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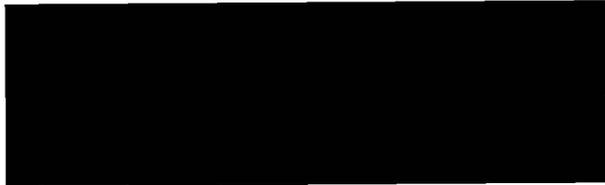
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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FILE: WAC 09 014 51308 Office: CALIFORNIA SERVICE CENTER Date: JAN 29 2010

IN RE: Petitioner:  
Beneficiary:



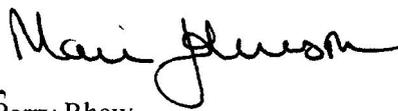
PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
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 sustain the appeal and approve the petition.

The petitioner is an Eastern Orthodox Christian women's monastery. It seeks to change the beneficiary's status to that of 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 director of education. The director determined that the petitioner had not establish that the position qualifies as a religious occupation relating to a traditional religious function.

On appeal, the petitioner submits arguments from counsel and several exhibits, most of them copies of previous submissions.

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.

U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. § 214.2(r)(1) state 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.

This proceeding rests on the question of whether the beneficiary's intended position qualifies as a religious occupation. The USCIS regulation at 8 C.F.R. § 214.2(r)(3) defines a "religious occupation" as 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.

The petitioner filed the petition on October 21, 2008. In a letter accompanying the petition, [REDACTED] of the petitioning entity, stated:

[The petitioner's] facility encompasses approximately 10 acres, which includes five structures: a structure used as a church and library; a structure used for a dining hall, commercial kitchen, Bookstore and classroom; and three structures used as residential housing units with a chapel and ecclesiastical sewing room. . . .

The temporary position of Director of Education is being offered to [the beneficiary] to direct and implement educational programs in the fundamentals of the Orthodox Christian culture and Russian language at our monastery. [The beneficiary] will be performing work that relates to a traditional religious function of providing religious educational services to our Orthodox Christian community. We teach Orthodox Christian values, faith and culture. Specifically, the duties of this position involve: instructing the community in religious faith and doctrine designed to promote social, physical and intellectual growth, as well as promoting an understanding of Orthodox Christian faith and culture. [The beneficiary] will develop curriculum and training materials designed for teacher training, seminars, community outreach/resource and classroom development. [The beneficiary's] activities will also include the preparation of language-teaching materials and handbooks, as well as the development of improved methods in translation, including computerization. The Monastery's library is currently cataloguing approximately 20,000 volumes of ecclesiastical, historical, cultural, language and rare books, some of which are in need of translation. [The beneficiary] will oversee the translation process.

Similar language appears in the October 15, 2008 employment agreement between the petitioner and the beneficiary.

Article II of the petitioner's Amended Articles of Incorporation listed the purposes of the petitioning entity, including:

to transplant, further and perpetuate Eastern Orthodox Christian monasticism and the Orthodox Christian faith in the United States of America; to maintain, propagate, practice and perpetuate forever the teachings, worship, life and divine and heavenly Mysteries with which God so lovingly has graced us . . . , and therein to cultivate and to further Orthodox Christian faith, piety and worship.

Documentation submitted with the petition shows that the beneficiary earned a bachelor's degree in linguistics from Odessa National University, Ukraine. A transcript from the university indicates that the beneficiary took courses in "Interpretation of Sacred Texts" and "Old Church Slavonic."

A letter from [REDACTED] of the Church of Vladimir's Icon of the Mother of God, attested to the beneficiary's membership in that church since 1996. [REDACTED] stated that this letter "confirm[s] that [the beneficiary] has been a parishioner of . . . an affiliated church with the Ukrainian Orthodox Church."

On January 15, 2009, the director requested additional evidence, including "a **detailed description** of the religious denomination's requirements (including the minimum education, training, and experience necessary for the proffered religious professional position" and "a **detailed description** of the work to be done, including specific job duties, level of responsibility, number of hours per week performing

each work duty, and explain how the duties of the position relate to a traditional religious function” (emphasis in original).

In response, [REDACTED] stated:

As Director of Education, [the beneficiary] will be required to direct, coordinate and implement educational programs and activities in the fundamentals of the Eastern Orthodox Christian culture and Russian language of our monastery. [The beneficiary] will be performing work that relates to a traditional religious function of providing religious educational services to our Eastern Orthodox Christian community. We teach Eastern Orthodox Christian values, faith and culture. [The beneficiary] will be required to instruct the community in religious faith and doctrine designed to promote social, physical and intellectual growth, as well as promoting an understanding of Orthodox Christian faith and culture.

A bachelor’s degree, the ability to communicate effectively (multilingual) with excellent written and oral comprehension skills, and proficient computer skills are required for the position of Director of Education. [The beneficiary] amply qualifies for this position. He is proficient in the English, Russian and Ukrainian languages, and he has obtained a degree from the Odessa National University, Ukraine. . . .

