



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF U-M-C-O-T-G-S-

DATE: MAY 13, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a church, seeks to classify the Beneficiary as a nonimmigrant religious worker to perform services as a pastor. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R). This classification allows non-profit religious organizations, or their affiliates, to temporarily employ foreign nationals as ministers or in other religious occupations or vocations in the United States.

The Director, California Service Center, initially granted the petition, but subsequently revoked its approval after finding that the Beneficiary started working for the Petitioner prior to the petition's approval and, therefore, violated her R-1 nonimmigrant status. We dismissed the appeal.

We are reopening the matter on our own motion. Upon *de novo* review, we will sustain the appeal.

I. RELEVANT LAW AND REGULATIONS

Non-profit religious organizations may petition for foreign nationals to work in the United States temporarily to perform religious work. The petitioning organizations, and the foreign nationals who are the beneficiaries of this nonimmigrant visa, must meet certain eligibility criteria.

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. . . .

According to 8 C.F.R. § 214.2(r)(6), in effect in 2007 when the petition was filed:¹

Change of employers. A different or additional organizational unit of the religious denomination seeking to employ or engage the services of a religious worker admitted under this section shall file Form I-129 with the appropriate fee. The petition shall be filed with the Service Center having jurisdiction over the place of employment. The petition must be accompanied by evidence establishing that the alien will continue to qualify as a religious worker under this section. Any unauthorized change to a new religious organizational unit will constitute a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act.

The regulation at 8 C.F.R. § 214.1(c)(4), which was in effect in 2007 and remains unchanged, states:

Timely filing and maintenance of status. An extension of stay may not be approved for an applicant who failed to maintain the previously accorded status or where such status expired before the application or petition was filed, except that failure to file before the period of previously authorized status expired may be excused in the discretion of the Service and without separate application, with any extension granted from the date the previously authorized stay expired, where it is demonstrated at the time of filing that:

- (i) The delay was due to extraordinary circumstances beyond the control of the applicant or petitioner, and the Service finds the delay commensurate with the circumstances;
- (ii) The alien has not otherwise violated his or her nonimmigrant status;
- (iii) The alien remains a bona fide nonimmigrant; and

¹ Although the implementing regulations for the religious worker program were revised in November of 2008, as we stated in our prior decision dismissing the appeal, dated January 25, 2011, we will not apply the revised regulations in this case. Because the petition had been approved and was, therefore, not pending on November 26, 2008, when the revised regulations went into effect, we will apply the regulations in effect when the petition was filed in 2007. *See* 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008) (“All cases pending on the rule’s effective date and all new filings will be adjudicated under the standards of this rule.”).

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(iv) The alien is not the subject of deportation proceedings under section 242 of the Act (prior to April 1, 1997) or removal proceedings under section 240 of the Act.

II. PERTINENT FACTS AND PROCEDURAL HISTORY

On October 30, 2007, the Petitioner filed a Form I-129, Petition for a Nonimmigrant Worker seeking to employ the Beneficiary from November 11, 2007, until November 10, 2010. In support of the petition, the Petitioner submitted, among other things, a copy of an approval notice granting the Beneficiary R-1 nonimmigrant status to work for the [REDACTED] from November 11, 2004, until November 10, 2007, and copies of recent paystubs.

On October 7, 2008, the Director issued a request for evidence (RFE), seeking, in part, “copies of the beneficiary’s pay records . . . with . . . her previous employer for the three months prior to the filing of the present petition to establish that the beneficiary was in a valid nonimmigrant status at the time the present petition was filed. Also, submit copies of the beneficiary’s pay records . . . with . . . her present employer (the petitioner).”

