

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

813

[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

SEP 27 2010

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

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1)

ON BEHALF OF PETITIONER:

[REDACTED]

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, with a fee of \$585. 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 appeal will be dismissed.

The petitioner is a school. It seeks to extend the beneficiary's status 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 "Christian Teacher (Spanish/religion)." The director determined that the petitioner had not established that the position qualifies as that of a religious occupation.

On appeal, counsel asserts that the petitioner's "sole reason for existence [is] the inculcation and propagation of the Christian faith" and that the proffered position "is an inherently religious position when the instructional program . . . is motivated by, and intermingled with, the inculcation and propagation of religion."

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 issue presented is whether the petitioner has established that the proffered position qualifies as that of a religious occupation or vocation.

The regulation at 8 C.F.R. § 214.2(r)(3) provides:

Religious occupation means an occupation that meets all of the following requirements:

- (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination;
- (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination;
- (C) The duties do not include positions which are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible; and
- (D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

In its April 25, 2009 letter submitted in support of the petition, the petitioner stated:

Because one of the purposes of [the petitioning organization is] to provide a rigorous and quality academic college preparatory preparation, the need has now arisen for a qualified teacher of a modern foreign language (Spanish) who is able, willing and qualified to not only teach the language and culture of the Hispanic world, but to do so in a way that furthers the Christian faith with each lesson. This means selecting, revising and formulating new curricula so that the Spanish language program teaches missions techniques and strategy along with language and culture. For example, appropriate bible verses will be selected for memorization in Spanish from a very early stage in even first year Spanish. This teacher will organize mission trips for our students each year to Mexico and other South American countries. Evangelical Christian doctrine and practice will be taught in every class, comparing and contrasting with actual practices and beliefs in various parts of the Hispanic world. These and similar aspects of our academic program make it mandatory that we have a Christian teacher for this position who is not only a competent and literate native speaker of the Spanish language, but also well educated in the bible, in mission techniques and strategies, and in Christian doctrine and practice generally.

The petitioner also submitted a course description for Spanish 1:

This course is an introduction to basic skills, listening, speaking, reading and writing in the Spanish language. The class will emphasize oral communication

and comprehension through listening exercises as well as speaking opportunities. Students will interact with the material as they are being introduced to facts and concepts about the culture, history and lifestyle of people of the Spanish-speaking world and cross-cultural missionary work. The class is designed to expose students to needs in Latin America and the inner cities in trying to cultivate a Biblical worldview of desiring to make a difference and care for the least of these. Finally, students will have opportunities to use their newly acquired skills through interaction with native speakers in the surrounding community through field trips and projects.

In a "preliminary unit" outline, the objectives of the first three weeks of the course are identified:

1. Familiarizing with culture of Spanish-speaking people in New York City.
2. Pronunciation of the letter "H."
3. Communicate using introductions and greetings.
4. Spelling using the Spanish alphabet.
5. Introductions to 0-10 and exchange phone numbers.
6. Communicate using the days of the week.
7. Describing the weather.
8. Identify Cultural experiences and how they influence Art.
9. Familiarization with Spanish speaking countries in the world.
10. Communication of useful phrases used in class.

In another document entitled "Biblical Integration," the petitioner indicated that:

Each Friday we take the last 10 minutes of the class to explore different elements of living in a way that is relevant on this Earth. We will play songs of a genre newly named "lyrical theology[.]" For 12 weeks we will be playing songs in the form of hip hop that explore different aspects of life. From Missions, loneliness, fear, redemption, sanctification, relationships, death, judgment and finally culminating on the story of Jesus Christ.

In a request for evidence (RFE) dated August 5, 2009, the director requested additional information to establish that the position qualifies as a religious occupation in addition to a detailed work schedule and a list of daily duties. In response, the petitioner submitted a copy of the beneficiary's schedule reflecting that each weekday, he will teach 10th grade math, Spanish I and Spanish II, and a copy of its faculty and staff manual highlighting provisions regarding its Christian mission, statement of faith, and the guidance that "[a]ll teachers, staff members, and representatives . . . are expected to conform to Biblical standards of behavior at all times."

In her September 3, 2009 letter accompanying the petitioner's response, counsel stated that religious instructors are specifically indentified in the regulations as a religious occupation. Counsel asserts:

This position involved daily instruction of the Bible in Spanish language, organizing Christian mission trips which include training students to evangelize Spanish speaking populations and the development and implementation of curricula involving doctrinal instruction and spiritual formation through the medium of Spanish language instruction. **This is religious.** For this reason this form of Spanish instruction would in no way be permitted in a publicly funded school because that would involve an inherent establishment of religion in that this form of instruction propagates the doctrines and practices of a specific religion, namely Evangelical Protestantism. [Emphasis in the original.]

In denying the petition, the director observed that “foreign language and history are regular parts of instructional programs” in American public schools and that the petitioner’s inclusion of bible study as part of the curriculum and other religious duties is designed to give the position religious significance. The director determined that this religious significance does not rise to the level of a traditional religious occupation.

On appeal, counsel asserts:

This decision [] constitutes invidious discrimination between religions and works toward the establishment of a particular religion in that it applies one standard to Christian private schools and another to Islamic or other non-Christian private schools. Please see Matter of [name withheld], [redacted] in which the Service, on appeal, granted the petition of a similarly situated Islamic private school for a teacher of “Islamic hygiene and practical laws, ‘quaranic’ interpretation and the contemporary history of Islam.” These subjects, like the Spanish courses taught in the curriculum of petitioner school, are concerned with the practical implementation of the tenets of the religion of the petitioner especially as they concerns [sic] teaching children to practice their religion and to propagate their religion among those who are not yet members of the religion.