[The beneficiary’s] duties, along with the approximate percentage of time for each duty, are as follows:

- \* Develop curriculum and training materials designed for teacher training, seminars, community outreach/resource and classroom development (15%);
- \* Preparation of language-teaching materials and handbooks (10%);
- \* Development of improved methods in translation, including computerization (10%);
- \* Identifying and recruiting potential volunteer workers (5%);
- \* Train and supervise religious education instructional staff (15%);
- \* Develop and direct study courses and religious education programs (15%);
- \* Select appropriate curricula and class structures for educational programs (15%);
- \* The Monastery’s library is currently cataloguing approximately 20,000 volumes of ecclesiastical, historical, cultural, language and rare books, some of which are in need of translation. [The beneficiary] will oversee the translation process (15%).

[REDACTED] stated that the petitioning church and the church the beneficiary attended in Ukraine are all Eastern Orthodox Churches that “adhere to the same practice and church canons,” distinguished only by the local languages spoken at each church.

The director denied the petition on May 5, 2009. In denying the petition, the director stated:

The petitioner did not submit any information explaining how the duties of the petition relate to a traditional religious function.

The beneficiary's duties will not be involving the doctrine of the religious organization as described in Article II of the Amended Articles of Incorporation. The petitioner did not submit copies of the curriculum and training materials designed for teacher training, language-teaching materials and handbooks or other documents to show that the duties of the beneficiary are to enforce the doctrine of the religious entity. In addition, the record lacks information showing how the beneficiary has been a full member of the religious organization and information describing the requirements for the proffered religious occupation.

The director also found that the beneficiary's duties "are administrative in nature."

On appeal, counsel argues that the petitioner's "documentation overwhelmingly establishes that the position of Director of Education relates to a traditional religious function and recognized as a religious occupation within the denomination." Counsel states that the petitioner's educational efforts serve the petitioner's goal, stated in its Amended Articles of Incorporation, "to perpetuate forever the teachings" of the church, and "to cultivate and to further Orthodox Christian faith, piety and worship."

Regarding the director's finding that the petitioner "did not submit copies of the curriculum and training materials designed for teacher training [or] language-teaching materials and handbooks," the director never requested those materials, and the regulatory language does not specifically mention such materials. The petitioner's failure to submit them on its own initiative can hardly be seen as a disqualifying omission.

Furthermore, the beneficiary has not yet begun working for the petitioner; at the time the petitioner filed the petition, the beneficiary was a B-2 nonimmigrant visitor with no employment authorization. Therefore, the petitioner has not yet begun to perform his intended duties including development of curriculum and training materials. The petitioning entity, which has existed in its current form for only a few years, has not claimed that it previously employed anyone in a similar position. Given these facts, it is not surprising that no curriculum or training materials yet exist.

The petitioner has published two children's books, *My Little Orthodox Christian Activity Book* and *My Little Orthodox Christian Feast Days Activity Book*. An excerpt from the former title, reproduced on appeal, indicates that the book includes "games and puzzles [that] focus on Orthodox Christian life, holy days, liturgical worship, religious objects and symbols, Bible stories and the various cultures that make up Orthodoxy."

We find that religious education of both children and adults relates to a traditional religious function in the Eastern Orthodox Church, as does the translation of religious materials. We note that, at the time the petitioner filed the petition in October 2008, the former regulation at 8 C.F.R. § 214.2(r)(2) included both "religious instructors" and "religious translators" in the definition of the term "religious

occupation.” While eligibility must hinge on the job duties rather than the job title, the descriptions offered by the petitioner in this proceeding appear to justify the title of the proffered position.

Furthermore, while the beneficiary’s duties necessarily include some administrative functions, the breakdown provided by the petitioner does not indicate that those duties will occupy the majority of the beneficiary’s time. The regulation at 8 C.F.R. § 214.2(r)(3) specifically states that administrative functions are permissible, so long as they do not predominate.

For the reasons discussed above, we find that the position offered to the beneficiary qualifies as a religious occupation, and we will withdraw the director’s finding to the contrary.

With respect to the director’s assertion that “the record lacks information showing how the beneficiary has been a full member of the religious organization,” it is not clear what the director meant. The director did not elaborate on this finding. The director did not dispute the letter from a Ukrainian church official attesting to the beneficiary’s membership in a church there, or the petitioner’s explanation that the various Orthodox Churches differ little except for liturgical language. Furthermore, this finding by the director is essentially buried within a paragraph that is otherwise devoted to the religious occupation issue. It is, therefore, not even clear that this sentence amounts to a separate basis for denial. Given the available evidence, we withdraw the director’s seemingly incomplete finding that the petitioner has not adequately established the beneficiary’s denominational membership.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the AAO will withdraw the decision of the director and approve the petition.

**ORDER:** The appeal is sustained. The petition is approved.