



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

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

MATTER OF S-G-C-C-

DATE: OCT. 5, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

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

The Director of the California Service Center initially approved the petition. The Director subsequently revoked the approved petition finding that the Petitioner violated its terms and conditions and that the facts contained in the petition were not true and correct.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and argues that the Director's revocation of the approved petition was not warranted. We will dismiss the appeal.

**I. LAW**

Non-profit religious organizations may petition for foreign nationals to work in the United States for up to five years to perform religious work as ministers, in religious vocations, or in other religious occupations. The petitioning organization must establish that the foreign national-beneficiary has been a member of a religious denomination for at least the two-year period before the date the petition is filed. *See generally* section 101(a)(15)(R) of the Act, 8 U.S.C. § 1101(a)(15)(R).

The implementing regulation at 8 C.F.R. § 214.2(r)(1) requires that to be approved for temporary admission to the United States, or extension of status, a foreign national 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.

In addition, the regulation at 8 C.F.R. § 214.2(r)(16) allows U.S. Citizenship and Immigration Services (USCIS) to verify information supporting the petition through any means deemed appropriate, including an on-site inspection. It further provides: "If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition."

Further, the regulation at 8 C.F.R. § 214.2(r)(18) states the following regarding revocation of approved petitions:

- (i) *Director discretion.* The director may revoke a petition at any time, even after the expiration of the petition.
- (ii) *Automatic revocation.* The approval of any petition is automatically revoked if the petitioner ceases to exist or files a written withdrawal of the petition.
- (iii) *Revocation on notice*
  - (A) *Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:
    - (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;
    - (2) The statement of facts contained in the petition was not true and correct;
    - (3) The petitioner violated terms and conditions of the approved petition;
    - (4) The petitioner violated requirements of section 101(a)(15)(R) of the Act or paragraph (r) of this section; or
    - (5) The approval of the petition violated paragraph (r) of this section or involved gross error.

- (B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition.

Finally, the regulation at 8 C.F.R. § 103.2(a)(2) states in part that by "signing the benefit request, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the benefit request, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct."

## II. ANALYSIS

The issue within this appeal relates to whether the Director properly revoked the approved petition. The Petitioner filed the petition in January 2014, and the Director approved it in July of that same year. The record reflects that, during September 2014, USCIS performed a post-approval on-site inspection during which it found that the Petitioner was not compensating the Beneficiary as indicated in the petition, but instead an overseas church was providing his compensation. The Director issued a notice of intent to revoke (NOIR) the petition approval, notifying the Petitioner had it has failed the site inspection. Citing the revocation on notice provisions of 8 C.F.R. § 214.2(r)(18)(iii), the NOIR stated that the site visit findings indicated the statement of facts in the approved petition was not true and correct as the Petitioner was not the entity compensating the Beneficiary. The Director also noted the regulation at 8 C.F.R. § 103.2(a)(2) provides that when a petitioner signs the petition, it is certifying that the claims and evidence associated with the petition must be true and correct, and that it promises to fulfill its obligations and commitments within the filing. In response, the Petitioner offered the reasoning that it took several months for the Beneficiary to obtain his social security card, which caused delays in the church being able to provide his compensation.<sup>1</sup> The Petitioner also provided evidence that it began compensating the Beneficiary in January 2015.

The Director issued the notice of revocation (NOR) of the petition's approval in February 2016, finding that the Petitioner was not compensating the Beneficiary during the five month period after the petition's approval, and noting that it did not show it compensated the Beneficiary "for the retroactive duration that the [B]eneficiary was approved for employment and was working for [the Petitioner]." Accordingly, the Director concluded that the Petitioner and Beneficiary had violated the terms and conditions of the approved petition under 8 C.F.R. § 214.2(r)(18)(iii)(3), and that the statement of facts in the approved petition was not true and correct under 8 C.F.R.

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<sup>1</sup> We note that the Petitioner's ability to employ and compensate the Beneficiary is dependent on his immigration status as a nonimmigrant religious worker rather than his possession of a social security number. The Petitioner's concerns surrounding the Beneficiary's social security number instead relate to its responsibilities of depositing federal income tax withheld, social security, and Medicare taxes.

§ 214.2(r)(18)(iii)(2). For the reasons discussed below, we find the Director properly revoked the petition's approval.

On the petition, the Petitioner attested that it would pay the beneficiary \$1,000 a month in salary in addition to providing room and board. The Petitioner does not contest the fact that it did not comply with these compensation terms from August through December of 2014, but instead offers an explanation relating to the Beneficiary's social security number and its inability to complete government forms. The Petitioner's statement as to why it did not comply with the religious worker regulations does not remedy its noncompliance. Accordingly, it has not shown that the Director erred in finding that the statement of facts in the petition was not true and correct, or that it had violated the terms and conditions of the approved petition. *See* 8 C.F.R. § 214.2(r)(18)(iii)(2), (3).<sup>2</sup>

Within the appeal, the Petitioner argues that it did not fail the post-approval on-site inspection. Instead, the Petitioner states that due to the church having to suddenly move and the former lead pastor's personal difficulties, documentation requested during the site visit was either not readily available or was provided to USCIS. However, while the Director did note that requested documentation was not provided to USCIS, the NOIR and revocation decision focused on the site visit findings regarding the Beneficiary's compensation, including the Petitioner's admission that a foreign church was compensating him. The Petitioner has not overcome these findings. The Petitioner also argues on appeal that this case does not warrant a revocation because both the Beneficiary and the church now qualify for the benefit sought. However, the question within the present appeal is whether the Director's revocation is justified and supported by the record. As discussed above, we find that it is. This finding does not prevent the Petitioner from filing a new petition on the Beneficiary's behalf if it believes it can now demonstrate eligibility.

As the Petitioner did not compensate the Beneficiary for several months after USCIS approved the petition, it has not established that the Director improperly revoked the petition.

### III. CONCLUSION

For the reasons discussed above, the Petitioner has not established that the Director's revocation of the approved petition was improper. Accordingly, we will dismiss the appeal.

**ORDER:** The appeal is dismissed.

Cite as *Matter of S-G-C-C-*, ID# 126558 (AAO Oct. 5, 2016)

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<sup>2</sup> Similarly, evidence that the Petitioner later began paying the Beneficiary's salary is not relevant to these findings.