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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
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Services

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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **SEP 16 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.

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 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 its director of children's ministry and education. The director determined that the petitioner had not submitted the required attestation and had not established that the petitioner is a bona fide nonprofit tax-exempt religious organization, that the position qualifies as that of a religious occupation, that the congregation size justifies the need for the position, that the beneficiary is qualified for the proffered position, and that the position is part of an established program for temporary, uncompensated missionary work.

The director also determined that the beneficiary had not performed the duties of the position as described in the previously approved R-1 nonimmigrant religious worker visa petition. The regulation at 8 C.F.R. § 214.2(r)(12) requires that any request for an extension of stay as an R-1 must include initial evidence of the previous R-1 employment (including Internal Revenue Service (IRS) documentation if available). 8 C.F.R. § 214.1(e) states that a nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act. Under 8 C.F.R. § 214.2(r)(5), extension of status is available only to aliens who maintain R-1 status.

The issues of the beneficiary's prior employment and maintenance of R-1 status are significant only insofar as they relate to the application to extend that status. An application for extension is concurrent with, but separate from, the nonimmigrant petition. There is no appeal from the denial of an application for extension of stay filed on Form I-129, Petition for a Nonimmigrant Worker. 8 C.F.R. § 214.1(c)(5). Because the beneficiary's past employment and maintenance of status are extension issues, rather than petition eligibility issues, the AAO lacks authority to decide those questions, and we will not discuss them in detail here.

On appeal, the petitioner asserts that the director did not provide the required attestation to be completed by the petitioner and erroneously evaluated the proffered position as that of a religious professional. The petitioner submits a brief and 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 first issue presented is whether the petitioner submitted the attestation required by the regulation at 8 C.F.R. § 214.2(r)(8), which provides:

An authorized official of the prospective employer of an R-1 alien must complete, sign and date an attestation prescribed by USCIS [U.S. Citizenship and Immigration Services] and submit it along with the petition. The prospective employer must specifically attest to all of the following:

- (i) That the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation;
- (ii) That the alien has been a member of the denomination for at least two years and that the alien is otherwise qualified for the position offered;
- (iii) The number of members of the prospective employer's organization;
- (iv) The number of employees who work at the same location where the beneficiary will be employed and a summary of the type of responsibilities of those employees. USCIS may request a list of all employees, their titles, and a brief description of their duties at its discretion;
- (v) The number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past five years by the prospective employer's organization;
- (vi) The number of special immigrant religious worker and nonimmigrant religious worker petitions and applications filed by or on behalf of any aliens for employment by the prospective employer in the past five years;

- (vii) The title of the position offered to the alien and a detailed description of the alien's proposed daily duties;
- (viii) Whether the alien will receive salaried or non-salaried compensation and the details of such compensation;
- (ix) That the alien will be employed at least 20 hours per week;
- (x) The specific location(s) of the proposed employment; and
- (xi) That the alien will not be engaged in secular employment.

The petition was filed on July 1, 2008. On November 26, 2008, USCIS published new regulations to supersede and replace the old regulations at 8 C.F.R. § 214.2(r). Supplementary information published with the new rule specified:

All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information. 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

Accordingly, on December 29, 2008, the director issued the petitioner a request for evidence (RFE) instructing the petitioner to “[c]omplete the attached employer attestation.” The petitioner failed to return the attestation with its response to the RFE and did not otherwise address the issue. On appeal, the petitioner, through its senior minister, [REDACTED] the official who signed the petition on behalf of the petitioner and also the beneficiary's father, states that an attestation was not included with the RFE and that he “was unable to complete and return a document . . . that I have no knowledge of ever receiving.”

Nonetheless, there is nothing in the record, and the petitioner does not allege, that it contacted USCIS in order to obtain the referenced attestation. Further, the regulation requires the submission of the form. These requirements were published in the Federal Register, in the Code of Federal Regulations, and on the USCIS website. Reverend Tate states on appeal that he had no reason to return to the USCIS website after completing the petition and therefore was not aware of the new requirement.

