

(b)(6)



U.S. Citizenship  
and Immigration  
Services

DATE: FEB 20 2014 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 (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. 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 Hindu temple. 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 Vedic priest. The director determined that the petitioner failed to establish the beneficiary's denominational membership during the two-year period immediately preceding the filing of the petition.

On appeal, the petitioner submits a brief from counsel and additional evidence.

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 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;
- (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)(3) provides the following definitions:

*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.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on December 31, 2012. On the petition, the petitioner identified itself as an "unaffiliated Hindu Temple." In a letter

accompanying the petition, the petitioner stated that it “does not belong to any ecclesiastical government,” and “[a]s such, it is a member of The Council of Hindu Temples of North America.” The petitioner further stated:

The Hindu way of life is not an organized religion, but is the name given to a set of religious practices commonly practiced predominately in India and wherever the Indian Diaspora have chosen to take these common practices. . . .

[The beneficiary] is a highly accomplished *Vedic Priest*, fully conversant with the Hindu Scriptures and worship as applicable to our Temple. He has over 10 years of experience as a *Vedic Priest*.

The petitioner submitted a profile of the petitioning temple, including a description of the petitioner’s religion that identified the “Vedas” as “the liturgy of rituals” practiced in Hinduism.

The petitioner submitted a letter from the chairman of the beneficiary’s current employer in India, [REDACTED]. The letter stated that the beneficiary “joined in this Temple on 01/06/2009 to till-date and he is performing the rituals and got knowledge in all VEDA MANTRAS and DAILY POOJAS AND KALYANAMS.” (Emphasis in original).

On March 28, 2013, USCIS issued a Request for Evidence (RFE), in part requesting “evidence that the beneficiary has the required two-year membership in the religious denomination or organization prior to the filing of the petition.”

In a letter responding to the notice, the petitioner again stated that the petitioner does not have an ecclesiastical form of government. The petitioner also stated:

As stated earlier, Hindu Temples are non-denominational. The letter from [REDACTED] was provided to document some of the experience [the beneficiary] gained in India. In addition, he has served as a Chief Priest (Pradhana Archaka) at [REDACTED] from 07/01/2005 – 03/15/2009; as Chief Priest (Pradhana Archaka) at [REDACTED] from 08/28/1998 to 05/15/2005. . . .

In other words, [the beneficiary] has always served in Temples similar to our establishment prior to entering the U.S.

The petitioner submitted a copy of is “Life Membership” certificate in The Council of Hindu Temples of North America and resubmitted copies of documents related to the beneficiary’s credentials.

On June 14, 2013, the director denied the petition, finding that the petitioner “has not established that the beneficiary has been a member of the same denomination as the organization seeking the

beneficiary's services for at least the two years immediately preceding the filing of the petition." The director stated that the petitioner had not provided "additional evidence about the [REDACTED] organization" or "evidence from the Council of Hindu Temples of North America, verifying [REDACTED] membership or commonalities." The director further stated:

While the petitioner and [REDACTED] may share similar doctrinal beliefs, they are of separate organizations and/or denominations with no documentary evidence to establish that a connection exists between them. The petitioner has not established that there is an institutional relationship or a common governing body and/or principles shared by the petitioner and the [REDACTED] organization.

On appeal, the petitioner submits an affidavit from the chairman of [REDACTED], stating that "[a] Hindu Temple does not have the concept of denomination," but that [REDACTED] and the petitioning temple "have a common form of worship and common religious services and ceremonies." In a separate affidavit, the signatory of the petition states that the Council of Hindu Temples of North America is not a governing body and that [REDACTED] is located in Andhra Pradesh, India, and therefore cannot belong to the council. The petitioner also submits an affidavit from the beneficiary, in which he states:

At all times I served as a Priest while employed for [REDACTED] I was in no way part of a separate organization and/or denomination. I was always an [REDACTED] serving a non-denominational temple, albeit run by [REDACTED]

The regulations do not require the petitioner to demonstrate "an institutional relationship or a common governing body" between the petitioning organization and the beneficiary's previous religious organization in order to establish the beneficiary's denominational membership. The regulation at 8 C.F.R. § 214.2(r)(3) instead defines "religious denomination" as a religious group that is administered under a "common type" of government, in addition to having one or more of the listed characteristics in common. Further, the definition of "denominational membership" includes membership in the "same type of religious denomination" during the two-year period immediately preceding the filing of the petition.

The petitioner has established that the beneficiary has been a member of the same type of religious denomination as the petitioning organization for at least the two years immediately preceding the filing of the petition.

The above discussion indicates that the petitioner has overcome the only stated basis for denial of the petition. However, review of the record shows additional grounds of eligibility that have not been established. The AAO may deny an application or petition that fails to comply with the technical requirements of the law even if the Service Center does not identify all of the grounds for denial in the initial decision. The AAO conducts appellate review on a de novo basis. *See Siddiqui v. Holder*,

670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The USCIS regulation at 8 C.F.R. § 214.2(r)(16) reads:

*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 director shall determine whether the petitioner has satisfied the regulation at 8 C.F.R. § 214.2(r)(16) and whether a compliance review, onsite inspection or other verification of the petitioner's claims is appropriate in the instant petition.

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. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

**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.