



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

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

In Re: 28490602

Date: SEP. 29, 2023

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (Religious Worker – R-1)

The Petitioner, a non-profit organization, seeks to continue to classify the Beneficiary as a nonimmigrant religious worker to perform services as a minister of evangelism. 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 denied the petition, concluding that the record did not establish that the Petitioner had successfully completed a pre-adjudication site visit, that the Beneficiary would work in a part-time position (averaging at least 20 hours per week), and that the Beneficiary was essentially a self-petitioner. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Non-profit religious organizations may petition for noncitizens to work in the United States for up to five years solely to perform religious work for an average of at least 20 hours per week as ministers, in religious vocations, or in religious occupations. The petitioning organization must establish, among other requirements, that the noncitizen 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 C.F.R. § 214.2(r).

United States Citizenship and Immigration Services (USCIS) may verify the evidence submitted in support of a petition seeking classification for a religious worker, which may include an on-site inspection of the Petitioner's premises. If USCIS decides to conduct a pre-approval inspection,

approval of the petition is conditioned upon satisfactory completion of the inspection. 8 C.F.R. § 214.2(r)(16).

A minister is an individual who is fully authorized by a religious denomination and trained to conduct religious worship, and who performs other duties having a rational relationship to the religious calling of a minister and usually performed by member's of that denomination's clergy. A minister must work solely in that occupation in the United States, which may include incidental administrative duties. 8 C.F.R. § 214.2(r)(3).

When requesting extension of stay as a nonimmigrant religious worker, a petition must be accompanied by evidence of the previous employment in R-1 status. If the Beneficiary received compensation in the form of a salary, this evidence must include Internal Revenue Service (IRS) documentation such as IRS Forms W-2 or certified copies of filed income tax returns which reflect the Beneficiary's work and compensation. 8 C.F.R., § 214.2(r)(12).

II. ANALYSIS

The Petitioner describes itself as a nondenominational Christian ministry which was founded to support a missionary organization founded by the Petitioner in India, [REDACTED]

[REDACTED] Its articles of organization state that its purpose is to "educate and inform people about the missionary work happening in India and provide a pathway for tax-deductible donations to support the work."

The Director identified three grounds for denial of the petition. As will be discussed below, the Director's conclusions regarding all of those grounds are based on errors of fact and law, and we withdraw those conclusions. Because our review has identified additional grounds for denial, we will remand this matter to the Director for consideration of those grounds and to provide the Petitioner an opportunity to respond.

A. Satisfactory Completion of On-Site Inspection

A pre-adjudication inspection at the address listed as the Petitioner's office on the first Form I-129, Petition for a Nonimmigrant Worker, was conducted by an USCIS officer on September 21, 2021. The inspecting officer found a number of issues relating to that first petition, with the most relevant being the following:

- The location inspected was not a church or other building serving a religious purpose, but the Petitioner's accountant's office, and the Petitioner does not maintain a physical office;
- The Beneficiary is a founding member of the Petitioner, and also serves as its President; and,
- The Beneficiary was a full-time student at the time of the inspection, while also claiming to work for the Petitioner and having his tuition paid by the Petitioner.

The Director concluded that due to these issues and the inconsistencies arising from them, which had been presented in a notice of intent to deny (NOID) in the original petition, the inspection could not be considered satisfactorily completed, and the petition was not in compliance with the regulation at 8 C.F.R. § 214.2(r)(16). However, after the Petitioner's response to the NOID was received, the

original petition was approved. While the Director did not err in referring to the facts and issues from that inspection report, they did err in not raising these specific issues and discrepancies when issuing a request for evidence (RFE) in the current matter, which would have provided the Petitioner with an opportunity to respond with evidence reflecting any changes in circumstances since the filing of the original petition. Therefore, we withdraw this portion of the Director's decision. On remand, the Director should consider the Petitioner's arguments and evidence submitted with its appeal, and provide the Petitioner an opportunity to submit further evidence if they determine that unresolved issues remain regarding the inspection.