The petitioner's argument is unpersuasive. The petitioner failed to question the director's request for a completed attestation and exhibited no curiosity about the request prior to the denial of the petition. Had the petitioner exercised due diligence, it would have discovered the requirement for the attestation, as it did following the director's denial. The petitioner now submits the attestation on appeal. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988);

Matter of Obaighena, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

Accordingly, the petitioner failed to submit the attestation required by the regulation.

The second issue presented is whether the petitioner has established that it is a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 214.2(r)(3) defines a tax-exempt organization as “an organization that has received a determination letter from the IRS [Internal Revenue Service] establishing that it, or a group it belongs to, is exempt from taxation in accordance with section[] 501(c)(3) of the Internal Revenue Code” (IRC). Additionally, the regulation at 8 C.F.R. § 214.2(r)(9) provides:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the IRS showing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or
- (iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3), or subsequent amendment or equivalent sections of prior enactments, of the [IRC], as something other than a religious organization:
 - (A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;
 - (B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;
 - (C) Organizational literature, such as books, articles, brochures, calendars, flyers, and other literature describing the religious purpose and nature of the activities of the organization; and
 - (D) A religious denomination certification. The religious organization must complete, sign and date a statement certifying that the petitioning organization is affiliated with the religious denomination. The statement must be submitted by the petitioner along with the petition.

The record contains a copy of a July 22, 1999 letter from the IRS to the [REDACTED] granting the organization tax exempt status, to include its subordinate units, under section 501(c)(3) and 170(b)(1)(A)(i) of the IRC. The petitioner also submitted a copy of a January 10, 2002 letter from [REDACTED] certifying that "Redemption Ministries of the [REDACTED] is a part of the [REDACTED] and covered under the group exemption granted by the IRS.

As the evidence did not indicate that the petitioner was covered under the group exemption granted to [REDACTED] the director instructed the petitioner to "provide evidence that the petitioner's religious organization at" its address of record "qualifies as a nonprofit religious organization." The director further instructed the petitioner as follows:

Federal Tax Exempt Status: Provide evidence that the petitioning religious organization in the United States qualifies as a non-profit religious organization with Federal tax exempt status in the form of a signed letter from the [IRS] showing that the organization is exempt from taxation in accordance with section 501(c)(3) of the [IRC] as it relates to religious organizations; **or**

Affiliated Organization: Provide a signed and dated statement certifying that the petitioning organization is affiliated with the religious denomination. [Emphasis in the original.]

In its March 16, 2009 response, the petitioner stated that it was "a part of [REDACTED] and that it was "a church plant that was begun and initially supported by [REDACTED]" In a March 15, 2009 letter, [REDACTED] stated:

One of our goals is to plant new churches in the metropolitan [REDACTED] area. Since [REDACTED] does not have any church in the [REDACTED] area, we invited the [REDACTED] to transfer to our denomination and start a new church. Since we do not have any church facilities, our church planting strategy involves the pastor meeting in their home until the congregation is large enough to financially afford rent or a mortgage for a meeting facility. At this time, [the petitioning organization] is still in its infancy, therefore the church still meets in their home.

...

The Tate's [sic] are currently employed as co-pastors of [the petitioning organization].

The petitioner also submitted a copy of a webpage from the [REDACTED] reflecting that the [REDACTED] is a subordinate unit of that organization, and a copy of a webpage from [REDACTED] reflecting that the petitioner is a subordinate unit of [REDACTED]. On appeal, the petitioner submits a May 6, 2009 letter from [REDACTED]

[REDACTED], confirming that the petitioner is covered under the group exemption granted to the [REDACTED]

We find that the petitioner has submitted sufficient documentation to establish that it is a bona fide nonprofit religious organization, and we withdraw the director's determination to the contrary.

The third issue 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(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 a July 5, 2005 letter submitted with the petition, the petitioner stated:

The missionary is tasked with conducting the public worship of God with children and youth, to select teaching curriculum, to train teachers, to minister the word of God to children and youth through visitation, counseling, instructing and teaching. The weekly duties broken down into time estimates include:

- Studying, researching, and praying in order to prepare and deliver weekly youth and children's teachings as well as coordinate volunteer teachers and leaders within the youth ministry and children's ministry department; (20 hours)

- Establish and lead care group through Bible Study presentations and worship coordination: (10 hours)
- Prayerfully strategize and conduct Evangelistic outreach activities for youth and outreach to families and mothers with children: (10 hours)
- Fulfilling duties such as attending to members' needs and visiting within the community, including family's children and youth and hospital care. (5 hours)
- Recruit, prepare for, train, teach and oversight of volunteers: (3-5 hours)
- Select and/or prepare teaching material and consistent with the doctrines and beliefs of the denomination and age appropriate. (5 hours)
- Fulfilling other administrative duties as needed. (2-4 hours)

The petitioner did not specify any specific education or training requirements necessary for the proffered position.