In response to the RFE, the Petitioner’s attorney at the time, Feng Ling Liu, submitted a letter stating that the Beneficiary “served as a full-time pastor at [REDACTED] until April 2007]. In May 2007, [she] transferred to the [REDACTED] [in Pennsylvania].” The Petitioner submitted, among other things, copies of paystubs, an earning statement, and tax forms. In addition, a letter from [REDACTED] stated that “[f]rom November 2004 to April 2007, [the Beneficiary] worked as a full-time pastor in the [REDACTED] [REDACTED]. In May 2007, [she] was appointed at the [REDACTED] in [REDACTED] . . .” According to [REDACTED] the Petitioner did not file a new R-1 petition for the Beneficiary in May of 2007 because it did not consider her appointment as a change of employer, but rather, a different branch of the same church. Similarly, a letter from [REDACTED] stated that “[i]n 2005 and 2006, . . . [the Beneficiary was] employed as full-time pastor[] in the [REDACTED] area. In May 2007, [the Beneficiary] changed her appointment to [REDACTED] at the [REDACTED]”

The petition was approved on November 17, 2008, granting the Beneficiary R-1 status from November 11, 2007, until November 10, 2009.

On January 5, 2010, the Director issued a notice of intent to revoke (NOIR) the petition’s approval. According to the Director, “USCIS has received information” the Beneficiary started working for the petitioning organization on May 1, 2007, prior to the petition’s approval. The Director cited the revised regulation at 8 C.F.R. § 214.2(r)(13) regarding a change of employers. In addition, the Director stated that the approved petition involved gross error because the validity period should have been November 17, 2008, the date the petition was approved, instead of November 11, 2007. On March 29, 2010, the Director revoked approval of the petition due to the Petitioner’s failure to respond to the NOIR.

The Petitioner retained new counsel, [REDACTED] who filed a timely appeal. [REDACTED] argued that the

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Beneficiary was, in fact, employed by the [REDACTED], her authorized employer, when the petition was filed in November of 2007. He explained that there was an “internal administrative error” and remained an employee of her authorized employer. According to [REDACTED] the Beneficiary was therefore never out of status. In support of this assertion, the Petitioner submitted letters and financial documents to show that the Beneficiary continued to be employed by the [REDACTED]

On January 25, 2011, we dismissed the appeal, rejecting the contention that the Beneficiary remained an employee in [REDACTED] even after she relocated to [REDACTED]. We noted conflicting documents in the record and upheld the revocation.

On November 18, 2015, we reopened the matter on our own motion. We noted, in part, that after we dismissed the appeal, the Petitioner filed a new Form I-129 (receipt # [REDACTED]) claimed that Ms. Liu never informed the Petitioner or the Beneficiary of the NOIR, and disavowed [REDACTED] assertions made on appeal. We subsequently issued a request for evidence (RFE) seeking additional documentation.

The Petitioner now responds to our letter reopening the matter and the RFE. The Petitioner requests that we grant the petition *nunc pro tunc*. It argues, in part, that we have the discretion to excuse an untimely filing for an extension of stay due to extraordinary circumstances under 8 C.F.R. § 214.1(c)(4)(i). It asserts that the [REDACTED] and the Petitioner are both churches under the same denomination, the [REDACTED]. It states that the Beneficiary followed the church’s directive to relocate from [REDACTED] to [REDACTED]. In addition, it states that both the Petitioner and the Beneficiary relied on the advice of their prior attorneys in good faith, but were given bad legal advice. Specifically, it contends that Ms. Liu failed to inform the Petitioner and Beneficiary of the need to file a petition before the Beneficiary began working for the Petitioner. It also contends that the assertions made by [REDACTED] on appeal were erroneous and that the Petitioner and the Beneficiary disavow of [REDACTED] assertions.

III. ANALYSIS

We agree with the Petitioner’s contention that it has established extraordinary circumstances under 8 C.F.R. § 214.1(c)(4)(i) considering the ineffective assistance of two former attorneys, in conjunction with errors made by USCIS. The record includes documentation that the Beneficiary filed a Grievance Committee Complaint Form against Ms. Liu with the [REDACTED] of the State of New York. The grievance, dated [REDACTED], 2013, included an affidavit from the Beneficiary, which stated, in part:

