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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: **MAY 25 2011** Office: CALIFORNIA SERVICE CENTER FILE:

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:

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,

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 church. It seeks to classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as a pastor. The director determined that the petitioner had not established that the beneficiary will be employed at least 20 hours per week.

On appeal, the petitioner submits a letter in an attempt to clarify the beneficiary's duties and working hours.

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 established that the beneficiary seeks to enter the United States to work at least 20 hours per week.

The regulation at 8 C.F.R. § 214.2(r)(1) provides that to be approved for temporary admission to the United States for the purpose of conducting the activities of a religious worker, an alien must "[b]e coming to the United States to work at least in a part time position (average of at least 20 hours per week)."

In its August 15, 2009 letter submitted in support of the petition, the petitioner stated that the duties of the position of pastor included administration, preaching, leadership training, education and counseling. The petitioner listed other duties as officiating at baptisms, the Lord's Supper, and funerals, performing home and hospital visitations and strengthening marital and family relationships. The petitioner provided a schedule of the weekly duties for the pastor as follows:

SUNDAY	–	1:00 – 2:00 pm – Deacons' Training/Meeting 2:00 – 5:00 pm – Worship Service and Sunday School
MONDAY	–	D A Y O F F
TUESDAY	–	9:00 am to 12:00 nn – Study/Preparation/Planning 2:00 to 4:00 pm – Study and Preparation
WEDNESDAY	–	9:00 am to 12:00 nn – Study/Preparation/Planning 2:00 to 4:00 pm – Study and Preparation 7:30 to 9:30 pm – Leading Church Prayer Meeting and Bible Study
THURSDAY	–	9:00 am to 12:00 nn – Study/Preparation/Planning 2:00 to 4:00 pm – Study and Preparation 7:00 to 9:00 pm – Leading Bible Study with new contacts
FRIDAY	–	9:00 am to 12:00 nn – Study/Preparation/Planning 2:00 to 4:00 pm – Study and Preparation 7:00 to 9:00 pm – Leading Youth Bible [Study]
SATURDAY	–	1:00 to 5:00 pm – Occasional Visitation 7:00 to 9:00 pm – Leading Outreach Bible Study

The pastor spends approximately 36 hours of the week for the ministry.

In denying the petition, the director stated that in a March 11, 2010 request for evidence (RFE), the petitioner had been instructed to provide a detailed description of the work to be done, including specific job duties and the number of hours per week performing the work duties. The director stated that in response to the RFE, the petitioner submitted the schedule above (which it had previously submitted with the petition). A review of the RFE, however, does not reveal that the director requested any other information about the duties of the proffered position. The director calculated that the beneficiary's duties as listed above accounted for only 16 hours of work per week and denied the petition.

The petitioner states on appeal:

We noticed that you only counted sixteen (16) hours work on [the beneficiary's] weekly schedule. This letter is requesting to please reconsider our explanation regarding his working hours why we came up 36 hours instead of 16 hours. We want to clarify that the study and research hours of a minister is [sic] very

essential to his function and pastoral duties to execute them effectively. Ample time for preparation and research is absolutely necessary for his weekly teaching and preaching duties, and this is the reason why it is explicitly included in the weekly schedule. We want to make clear that the sermons he delivers when he preaches every Sunday are *not* ready made sermons coming from the head of the denomination or someone else. Week after week his sermons are composed and made suitable, during those study hours, for the specific congregation he is delivering the message, in his case, they are the members and regular attendees of [the petitioning organization]. In order to do that laborious work he has to read bible commentaries, articles or journals related to the biblical text he is studying for preaching and teaching . . . Also, the teaching duties every week and during weekdays are carefully selected, prepared and composed according to the level of spiritual understanding of each group he is dealing with; and also for the church members as a group during Sunday School. [Emphasis in the original.]

The petitioner again submits the beneficiary's weekly schedule and also a new schedule that became effective after the petition was filed. The petitioner stated that the schedule changed because some of the church activities changed. The new schedule added duties such as meeting with the church council once a month, office hours, and teaching "contextualized leadership development," and indicates that the beneficiary will work 45 hours per week. However, this new schedule became effective after the filing date of the petition. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

The director did not indicate why she did not consider all of the duties and times indicated on the schedule provided by the petitioner, particularly the study and preparation times. On appeal, the petitioner provided a rational explanation of the beneficiary's study and preparation times. Even if the director did not consider all of the times provided on the schedule, it is logical to provide time for the beneficiary to research and prepare his sermons and classes. Allowing time for such preparation, the schedule indicates that the beneficiary will be engaged in his work as a pastor for more than 20 hours per week. The AAO therefore withdraws the director's decision.

However, the petition cannot be approved as the record now stands. The regulation at 8 C.F.R. § 214.2(r)(16) provides:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the

USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The record does not indicate that the petitioner has satisfactorily completed the onsite inspection. The matter is therefore remanded for the director to determine whether an additional compliance review is required in the instant case.

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.