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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

D13

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: OCT 20 2010

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

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(i) of the
Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(i)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
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 AAO will dismiss the appeal.

The petitioner is a Protestant Christian denomination based in Anderson, Indiana. It seeks to classify the beneficiary as a nonimmigrant religious worker under section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1), to perform services as a pastor. The director determined that the beneficiary's changes of work location were disqualifying, and that the petitioner failed to establish how the petitioner will compensate the beneficiary.

On appeal, the petitioner submits arguments from counsel, copies of letters, and financial and organizational documents.

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 first issue we will discuss concerns the location of the beneficiary's intended employment. The regulation at 8 C.F.R. § 214.2(r)(8)(x) requires the petitioner to specify the location(s) where the beneficiary will work. An alien in R-1 status may be employed only by the religious organization through whom the status was obtained. 8 C.F.R. § 274a.12(b)(16). An R-1 alien may not be compensated for work for any religious organization other than the one for which a petition has been approved or the alien will be out of status. 8 C.F.R. § 214.2(r)(13). More generally, the USCIS regulation at 8 C.F.R. § 214.1(e) provides that a nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status.

On Form I-129 and again on its accompanying attestation, the petitioner stated only one such location, that being the Hispanic Church of God, Shorewood, Illinois. Rev. [REDACTED] director of new works for the petitioner's Hispanic ministries, stated that the beneficiary "has been a full-time Minister/church planter of the new Hispanic Church of God-Iglesia de Dios in Shorewood, Illinois since June 2008. Previous to that he has been a minister with the Hispanic Church of God in Aurora, Illinois," where he had worked since "November 2006." In this letter, Rev. [REDACTED] repeated several times that the beneficiary worked in Aurora from November 2006 to June 2008, and then moved to Shorewood.

On December 7, 2009, the director issued a request for evidence (RFE), asking the petitioner to submit a more complete employer attestation and to explain whether "the beneficiary [had] been authorized to change employment in Aurora to [a new position] in Shorewood." In response, the petitioner submitted a new attestation, signed by Rev. [REDACTED] stating once again that the beneficiary would work in Shorewood, with no other address specified.

In a separate letter, Rev. [REDACTED] stated: “We have authorized the placement and movement of [the beneficiary] to move from the ministry at Shorewood, Illinois to begin a new Hispanic Language ministry to the Spanish speaking community of the greater Aurora, Illinois area.” This letter, stating that the beneficiary will “move from the ministry at Shorewood” to start a new church in Aurora, contradicts both versions of the attestation, both of which indicate that the beneficiary will work only in Shorewood.

While the petitioner claimed denominational authorization for the beneficiary’s move from one church to another, the petitioner did not establish USCIS authorization for the change of assignment. It is not clear whether the beneficiary’s return to Aurora is in any way related to the director’s request for evidence of USCIS authorization. The correspondence detailing the move is undated, and therefore we cannot determine whether the move occurred before or after the director requested evidence of authorization.

A copy of the petitioner’s 2009 *Yearbook* lists the beneficiary’s name under the listing for [REDACTED] Community in Aurora. The beneficiary’s name does not appear in the Shorewood listing.

The director denied the petition on January 28, 2010, stating that the churches in Aurora and Shorewood, while denominationally affiliated, are “completely different and separate entities.” The director noted that some correspondence indicates that the beneficiary left Aurora for Shorewood, while other evidence indicates that the beneficiary left Shorewood for Aurora.

On appeal, counsel states that the director “incorrectly found that the beneficiary worked for two different churches. They are the same church.” Elsewhere, counsel contends: “There has not been a change of employers. It is not a new employer. It is the same church and the same denomination.” While the churches in Shorewood and Aurora belong to the same denomination, they are different entities in different places. They are “the same church” only in the sense that they belong to the same denomination.

Materials submitted on appeal show that the federal employer identification number (EIN) of the Shorewood church is [REDACTED]. Previous submissions show that the EIN of the Aurora church is [REDACTED] and the EIN of the denomination’s headquarters is [REDACTED]. This is further evidence that the IRS considers the two local churches to be distinct from each other and from the national organization.

As we shall discuss in greater detail in the next section of the decision, the record indicates that individual churches employ and compensate their own religious workers. Tax and payroll records show that [REDACTED] Community in Aurora – not the state or national denominational headquarters – paid the beneficiary’s salary in 2007 and 2008. This is consistent with each church acting as the employer of the workers at that church. Each church within a denomination is a separate religious organization within the denomination, and a change from one church to another necessitates the filing of a new petition. *See* 8 C.F.R. § 214.2(r)(13).

Furthermore, the regulation at 8 C.F.R. § 214.2(r)(8)(x) requires the petitioner to attest, under penalty of perjury, to the location(s) where the proposed employment will take place. The petitioner's repeated revisions on this point necessarily raise questions of credibility. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Also, under the regulation at 8 C.F.R. § 214.2(r)(16), the petitioner's claims are subject to USCIS verification, including site inspections at the beneficiary's planned work locations. Changing one or more work locations thwarts USCIS's ability to verify the petitioner's claims.

