petitioner's ability to pay the beneficiary the proffered salary but are not reliable or sufficient when viewed in context with the IRS Form 990 and the profit and loss statement.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO 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 petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.