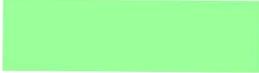


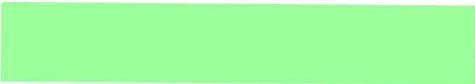
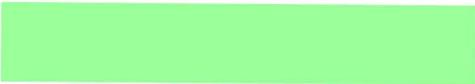


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: APR 21 2014 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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
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. We will remand the petition for a decision on its merits.

The petitioner is a Sikh religious organization. It seeks to classify the beneficiary as a nonimmigrant 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), to perform services as a Granthi/Priest. At filing, the beneficiary was in the United States and previously held R-1 nonimmigrant status. The petitioner sought to change the beneficiary's employer and extend the beneficiary's status. The director determined that the beneficiary is not entitled to an extension of his R-1 nonimmigrant status as he has reached the five year limit for such status.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(6) provides, in part:

Limitation on total stay. An alien who has spent five years in the United States in R-1 status may not be readmitted to or receive an extension of stay in the United States under the R visa classification unless the alien has resided abroad and has been physically present outside the United States for the immediate prior year.

The director's decision stated that USCIS records show that the beneficiary has worked in the United States in R-1 nonimmigrant status since April 3, 2008. The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on April 4, 2013, more than five years after the beneficiary's initial entry. On appeal, the petitioner requests that USCIS "check for any time that can be recaptured to enable [the beneficiary] to work for our organization."

The issue of the beneficiary's limitation on total stay in R-1 nonimmigrant status is significant only insofar as it relates to the application to extend that status. An application for extension of stay 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 the Form I-129 petition. 8 C.F.R. § 214.1(c)(5). Because the beneficiary's limitation on total stay is an extension issue, rather than a petition issue, we lack the authority to decide this question.

The ground provided by the director for the denial of the nonimmigrant petition relates to the beneficiary's extension of status rather than his eligibility for nonimmigrant status. The director must issue a decision on the merits of the Form I-129 petition.¹ The matter shall be remanded to the director for that purpose.

¹ It is noted that, even if the director were to approve the petition, this would not require the director to approve the petitioner's concurrent request for an extension of status as the two issues are separate and distinct.

ORDER: The petition is remanded to the director for further action in accordance with the foregoing and the issuance of a new decision, which, if adverse to the petitioner, shall be certified to the AAO for review.