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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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U.S. Citizenship
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Services

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[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **SEP 15 2010**

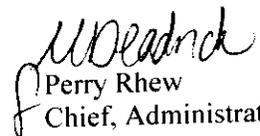
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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.

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 AAO will withdraw the director's decision and will remand the petition for further action and consideration.

The petitioner is a Jewish synagogue. It seeks to extend the beneficiary's status as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as an assistant teacher. The director determined that the beneficiary had reached the five-year limitation for nonimmigrant religious workers and was not eligible for additional extensions.

On appeal, counsel asserts that the beneficiary was first accorded R-1 nonimmigrant religious worker status on August 6, 2008 and therefore has not exceeded the five-year statutory limitation. The petitioner submits additional documentation in support of the appeal.

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 exceeded the five-year statutory limitation for nonimmigrant religious workers.

The director denied the petition, stating that U.S. Citizenship and Immigration Services (USCIS) records "show that the beneficiary has been in R1 status since 11/06/04." The USCIS records relied upon by the director were not made a part of the record of proceeding. The record before

the AAO reflects that the beneficiary last entered the United States on November 6, 2004 as an E-2 nonimmigrant with authorization to remain in the United States until November 6, 2006. The record also reflects that the petitioner filed a Form I-140, Immigrant Petition for Alien Worker, on behalf of the beneficiary on July 12, 2007 [REDACTED] which was denied on April 14, 2008. The petitioner's appeal of that decision is presently pending before the AAO. The petitioner's I-129, Petition for a Nonimmigrant Worker, filed by the petitioner on behalf of the beneficiary on October 31, 2006 [REDACTED] as a nonimmigrant religious worker was approved on August 7, 2008 for the period from August 6, 2008 to November 5, 2009.

The record reflects that the beneficiary has worked in the United States as an R-1 nonimmigrant from August 6, 2008 and therefore has not exceeded the five-year statutory limitation on the date the petition was filed on July 21, 2009.

Accordingly, we withdraw the director's decision. Nonetheless, the petition cannot be approved as the record now stands. Therefore, the petition will be remanded to the director for further action and consideration as discussed below.

The regulation at 8 C.F.R. § 214.2(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 an addendum to the Form I-129, the petitioner stated that, as an assistant teacher, the beneficiary devotes approximately 75% of her time in religious instruction, and that:

Her duties as Assistant Teacher entail assisting in teaching children in the early childhood education center about Jewish holidays and proper methods of religious

observance, prayers, Jewish customs, traditions and the Hebrew language. She assists in teaching children to understand the religious significance of popular Jewish songs and melodies.

Documentation submitted by the petitioner reflects that the beneficiary teaches "pre-K." The petitioner has not submitted sufficient documentation to establish that the duties of the proffered position primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

The matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.