



U.S. Citizenship
and Immigration
Services

DATE: MAY 05 2014

OFFICE: CALIFORNIA SERVICE CENTER FILE [REDACTED]

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,

A handwritten signature in cursive script, appearing to read "Ron Rosenberg".

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 withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, we will remand the petition for further action and consideration.

The petitioner is a Buddhist temple. It seeks classification of 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 Buddhist minister. The director determined that the petitioner failed to establish the beneficiary's denominational membership during the two years immediately preceding the filing of the petition.

On appeal, the petitioner submits 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 November 20, 2012. The petitioner indicated on the petition that it is affiliated with the "[REDACTED] in the United States." The petitioner submitted evidence that the beneficiary has been a Buddhist monk since his ordination as a novice in 1999. The beneficiary's identification booklet, submitted with the petition, indicates that he belongs to the "[REDACTED] sect. The petitioner also submitted evidence that the beneficiary entered the United States on July 19, 2010, in R-1 nonimmigrant status authorizing his employment with [REDACTED] Inc., expiring December 18, 2012.

On March 27, 2013, USCIS issued a Request for Evidence (RFE) asking, in part, that the petitioner submit evidence that the beneficiary had “the required two-year membership in the religious denomination [redacted] or organization prior to the filing of the petition.” In response to the RFE, the petitioner submitted a May 7, 2013 letter from the petitioner’s president stating that the petitioner and [redacted] are both members of the [redacted] in the United States. The petitioner submitted a “List of the Temple under the [redacted] order in U.S.A.” which listed 59 temples, including the petitioner and [redacted], in Melbourne, Florida.¹

On August 2, 2013, the director denied the petition, finding that the petitioner failed to establish the beneficiary’s denominational membership during the two years immediately preceding the filing of the petition. The director stated: “Although the beneficiary was a member of [redacted] Inc. that has tenets similar [to the petitioner], mere similarities in religious practices do not serve to make unrelated religious organizations members of the same ‘religious denomination.’” The director stated that the petitioner failed to establish that there is a common governing body between the petitioner and the previous R-1 employer.

On appeal, the petitioner states that the petitioner and the beneficiary’s prior employer both operate under the [redacted] in the United States, and that the [redacted] is the administrative organization that oversees the [redacted] temples in the United States. The petitioner further states that both the petitioner and the beneficiary’s previous temple operate under the guidance of “the Supreme Ecclesiastical of Thailand under the Department of Religious Affairs.” In support of the appeal, the petitioner submits an “Application Form Change of Temple for Religious Duty Performance” for the beneficiary’s transfer from [redacted] to the petitioning temple, and a “Permission of Receiving into the Temple for Religious Duty Performance Form” approving the transfer. Both forms are printed on the letterhead of [redacted] in the United States of America.”

The regulations do not require the petitioner to demonstrate that there is a common governing body between its organization and the beneficiary’s former employer, as stated by the director. The regulation at 8 C.F.R. § 204.5(m)(5) 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 the required denominational membership during 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

¹ The submitted list references the website of The [redacted] in the United States of America, [www.\[redacted\]](http://www.[redacted]) which includes both the petitioning temple and [redacted] on its “USA Temple Map.”

established. 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)(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 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.

* * * *

The Form I-129 states that the petitioner does not pay salaries to Buddhist monks in accordance with the tenets of its religion, but that the beneficiary will be provided with his basic needs including food, clothing, room and board, medical care and transportation. The only evidence submitted by the petitioner of its ability to compensate the beneficiary are copies of bank statements from February, 2012, to September, 2012, which show monthly bank balances ranging from \$1,037.14 to \$3,441.27. The record does not contain evidence of the petitioner's operating expenses or budgets to establish that these bank balances are sufficient to sustain those expenses in addition to providing the proffered non-salaried compensation. Nor does the record provide evidence of living quarters within the petitioner's temple or other living arrangements for the beneficiary to be provided by the petitioner. Thus, the petitioner has not established how it will provide the proffered compensation.

Further, the USCIS 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 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 matter shall be remanded to the director for issuance of a new decision in accordance with the foregoing. The director may request such additional evidence as deemed necessary in making this determination. The petitioner shall be given a reasonable opportunity to respond to the concerns set forth in this decision and to provide additional evidence in support of the petition.

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, shall be certified to the AAO for review.