



U.S. Citizenship
and Immigration
Services

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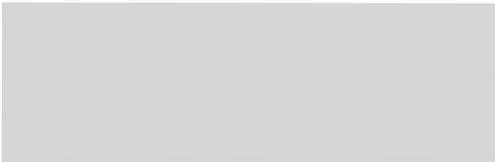


DATE: **JUL 23 2015** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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:



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 on November 22, 2014. The matter was appealed to the Administrative Appeals Office (AAO) who rejected the appeal as untimely filed on June 1, 2015. We are sua sponte reopening the matter on motion pursuant to 8 C.F.R. § 103.5(a)(5)(i) and remanding the petition for further action and consideration.

The petitioner is a church. 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 “pastor.”

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.

PERTINENT FACTS AND PROCEDURAL HISTORY

The director issued a Notice of Intent to Deny (NOID) stating that USCIS conducted a compliance review inspection on July 29, 2014. According to the director, the inspector visited the petitioner's facility but no representative of the petitioning entity was present at that time. The inspector left his contact information with "an unidentified boutique owner" and asked that the information be forwarded to the petitioner. The inspector attempted to contact the petitioner by email on August 19, 2014, and August 28, 2014, but received no response. The inspector observed that a portion of the petitioner's facility was being used for "the commercial peddling of goods."

In response to the NOID, the petitioner stated that its pastor was not at the facility on the date of inspection because the pastor was in the process of moving his residence. The petitioner stated that it spoke with the boutique owner upon receipt of the NOID. The owner confirmed a site visit but denies receiving any contact information from the inspector stating that the inspector indicated he would contact the petitioner. The petitioner states that its email was out of service and it was unable to access

its email account and provided a new email address ([REDACTED]). The petitioner stated that the boutique owner had a rented shop above the petitioner's facility and that it had no financial or working relationship with the boutique owner. The petitioner further stated that "[t]he owner no longer display[s] items anywhere near or within the church premises."

The director denied the petition stating that the petitioner had not satisfactorily "completed a compliance review site inspection." The director noted that:

- the petitioner did not provide an explanation as to why the church secretary/petition signatory was not present at the time of the site visit, or why no other personnel were present during stated business hours.
- the petitioner's signatory indicated that she had "received a letter but did not specify what kind of letter she received and where it was from."
- the boutique owner's statement that she had not been given contact information by the inspector conflicts with inspector's statements.
- the petitioner offered no explanation as to why its email was out of service and could not be accessed, when it obtained its new email address, or why USCIS had not been notified of the change in email addresses.

On appeal, the petitioner states that USCIS used the wrong contact information in attempting to reach the petitioner and did not use other reasonable means, such as the U.S. mail. The petitioner asks that the matter be remanded to the director and that another site inspection be conducted.

ANALYSIS AND CONCLUSION

The record contains information about the petitioner's facility/location, finances, operations, tax exempt status and personnel. We find that the petitioner has submitted a reasonable explanation for not responding to the site inspector and has submitted documentation indicating that it is operating as a religious organization. We will therefore withdraw the director's decision and remand the matter for the director to determine whether another site inspection is warranted. On remand, 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 time. As always in these 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.