In her RFE, the director advised the petitioner of the following:

Religious Professional: A professional capacity is an activity in a religious vocation or occupation for which the minimum of a United States baccalaureate degree or a foreign equivalent degree is required. Provide [documentation] to establish that the beneficiary qualifies as a religious professional worker.

In response, the petitioner did not indicate any specific educational or experience requirements for the position but stated that the beneficiary was scheduled to undergo training that would lead to her local church license and that she "met the necessary academic qualification and experience required by the organization for the position she now holds." The petitioner also stated that the beneficiary attended college in the United Kingdom and that her qualifications "cross-matched" with that of a Bachelor's of Art in Administration.

The petitioner submitted an excerpt from the 1997-2001 manual of the [REDACTED] [REDACTED] regarding ministerial credentials, a copy of a 2009 "Equipping the Saints School of Ministry" student catalog from [REDACTED] and copies of certificates indicating the beneficiary had completed several classes in various areas. The petitioner also submitted a copy of a January 9, 2002 "Evaluation of Academics and Experience" from [REDACTED], reflecting that the beneficiary had completed two years of academic coursework at [REDACTED] which together with her years of experience and other training was the equivalent of a Bachelor of Business Administration degree in the United States.

The director found that the submitted documentation did not show that either the petitioning organization or the denomination had established the proffered position as a religious professional position. On appeal, the petitioner states that the director “categorized the petition incorrectly” and that it sought to employ the beneficiary “in a religious occupation.”

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner stated that the beneficiary’s qualifications for the position included her BA degree. However, the petitioner did not specify any educational or experience required for the position. The director apparently misconstrued the beneficiary’s alleged qualifications as the qualifications necessary for the position. We agree with the petitioner that there was a misunderstanding as to the category in which it sought to employ the beneficiary. While we withdraw this portion of the director’s decision, as will be discussed, we concur with the director’s ultimate conclusion regarding this eligibility requirement.

The petitioner stated that the proffered position was that of director of children’s ministry and education. As discussed above, the petitioner submitted no specific requirements necessary for the proffered position. In response to the RFE, the petitioner submitted an excerpt from the denomination’s manual regarding ministerial credentials on which it has highlighted “local church ministers license.” The [REDACTED] student catalog indicates that the [REDACTED] was designed “to equip ministerial candidates, ministers, and local church leadership.” The course curriculum includes “emphasis modules” in children’s ministry, church education and youth ministry, which the petitioner has highlighted as requirements for the local church minister’s license.

The petitioner has not established that the position of “director of children’s ministry and education” is an occupation recognized as a religious occupation within the petitioner’s organization. Although the student catalog contains course curriculums in children’s ministry and church education, the coursework is associated with obtaining a ministerial license. The record does not establish that the position of an unlicensed children’s or education minister, or the director of such ministries, exists in the petitioner’s denomination.

Accordingly, the petitioner has failed to establish that the proffered position is a religious occupation within the meaning of the regulation.

The fourth issue is whether the petitioner has established that its congregation size justifies the need for the proffered position.

We note that while the regulation does not require the petitioner to establish a specific need for the position, the regulation at 8 C.F.R. § 214.2(r)(1)(ii) provides that the beneficiary must be coming to the United States to work at least 20 hours per week.

As discussed above, the petitioner stated that the beneficiary would work at least 40 hours per week. In her RFE, the director inquired about the size of the petitioner’s congregation and

instructed the petitioner to “[s]ubmit a current membership directory verifying the total number of actual congregants.”