The position at issue (that of a Christian teacher) is an inherently religious position when the instructional program for the courses to be taught is motivated by, and intermingled with, the inculcation and propagation of religion

Due to the First Amendment, which forbids the use of government monies and schools for the inculcation and propagation of particular religious beliefs, the instructional program in the Spanish language offered by the petitioner could not constitutionally be offered in any public school in America. However, petitioner, like any religious organization, has a right to propagate its religious beliefs through the medium of the instruction of children at will and that is what is at stake in this appeal. Religious instruction takes many forms and uses many media. The purpose of the instructional program at petitioner school is the inculcation and propagation of the Christian faith in all aspects of life and academic instruction. Just as the teaching of Creationism is properly banned in public

schools as a form of establishment of religion, so instruction in a foreign language by means of religious texts, and for the purpose of evangelism/proselytism, prayer, and religious instruction is not permitted in a public school. Petitioner is a religious institution that exists for the purpose of inculcating and propagating the Christian faith through the instruction of children. It is in that context that this job exists.

Counsel's argument is not persuasive. First, the AAO decision cited by counsel is a 1993 unpublished decision and based on whether the petitioner had established that the beneficiary had been continuously employed throughout the two-year period to qualify as a religious worker pursuant to section 203(b)(4) of the Act, 8 U.S.C. § 1153(b)(4), as described at section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C). Although counsel asserts that the cases are similar, the evidence does not support this assertion. The petitioner has submitted no evidence that the teaching of the Spanish language and history are integral parts of the Christian faith in the same way that the teaching of Islamic hygiene and laws and religious history are to Islam. Additionally, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all U.S. Citizenship and Immigration Services (USCIS) employees in the administration of the Act, unpublished decisions are not similarly binding and have no precedential effect.

Additionally, despite counsel's assertion, the petitioner has submitted no documentation to establish that the teaching of Spanish to 9th and 10th graders involve inculcating or carrying out the religious creed and beliefs of the denomination. The petitioner provided a copy of an introductory three-week course of study for Spanish I that does not indicate that the beneficiary uses or teaches any religious text or content. The petitioner stated that for the last 10 minutes of class, the class would "explore different elements of living in a way that is relevant on this Earth" and for 12 weeks would "explore different aspects of life," presumably of a religious nature. However, the evidence submitted by the petitioner does not establish that the beneficiary's duties primarily relate to a traditional religious function, is recognized as a religious occupation within the denomination and primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination, as required by the regulation at 8 C.F.R. § 214.2(r)(3). Merely because a secular subject is taught in a religious school does not elevate it to a religious study or the instructor of such a course to that of a religious instructor. The petitioner has submitted insufficient documentation to establish that the proffered position is that of a religious occupation as defined by the regulation.

Beyond the decision of the director, the petitioner has not established that it is a member of a religious denomination or that the beneficiary has been a member of its religious denomination for the two years immediately preceding the filing of the visa petition.

Section 101(a)(15)(R) of the Act and 8 C.F.R. § 214.2(r)(1)(i) provide that an alien seeking classification as an R-1 nonimmigrant religious worker must 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. The regulation at 8 C.F.R. § 214.2(r)(3) defines religious denomination:

Religious denomination means a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes one or more of the following:

- (A) A recognized common creed or statement of faith shared among the denomination's members;
- (B) A common form of worship;
- (C) A common formal code of doctrine and discipline;
- (D) Common religious services and ceremonies;
- (E) Common established places of religious worship or religious congregations; or
- (F) Comparable indicia of a bona fide religious denomination.

The petition was filed on May 14, 2009. Therefore, the petitioner must establish that the beneficiary was a member of its religious denomination for two full years prior to the date the petition was filed.

In its April 25, 2009 letter submitted in support of the petition, the petitioner stated that its “educational program is in the tradition of that of the great Reformation heroes of the evangelical Protestant faith.” The petitioner also submitted a page from the website of Guidestar.org, a guide to nonprofit organizations, which identifies the petitioner as a “non-profit denominational K-8 Christian school” whose student body represents “over 40 different Christian churches in our community.” In its faculty and staff manual, the petitioner states that it is a “non-denominational school.” In her letter accompanying the petitioner’s response to the RFE, counsel stated that the petitioner’s “denomination is Evangelical Protestant” and “draw[s] students from a number of separately incorporated Evangelical Protestant congregations that share theology, dogma, doctrine and church structuring discipline.” The record is unclear as to whether the petitioner claims to be associated with Evangelical Protestantism or is non-denominational. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner submitted an April 17, 2009 letter from [REDACTED] stating that the beneficiary was a member of that organization. [REDACTED] did not state when the beneficiary became associated with the Hope Baptist Church. In response to the RFE, the petitioner submitted a copy of a September 1, 2009 letter from [REDACTED]

stating that the beneficiary had become a member of that organization in 2004. The petitioner submitted no documentation to establish that the Hope Baptist Church or the Hope Bible Church is of the "Evangelical Protestant" denomination. Further, if the petitioner claims to be non-denominational, it submitted no documentation that the beneficiary belongs to a non-denominational church that shares the petitioner's creed and faith or other indicia of a common denomination as defined in the regulation at 8 C.F.R. § 214.2(r)(3), or that he was a member of a non-denominational church for two full years immediately preceding the filing of the petition. Accordingly, the petitioner has failed to provide sufficient documentation of its denomination and that the beneficiary has been a member of its denomination for two full years immediately preceding the filing of the visa petition.

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 petition will be denied 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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.