



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **JUL 06 2015** OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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 is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

A handwritten signature in black ink, 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. The director's decision will be withdrawn and the matter remanded for additional proceedings.

The petitioner 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 an " [REDACTED] Missionary." The director determined that the petitioner failed to successfully complete a preadjudication compliance review.

On appeal, the petitioner submits additional evidence.

#### RELEVANT LAW AND REGULATIONS

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 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 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 [U.S. Citizenship and Immigration Services] 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 regulation at 8 C.F.R. § 103.2(b)(16)(i) states:

(16) *Inspection of evidence.* An applicant or petitioner shall be permitted to inspect the record of proceeding which constitutes the basis for the decision, except as provided in the following paragraphs.

(i) *Derogatory information unknown to petitioner or applicant.* If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

## PERTINENT FACTS AND PROCEDURAL HISTORY

The Petition for a Nonimmigrant Worker (Form I-129) was filed on March 20, 2014. The director denied the petition on October 7, 2014 based on information obtained in a preadjudication inspection/verification process which was completed on August 26, 2014. Specifically, the director stated that information had been obtained which indicated that the signatory of the Form I-129 had fraudulently obtained immigration benefits for another individual as a religious worker naming as the petitioning employer. The director referenced information obtained from letters written by Reverend , Senior Pastor of dated February 5, 2007 and January 10, 2008 in denying the petition. Reverend stated that was not a member of the , had been expelled from the church, and had no authority to act on behalf of the church.

## ANALYSIS

The petitioner addressed the stated basis of the director's denial on appeal without having an opportunity to first review the derogatory evidence discussed by the director. The regulation at 8 C.F.R. § 103.2(b)(16)(i) requires the director to advise the petitioner of the derogatory information and offer the petitioner an opportunity to rebut the information and submit additional evidence in its behalf before a decision is rendered. Any explanation, rebuttal or information presented by or on behalf of the petitioner shall then be included in the record of proceeding. The director did not adhere to the regulation's requirements. The director's decision, therefore, shall be withdrawn and the matter remanded to the director to notify the petitioner of any derogatory information considered by USCIS which served as a basis for denial of the petition. The petitioner shall be given an opportunity to rebut that information, offer explanation if any, and submit additional evidence in this regard. The petitioner's response shall become a part of the record.

Additionally, it is unclear from the record who is in possession and control of the church facility and resources. On remand, the director shall determine whether the signatory of the present petition had authority to file the Form I-129 on behalf of and whether the offered position represents a bona fide job offer by in accordance with 8 C.F.R. § 214.2(r)(1).

The director may request any additional evidence deemed necessary in adjudicating the petition and then issue a new decision.

## CONCLUSION

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).

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*NON-PRECEDENT DECISION*

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**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further proceedings 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.