We told [Ms. Liu] that we were moving to [REDACTED] and wanted to proceed in a lawful manner. We asked if we needed to file an R-1 with [REDACTED] [sic]? We were advised to just file the I-360. She told us that we didn’t need to file anything other than the I-360 because it would be easy to get the I-360 approved and because we were real pastors at a real church. She said, “You will get Green Cards within six months. . . before your current R-1 expires.” We were advised not to worry. . . . We were not advised to file an R-1 transfer for our visas to the [REDACTED] or that we were not allowed to work at [REDACTED] because the [REDACTED] was

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the only body authorized to be our employer. . . . [Regarding the NOIR,] Ms. Liu filed the Notice away and did not notify us or [REDACTED] She also did not respond. Our Rs were revoked

The complaint also included an affidavit from [REDACTED] who stated that Ms. Liu was “never available” and that communication was difficult due to a language barrier. [REDACTED] claimed she “never quite understood what [she] was supposed to provide and what purpose it served.” [REDACTED] asserted in another letter in the record that Ms. Liu did not advise the Petitioner that it could not employ the Beneficiary until after the petition was filed and approved by USCIS. [REDACTED] asserted that Ms. Liu inadequately represented the petitioning organization’s interests and did not adequately advise them, describing it as an injustice.

In response to the complaint, the Chief Counsel for the Departmental Disciplinary Committee sent the Beneficiary a letter stating that her allegations against Ms. Liu were “substantially similar” to allegations made in pending litigation against Ms. Liu. The committee deferred further investigation of the complaint due to the litigation.

We take administrative notice that Ms. Liu was convicted of conspiracy to commit immigration fraud in violation of 18 U.S.C. § 371, which was upheld by the U.S. Court of Appeals for the Second Circuit. *See United States v. Feng Ling Liu*, No. 12-CR-934-01 RA, 2015 WL 4460898 (S.D.N.Y. July 20, 2015), *aff’d sub nom. United States v. Bandrich et al.*, No. 14-3104, 2016 WL 321003 (2d Cir. Jan. 27, 2016). The U.S. District Court for the Southern District of New York described Ms. Liu as being part of a multiyear conspiracy to submit fraudulent asylum applications on behalf of Chinese nationals. *Id.* As a result of her conviction, on April 19, 2016, the Board of Immigration Appeals (Board) disbarred Ms. Liu from the practice of law before the Board, the Immigration Courts, and the Department of Homeland Security, with an effective date of January 14, 2015. *See Matter of Feng Ling Liu* (Apr. 19, 2016), https://www.justice.gov/sites/default/files/pages/attachments/2016/04/20/liufengling_finalorder.pdf.

Indeed, as early as February of 2009, the U.S. Court of Appeals for the Second Circuit referred Ms. Liu for disciplinary proceedings. *See Matter of Fengling Liu*, 664 F.3d 367, 368 (2d Cir. 2011). On November 22, 2011, the Court issued a public reprimand, finding that “Ms. Liu neglected her duties and failed to prosecute her clients’ cases diligently.” *Id.* at 384. It described her representation of clients as “gross negligence,” and stated that “it does not appear that Ms. Liu contacted her clients to update them about the status of their cases.” *Id.* at 385. It concluded that “aggravating factors . . . include: (1) Ms. Liu’s pattern of negligence, involving multiple instances of misconduct; and (2) the vulnerability of Ms. Liu’s immigration clients.” *Id.* at 387; *see also Matter of Fengling Liu*, 969 N.Y.S.2d 57 (2013) (issuing a public censure of Ms. Liu).

The record therefore shows that the Petitioner and Beneficiary made substantially similar allegations regarding Ms. Liu’s misconduct that ultimately led to her criminal conviction. Of particular concern in the instant petition is the contention that the Petitioner relied on Ms. Liu’s advice not to file the petition despite the Beneficiary’s transfer from [REDACTED] to the petitioning church. Equally disconcerting is the

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contention that Ms. Liu did not notify the Petitioner or the Beneficiary that the Director had issued a NOIR.