B. Offered Position is at Least Part Time

The Petitioner provided a list of the Beneficiary's duties as minister of evangelism, which includes conducting "baptisms, funerals, weddings and other sacramental rites as requested," preaching "in venues receptive to learning more about the work," "training church planters and develop(ing) programs of holistic ministry," leading a volunteer board, and developing relationships with potential donors.

In their decision, the Director refers to the lack of physical space in which to conduct religious services and ceremonies which was noted in the inspection report, and states that the Petitioner did not submit evidence relating to when and where such duties are or will be performed. However, we note that the Petitioner did submit evidence listing the Beneficiary's previous activities and provided explanations relating to his proposed work. On remand, the Director should weigh the sufficiency of this evidence and the Petitioner's response to the RFE's request for further evidence related to this issue. In addition, as the Director's RFE did not request further evidence of the amount of time the Beneficiary is expected to spend performing his duties, they should provide the Petitioner an opportunity to submit evidence including a schedule or itinerary of the Beneficiary's activities, including supporting documentation.

Also, the Director based their conclusion regarding this requirement in part on the inspection report's note that the Beneficiary was a full-time student at that time, and did not raise this issue or request additional evidence concerning it when issuing the RFE. The Director should consider the new evidence in this regard submitted with the Petitioner's appeal when making their new decision.

Further, when considering this issue on remand, the Director should take note that the regulations specifically require that a religious worker be "*coming to the United States* to work at least in a part-time position" and "*coming to or remaining in the United States* at the request of the petitioner to work for the petitioner" (emphasis added). 8 C.F.R. §§ 214.2(r)(1)(ii), (iv). The record indicates that the Petitioner has performed, and is expected to continue to perform, a significant portion of his duties outside of the United States.¹ Therefore, the Director should consider whether the Petitioner has established that the Beneficiary will be employed for an average of at least 20 hours per week in the United States.

¹ We note that the regulation at 8 C.F.R. § 214.2(r)(6) provides for religious workers whose employment is seasonal or intermittent or who commute to the United States for part-time employment. However, the Petitioner indicates that the Beneficiary resides, and will reside, in the United States, and makes no suggestion that his employment is of a seasonal or intermittent nature.

C. Evidence of Previous R-1 Employment

The Director acknowledged the submission of evidence relating to the Beneficiary's receipt of compensation from the Petitioner during his initial period of nonimmigrant status as a religious worker. However, they focused on the Beneficiary's status as a founder and president of the Petitioner, concluding that he cannot be both the Petitioner and Beneficiary and that the filing of the petition was not in accordance with the regulations.

On review, we note that the petition was filed by [REDACTED], which the evidence shows is a corporation with a board of directors. It is an elementary rule that a corporation is a separate and distinct legal entity from its owners and shareholders. *See Matter of M*, 8 I&N Dec. 24 (BIA 1958), *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980), and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). Therefore, the Director's conclusion is erroneous, and we withdraw this portion of their decision. On remand, the Director should consider the sufficiency of the evidence relating to the Beneficiary's previous compensation, including the evidence submitted on appeal, and if necessary provide the Petitioner with an opportunity to submit further evidence pertaining to this requirement.

D. Position for a Minister

Although not addressed in the Director's RFE or decision, on remand they should consider whether the offered position of minister of evangelism qualifies as a minister pursuant to the definition at 8 C.F.R. § 214.2(r)(3). Notably, subsection (D) requires that a minister work "solely as a minister in the United States, which may include administrative duties incidental to the duties of a minister." The Director should consider whether the evidence of the Beneficiary's duties, which include production of a newsletter and meeting with and securing donors for [REDACTED] charitable and religious activities, are solely those of a minister. If the Director determines that the evidence of record is insufficient, they should provide the Petitioner with notice and an opportunity to respond.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.