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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: **SEP 07 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:

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.

Thank you,

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f 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 a boarding school for “at-risk teenagers,” affiliated with the Church of Seventh-day Adventists (SDA Church). 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 spiritual counselor. The director determined that the petitioner had failed to show that the beneficiary’s position qualifies as a religious occupation.

On appeal, the petitioner submits an expanded job description and a letter from a regional SDA official.

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.

The petitioner filed the Form I-129 petition on October 31, 2008. The initial filing included a September 25, 2008 job offer letter to the beneficiary from [REDACTED] the petitioner's executive director. The letter reads, in part:

As a Spiritual Counselor, you will be responsible for providing spiritual mentoring and guidance to the students, and must be willing to assist them in whatever areas they require. More specifically, these areas are the physical, social, mental and spiritual realms. The *Spiritual Counselor* assures the planning and implementation of activities, which enhance the spiritual development of students.

Specific responsibilities include:

- Lead out in worship in the boys' dormitory
- Plan and implement worship services in the chapel
- Create a positive spiritual influence in every day interaction with students
- General supervision and guidance of [the petitioner's] students
- Participate in staff meetings
- Communicate with parents and provide regular written reports on each student
- Communicate with and provide spiritual counseling with students daily
- Observe and report all inappropriate student behavior for discipline and correction
- Enforce the student schedule
- Assist in planning and providing methods to motivate students to learn a better lifestyle
- Role model positive behavior and attitudes

. . . We address physical, academic and social needs but . . . the spiritual need will be your primary focus.

While the petition was pending, USCIS published new regulations for nonimmigrant religious worker petitions. Supplementary information published with the new regulations specified: "All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). On January 26, 2009, the director requested various materials newly required under the revised regulations. The director did not cite the new definition of the term "religious occupation," and the director did not specifically instruct the petitioner to submit any denominational documentation relating to the occupation of a spiritual counselor. Nothing in the request for evidence indicated that the director had any concerns about the religious nature of the beneficiary's intended position.

The petitioner's response included an attestation, required by the regulation at 8 C.F.R. § 214.2(r)(8). The attestation included a new list of the beneficiary's responsibilities, which matched the previous list and showed the approximate number of hours that each task occupied each week. Leading worship, providing spiritual counseling and observing and reporting student behavior were each said to occupy seven hours per week; planning and implementing worship services, staff meetings, communicating with parents and planning student motivation were each said to occupy three hours per week. The other described duties were on an "as needed" basis.

The director denied the petition on November 5, 2009, stating that the petitioner had submitted:

No evidence that [the beneficiary's] position is recognized as a religious occupation related to a traditional function in this denomination . . . [or] that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination. Rather, the duties performed by the beneficiary are generally performed by dedicated members of the congregation and do not relate to a religious occupation.

It is not clear what "congregation" the director had in mind, because the petitioner is not a church (even though the director referred to "the petitioning church" in the denial notice).

The director observed: "The record . . . lacks any documentation establishing that the position of 'Children's Ministry Counselor' is recognized as a religious occupation related to a traditional religious function in this denomination. . . . [A]cceptable evidence includes a letter from a Superior or Principal of the denomination." Leaving aside the reference to a "Children's Ministry Counselor," which is not the beneficiary's job title, the director had not previously requested "a letter from a Superior or Principal of the denomination" attesting to the religious nature of the beneficiary's position. The director, therefore, based the denial on the petitioner's failure to submit materials that the regulations do not require, and that the director had never requested.

The director's decision devoted only a single sentence to a description of the beneficiary's duties. The director's description included the phrase "provide healthy vegetarian meals to the students, faculty, and staff etc.," even though the petitioner never claimed that the beneficiary would serve that function.

On appeal, the petitioner submits a letter from

One of the main duties performed at [the petitioning] School is that of a spiritual counselor. It is a recognized job that can only be filled by SDA individuals who have experience in Bible based religious counseling, preferably with youth and has the ability to guide, teach and counsel youth in accordance with Seventh Day Adventist Church Fundamental beliefs, teaching and manual.

This letter shows that a high-ranking official of the denomination has recognized that the beneficiary's position is a religious occupation within that denomination. The director had stated that such a letter would be strong evidence in the petitioner's favor.

The director, in the denial decision, cited no basis for the conclusion that the duties of a spiritual counselor are typically entrusted to "members of the congregation." The petitioner's consistent descriptions of the beneficiary's job duties indicate significant involvement, rather than occasional volunteer duties that "require only a modest time commitment" (another phrase from the decision). A more detailed job description indicates that spiritual counselors "provide spiritual guidance using Seventh-Day Adventist 28 fundamental beliefs . . . seeking to inculcate these beliefs as a guide to positive behavior."

We conclude that the director rendered a cursory finding based on an inaccurate portrayal of the record, and denied the petition based on the petitioner's failure to submit evidence not required by the regulations, and never requested by the director prior to the issuance of the decision. The petitioner's submission on appeal suffices to overcome the director's stated grounds for denial. Review of the record reveals no other evident obstacle to approval of the petition. Therefore, the AAO will withdraw the director's decision and approve the petition.

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.