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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

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date JUL 15 2010

IN RE: Petitioner: [redacted]
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:

SELF-REPRESENTED

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 church. It seeks to classify the beneficiary as a nonimmigrant religious worker under section 101(a)(15)(R)(1) of the Act, 8 U.S.C. § 1101(a)(15)(R)(1), to perform services as a minister of technology. The director determined that the petitioner had not established how it intends to compensate the beneficiary and that the beneficiary is without lawful immigration status in the United States.

On appeal, the petitioner provides copies of previously submitted documentation.

The director's determination regarding the beneficiary's immigration status relates to the beneficiary's extension request, which is a separate determination from the petitioner's eligibility for classification as a nonimmigrant religious worker. There is no appeal from the denial of an application for extension of stay filed on Form I-129. 8 C.F.R. § 214.1(c)(5). As the AAO lacks authority to decide those questions, this issue will not be addressed in this proceeding.

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 sole issue to be determined on appeal is whether the petitioner has established how it intends to compensate the beneficiary.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(11) provides:

> *Evidence relating to compensation.* Initial evidence must state how the petitioner intends to compensate the alien, including specific monetary or in-kind compensation, or whether the alien intends to be self-supporting. In either case, the petitioner must submit verifiable evidence explaining how the petitioner will compensate the alien or how the alien will be self-supporting. Compensation may include:
>
> (i) Salaried or non-salaried compensation. 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. 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.
>
> (ii) Self support.
>
> (A) If the alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.
>
> (B) An established program for temporary, uncompensated work is defined to be a missionary program in which:
>
> (1) Foreign workers, whether compensated or uncompensated, have previously participated in R-1 status;
> (2) Missionary workers are traditionally uncompensated;
> (3) The organization provides formal training for missionaries; and
> (4) Participation in such missionary work is an established element of religious development in that denomination.
>
> (C) The petitioner must submit evidence demonstrating:
>
> (1) That the organization has an established program for temporary, uncompensated missionary work;
> (2) That the denomination maintains missionary programs both in the United States and abroad;

> (3) The religious worker's acceptance into the missionary program;
> (4) The religious duties and responsibilities associated with the traditionally uncompensated missionary work; and
> (5) Copies of the alien's bank records, budgets documenting the sources of self-support (including personal or family savings, room and board with host families in the United States, donations from the denomination's churches), or other verifiable evidence acceptable to USCIS.

In response to a request for evidence (RFE) dated November 6, 2008, the petitioner stated that the beneficiary received "no personal compensation" for his services but was provided with rent-free housing. The petitioner submitted photographs of the home in which it stated the beneficiary lived with his parents and sibling. On appeal, the petitioner states that as its finances improve, it hopes to compensate the beneficiary for his services.

Although the regulation does allow for non-salaried compensation, the evidence of record indicates that the beneficiary lives in a home provided to his father as part of the father's compensation with the petitioner long before the beneficiary began his employment. The petitioner has failed to establish that such accommodations are to compensate the beneficiary for his services and would not be provided to the beneficiary if he were no longer working for the petitioner. On appeal, the petitioner submits copies of its unaudited financial statements for 2008 and, in fact, admits that it does not have the financial ability to pay the beneficiary as of the date the petition was filed.

Accordingly, the petitioner has failed to submit verifiable evidence of how it intends to compensate the beneficiary.

Beyond the decision of the director, the petitioner has not established that the proffered position is a religious occupation within the meaning of the regulation. 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)(1) defines 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 stated that the proffered position was that of minister of technology. In its January 2009 letter responding to the director's RFE, the petitioner stated that beneficiary served as the church's information technician:

> In that position [the beneficiary] coordinates all the specialized electronic equipment that are used for two Sunday Worship Services including providing Scripture, Video and Audio and the announcements using the [petitioner's] computer system and other specialized lighting equipment that the Church has provided.. . . .
>
> [The beneficiary] has also coordinated the [recording] of his father's Sermons that were broadcast for two years on WWLE.
>
> [He] is one of eight ordained Deacons.

While the petitioner stated that the beneficiary served as an ordained deacon, the proffered position is that of minister of technology. The petitioner provided no documentation to establish that the position of minister of technology primarily relates to a traditional religious function and is recognized as a religious occupation within the denomination, and that the duties primarily related to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination. The petitioner has therefore failed to establish that this position is a religious occupation within the meaning of the regulation.

The petitioner has also failed to establish that the beneficiary will work at least 20 hours per week. The regulation at 8 C.F.R. § 214.2(r)(1)(ii) provides that the alien must be coming to the United States to work at least in a part time position (average of at least 20 hours per week).

In its January 2009 letter, the petitioner stated that the beneficiary had been working "between six and ten hours per week." The petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that the beneficiary would be expected to work between 15 and 20 hours per week. The petitioner has provided no documentation to establish that the duties of the position would encompass 20 hours per week. The petitioner has therefore failed to establish that the beneficiary seeks to enter the United States to work for at least 20 hours per week.

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.