In response, the petitioner stated that it had “not prepared any official church directory up to this point because of the fluctuating and changing of names and families.” The petitioner provided photographs that it stated were of the “present attendees and some whom we have sadly seen leave.” The photographs do not show a group that included more than 12 individuals. The petitioner also indicated that it was a “home-church” and stated that the photographs also depicted the areas of the home that was used for religious activity.

On appeal, the petitioner states that it is a growing church and that the size of the congregation fluctuates during the year. The petitioner states that “the children are taught in a large room that accommodates 15-20 children.” However, it submitted no documentation that 15-20 children are actually taught by the beneficiary or that the church itself as a total membership of 15 to 20.

The petitioner has not established that the beneficiary will work at least 20 hours per week.

The fifth issue is whether the petitioner established that the beneficiary is qualified for the proffered position.

The regulation at 8 C.F.R. § 214.2(r)(3) defines a religious worker as “an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister.”¹

As discussed previously, the petitioner did not identify any specific prerequisite for the position. In its response to the RFE, the petitioner stated:

[The beneficiary] is to undergo within the next six months the training . . . leading to her Local Church License. Her training had been delayed in order that she gained more onsite experience and had time to adapt to the new culture in which she was ministering. However, she is now to begin the academic training . . . which will lead to her receiving a Local Church License later this year.

The petitioner did not indicate that the proffered position required a ministerial license as a condition of employment. The petitioner stated again that the beneficiary meets the “necessary academic qualifications and experience required by the organization.” Nonetheless, the petitioner again identified no “academic qualifications or experience required by the organization.”

On appeal, the petitioner states that the qualifications for the position include “5+ years experience with a Children’s ministry.” According to the beneficiary’s résumé, however, the

¹ We note that the director erroneously cited to the regulation at 8 C.F.R. § 204.5, which governs immigrant visa petitions. We, however, find such error to be harmless as the relevant portion of the regulations for the immigrants and nonimmigrants are identical.

only experience she has in this field is with the petitioner and dates from August 2005. The petition was filed on July 1, 2008. The petitioner provided no other documentation of the beneficiary's experience with a children's ministry. Therefore, the petitioner has not established that the beneficiary possessed the required experience, either at the time she first assumed the position with the petitioner or prior to the filing of the current petition, and was thus qualified for the proffered position.

Finally, the director determined that the petitioner had failed to establish that the position is part of an established program for temporary, uncompensated missionary work.

The 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 its July 5, 2005 letter, the petitioner stated that the proffered position would be compensated at the rate of \$25,000 per year. In response to the RFE, however, [REDACTED] stated that he had fully supported the beneficiary, his daughter, since early 2006. The petitioner provided no other documentation to establish how it intends to compensate the beneficiary or that the position was 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.

On appeal, the petitioner states that the beneficiary is not self-supporting but is compensated with in-kind support of room and board and that her healthcare needs were met by the petitioner. The petitioner also submits a May 6, 2009 letter from Bishop Birt, who confirmed that the beneficiary "is serving as a traditional non-compensated missionary . . . as part of a non-compensated missionary program within the church."

The petitioner, however, has not submitted documentation that meets the requirements of 8 C.F.R. § 214.2(r)(11). First, the petitioner initially alleged that the position would be compensated with an annual salary of \$25,000. This statement is not consistent with the petitioner's later allegation that the position is "a traditional non-compensated" one. The regulation provides that the petitioner must provide evidence of compensation, either in the form of how it intends to compensate the beneficiary or documentation of how the beneficiary will be self-supporting. The petitioner alleges that the beneficiary is not self-supporting; however, it provided no documentation of how it intends to compensate the beneficiary. The regulation does not distinguish "self-support" as that provided entirely by the beneficiary or support received from family members.

Additionally, the regulation provides that if the beneficiary is self-supporting, the petitioner must establish that the proffered position 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. The regulation defines what constitutes an established program for temporary, uncompensated missionary work and the documentation required. The petitioner submitted only a statement from [REDACTED] attesting that the position is part of an established program for temporary, uncompensated missionary work. The petitioner's evidence is insufficient to establish that the proffered position is part of an established program for temporary, uncompensated missionary work.

Accordingly, the petitioner has not established how it intends to compensate the beneficiary or that the proffered position is part of an established program for temporary, uncompensated missionary work.

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.