Compounding these errors, we also recognize the Director's oversights when she adjudicated the petition. According to the NOIR, "USCIS has received information regarding the beneficiary having violated the terms and conditions of an approved petition, and, therefore, no longer qualifies for the classification sought." However, the record was clear from the initial filing of the petition that the Beneficiary had started working for the Petitioner in May of 2007. The Director herself requested in her RFE "copies of the beneficiary's pay records . . . with . . . her present employer (the petitioner)." In response to the RFE, Ms. Liu clearly stated in her letter that the Beneficiary worked full-time as a pastor at [REDACTED] until April 2007 and that "[i]n May 2007, [she] transferred to the [REDACTED]. The Petitioner submitted documents to show that the Beneficiary was already working for the Petitioner, including the Beneficiary's IRS Form W-2, Wage and Tax Statement, which showed the petitioning organization paid the Beneficiary \$33,342 in 2007. It also submitted 37 "[p]ay stubs with the present employer from May 2007 to present," all of which also showed that Pennsylvania taxes were withheld.

Moreover, the record indicates that a compliance review was conducted on July 23, 2008, at the petitioning organization's location in [REDACTED] for the instant petition. Notes from the compliance review state that the Beneficiary had been a full-time paid employee of the organization since 2007. Despite this plethora of information that the Beneficiary was already working for the Petitioner, the petition was approved.

Furthermore, the coversheet for the NOIR indicates that it was sent to the Law Offices of Fengling Liu and the NOIR indicates a "cc" was also sent to Ms. Liu. There is no indication that a copy of the NOIR was ever sent to the Petitioner. The Petitioner and Beneficiary contend they did not know a NOIR was issued and the petition was ultimately revoked due to a lack of a response to the allegations specified in the NOIR. Although USCIS did not err in sending the NOIR to the authorized attorney of record, Ms. Liu was in the midst of disciplinary proceedings which ultimately led to her criminal conviction and disbarment when the NOIR was issued on January 5, 2010.

In conjunction with this highly unusual circumstance, the Petitioner's second attorney, [REDACTED], further complicated matters by concocting what he described as a "strategy" that the Petitioner and Beneficiary did not understand. According to the Beneficiary, [REDACTED] advised her to return her salary to the [REDACTED] "and say that the [REDACTED] *actually* paid her salary." She described [REDACTED] legal advice as a "complex scheme" that "was very elaborate and complicated for everyone involved," and that "[n]o one really understood what they were doing." [REDACTED] affidavit stated that they were on a "short deadline" and did not receive communication about the petition in a timely matter. She concluded that she now understands the petition was improperly filed based on the poor advice of prior attorneys Liu and [REDACTED]. Rather than asserting on appeal that the Petitioner never received a copy of the NOIR, the Petitioner and Beneficiary followed [REDACTED] strategy that they subsequently disavowed.

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Based on the unusual circumstances of this case, we find that under the totality of circumstances, the Petitioner has established extraordinary circumstances beyond the control of the Petitioner and that the delay in timely filing a petition before the Beneficiary began working at the petitioning organization is commensurate with the circumstances. Therefore, we find the Petitioner has met the requirements of 8 C.F.R. § 214.1(c)(4)(i).

We further find that the Petitioner has established that the Beneficiary has not otherwise violated her nonimmigrant status, that she was a bona fide nonimmigrant with a valid R-1 nonimmigrant visa at the time the instant petition was filed, and that she was not the subject of removal proceedings at the time the petition was filed,² as required by 8 C.F.R. § 214.1(c)(4)(ii), (iii), and (iv). As such, we will exercise our discretion to excuse the untimely filing of the petition which should have been filed prior to the Beneficiary beginning her work at the petitioning organization. We find no reason the petition, had it been timely filed prior to May of 2007, would not have been approved. The Director's revocation of the petition's initial approval is withdrawn.

IV. CONCLUSION

The Petitioner has established by a preponderance of the evidence that the Beneficiary is eligible for the benefit sought. The Director's revocation is withdrawn.

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). Here, that burden has been met.

ORDER: The appeal is sustained.

Cite as *Matter of U-M-C-O-T-G-S-*, ID# 16348 (AAO May 13, 2016)

² The Beneficiary was served with a Notice to Appear, placing her in removal proceedings, on July 27, 2011. According to a footnote in [REDACTED] letter, dated December 21, 2015, removal proceedings have been terminated.