We agree with the director's finding that the petitioner's change of the beneficiary's work location invalidated the terms on which the petitioner originally based that petition. Returning the beneficiary to the original location after the beneficiary had already worked at the revised location does not remedy the disqualifying situation that had already occurred.

The second and final issue raised by the director concerns the beneficiary's intended compensation. The USCIS regulation at 8 C.F.R. § 214.2(r)(11)(i) requires the petitioner to submit verifiable evidence explaining how the petitioner will compensate the alien or how the alien will be self-supporting. 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. Internal Revenue Service (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 petitioner initially indicated that the denomination employs 2,800 pastors and has a gross annual income of \$11.2 million. The petitioner also indicated that the Shorewood church has one employee. The Form I-129 and its accompanying attestation both have spaces for the petitioner to describe the beneficiary's intended compensation. The petitioner left both of these spaces blank.

In the letter accompanying the petition, [REDACTED] stated:

We have more than adequate financial resources as a denomination to provide housing and salary for [the beneficiary]. The [petitioner's] national annual budget exceeds eleven million dollars. The state of Illinois Church of God budget . . . exceed[s] a million dollar budget. The Hispanic [REDACTED] also provides for budgetary items for supporting our new churches. With the combined totals of all agencies and support there is more than sufficient funding for the Shorewood, Illinois Hispanic Church of God[']s support of [the beneficiary].

A partial copy of the denomination's 2008 *General Assembly Annual Reports* indicates that the denomination's 2009 and 2010 "Baseline Budget" is over \$11.7 million. The document did not report

how the denomination distributes these funds, or how much of the funds go to pastor's salaries. We have already noted the petitioner's assertion that the denomination employs 2,800 pastors. If the petitioner were to divide its entire "baseline budget" evenly among those 2,800 pastors, then each pastor would receive approximately \$4,200 per year – assuming that the petitioning denomination had no expenses of any kind except for pastoral salaries. Therefore, it is highly unlikely that the denomination's budget is the sole, or even principal, source for pastoral compensation.

In the December 2009 RFE, the director requested more specific evidence to support the general claims in the annual report submitted previously, including bank documents and IRS Forms W-3 to show wages paid by the petitioner. The director also requested IRS documentation of the beneficiary's past compensation from the petitioner.

The petitioner's response included a new letter from [REDACTED] offering the beneficiary a new position in Aurora and stating: "Your salary package of \$30,000 per year which includes salary, fringe benefits and housing allowance will be paid by the Hispanic Church of God in Aurora, Illinois." If we assume this to be a typical pastoral salary for the denomination, then the salaries for 2,800 pastors would add up to \$84 million, more than seven times the entire annual budget of the denomination's headquarters.

The petitioner submitted copies of bank statements for the church in Shorewood, but no evidence that the Shorewood church would be responsible, in whole or in part, for the beneficiary's future compensation at the Aurora church. The petitioner also submitted IRS documentation showing that the beneficiary reported \$15,000 in income from Shorewood Church of God, and \$12,500 from [REDACTED] Community in Aurora in 2008. In 2007, Buenas Nuevas Community paid the beneficiary \$30,000. As we have already noted, this documentation indicates that each individual church is responsible for compensating its own workers.

The petitioner did not submit the requested copy of IRS Form W-3, Transmittal of Wage and Tax Statements, or explain its absence. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. 8 C.F.R. § 103.2(b)(14). If it is the petitioner's argument that the national or state organizations have sufficient funds to pay pastors' salaries, then the petitioner must establish that those organizations actually pay those salaries. If the organizations are not responsible for salaries at individual churches, then it is irrelevant whether or not they have the funds to cover them.

In denying the petition, the director noted that, because of the repeated changes of work location and the incomplete financial evidence from the churches in Shorewood and Aurora, the petitioner did not submit sufficient evidence that the beneficiary's employer would be able to compensate the beneficiary.

On appeal, counsel repeats the assertion that "the Illinois Church of God has a budget in excess of \$1,000,000.00." The petitioner submits no evidence that the beneficiary has been or will be paid from that budget. The record consistently shows that the beneficiary received payment from local churches. There is no evidence to show contributions from state or national denominational headquarters, and we

have already shown that the petitioner's national budget would not cover the salaries of all the denomination's claimed pastors.

We agree with the director's finding that the petitioner has not provided adequate or consistent information regarding the actual source of the beneficiary's proposed compensation, or the financial resources of the entity or entities that would pay that compensation.

Review of the record reveals an additional ground of concern. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The regulation at 8 C.F.R. § 214.2(r)(7) requires the intending employer to file the petition. The petitioner, in this instance, is an office of the national denomination. As we have shown, however, the beneficiary has received compensation from local churches rather than the national organization. It is not clear where hiring authority resides – at the local, state, or national level. Thus, we cannot determine whether the employer is the petitioning denomination or a local church. There is, therefore, some doubt as to whether the petition was properly filed according to the requirements in the regulations.

The AAO will dismiss the appeal for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.