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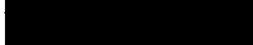
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

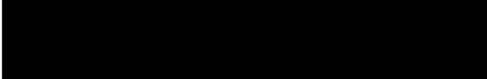
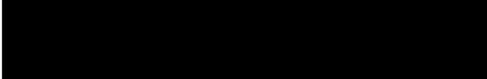


**U.S. Citizenship
and Immigration
Services**



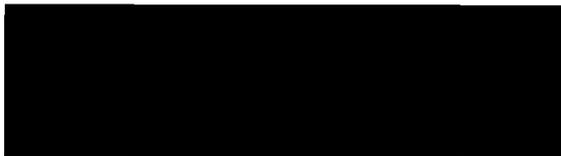
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Date: **SEP 28 2011** Office: CALIFORNIA SERVICE CENTER FILE: 

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:



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 \$630. 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1), to perform services as a youth ministry assistant. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation.

On appeal, counsel asserts that the decision is arbitrary, without a legal basis and “created a new and additional standard for approval of the R-1 case that is not contained in the statute and regulation.” Counsel 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 issue presented 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(r)(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 its January 30, 2010 letter submitted in support of the petition, the petitioner, through its [REDACTED] stated that the beneficiary's duties as a youth ministry assistant include "providing support for the ministry to children at the church." The petitioner provided a job description for the proffered position and stated that seventy percent of the beneficiary's time would be spent in "providing support to the children's ministry," twenty-five percent of his time would involve community support including overseeing the food bank, and five percent of his time would be in administrative support to the church.

In a May 27, 2010 request for evidence (RFE), the director instructed the petitioner to submit additional documentation to establish that the proffered position is a religious occupation within the meaning of the regulation, including the requirements for the position, evidence that it is a traditional religious function within the petitioner's denomination, the number of hours per week the beneficiary would be engaged in the work, and the minimum education, training, and experience necessary to do the job.

In response, [REDACTED] on behalf of the petitioner, stated that the beneficiary would work 37.5 hours per week in the duties previously outlined in the job description, which had been approved by the petitioner's board of elders. The petitioner further stated, "The traditional religious function of the position [the beneficiary] will serve is in assisting with the ministry of the scripture to grade school aged children, to nurture them in the faith and instill Christian values, so that they too may grow in the faith."

In denying the petition, the director found that the petitioner's letter was insufficient to satisfy the regulatory requirement and that the petitioner had failed to submit documentary evidence to establish that the proffered position is a religious occupation within its denomination. The director noted that while the position is that of an "assistant," the petitioner's list of paid

employees does not include a position for a youth minister for the beneficiary to assist. The director also stated:

Furthermore, the job duties of the beneficiary provided by the petitioner . . . consist mostly of assisting and other vague duties that were not elaborated. The hours performing each duty were also not provided. The conventional meaning of a religious occupation, as opposed to a religious vocation, is a permanent, salaried position within a church organization. The position is traditionally permanent and salaried due to the significant time commitment necessary to perform the duties and the level of training and education required to perform the duties. Lay persons who have completed some prescribed course of religious training and who possess some type of certification or qualifications issued by the denomination fill religious occupations. In contrast, a great number of activities carried out within a religious organization are not classifiable as either vocation or occupational. Such activities usually are concerned with participating in worship services or to their church-sponsored religious programs. These activities require only a modest time commitment and no specialized religious training or education. Volunteers from among the congregation as an expression of their faith and practice of their beliefs traditionally perform these duties.

The submitted evidence does not indicate that the position requires religious training or education beyond that of a devout member of the belief. Rather, the duties listed are those generally provided by dedicated members of a congregation on a volunteer basis.

The record does not demonstrate the proposed duties of the position are sufficiently specialized in a theological doctrine so as to constitute a religious occupation.

On appeal, counsel takes issue with all of the director's statements, arguing *inter alia* that because "a position can be unpaid does not equate to it not being a religious occupation," that religious training is not a requirement of the regulation or statute, and that the director "erred in finding that a position that involves 'assisting' cannot be the basis for an R-1 visa." In a February 4, 2011 letter submitted on appeal, [REDACTED] stated that the beneficiary would be his assistant and that the position of youth ministry assistant is really that of "an assistant teacher." He further stated:

[S]imply because the position has not existed in the past does not mean that it is not a traditional religious occupation. With the growth of our church, we need additional full-time help, and the use of volunteers is not adequate due to the increasing programs and hourly demands that have come with the growth of our church. So, the adjudicator is correct that this is a new position in our church, but the mere fact that it is new does not mean that it is not a traditional religious occupation. A church only exists by teaching and passing its faith to the next

generation. There is nothing that is more inherently a traditional religious occupation than acting as a teacher

The director erred in suggesting that a religious occupation requires any specific training or education. The regulation requires specific training for a religious occupation only as it is applicable to the position of minister. Further, while compensation is indicative that a position can qualify as a religious occupation, the absence of compensation is not dispositive of the issue. Nonetheless, we concur with the director that the petitioner has failed to establish that the proffered position is a religious occupation within the meaning of the regulation.

The regulation requires the petitioner to establish that the duties of the proffered position primarily relate to a traditional religious function. The position description states that the purpose of the position is:

To provide support for the ministry to Children at the church so that discipleship and nurture can occur and to assist in programs that will affect our local community and the congregational community.

The position description identifies the duties of the position, ministry assistant for children and community service, as including:

- a. Sunday Morning Responsibilities
 - To assist children's class in the programming and teach ministry.
 - To assist in selection and preparation of educational materials of interest to class.
 - To minister to the children and shepherd them while in the class.
 - To conduct follow-up of children missing from class each week.
- b. Support
 - Assist with special events (i.e. fall fest, quarterly events, musicals of a religious nature).
- c. Weekly Responsibilities
 - Assist in presentation of thematically appropriate spiritual education for children ages K to 5th grade.
 - Encourage church children in participating in religious education
 - To conduct follow-up of unchurched children who visit the church.

The position description also identifies the oversight and supervision of the position:

Ultimately, all staff persons are accountable to the Board of Elders. The Elders entrust the direction and supervision of the staff to the Pastor-Teacher for the day-to-day operations of the church. The Ministry Assistant (MACCS) will meet weekly with the Pastor of Equipping and/or Congregational Life and receive his direct supervision from the Pastor of Equipping. A weekly staff meeting is a

priority and additional interaction with supervisors to successfully perform his role as needed.

The list of staff profiles identifies [REDACTED] as the pastor of equipping and indicates that he is “responsible for children’s education, ministry mobilization of church members, local outreach networking and pastoral care.” This is inconsistent with [REDACTED] statement that the position is, in essence, that of an assistant teacher, and that the beneficiary is his assistant and answers to him as the teacher. The position description does not provide a direct supervisory chain to [REDACTED] and it is unclear why he claimed the relationship. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). According to the Form I-129, Petition for a Nonimmigrant Worker, the pastor-teacher is responsible for the “overall oversight of the Church, staff and leadership development, global ministries, primary preaching and management and business functions.”

In an effort to deter fraud in the religious worker visa program, USCIS regulations require a petitioner to establish that the proffered position is recognized as a religious occupation within its denomination. One of the purposes of this requirement is to prevent a petitioner from manipulating the religious worker visa program by creating a position for a specific individual. Therefore, a petitioner must establish that the position is recognized as a religious occupation within the petitioner’s denomination. However, if the organization is nondenominational, as with the petitioner, the petitioner must establish that the position is recognized as a religious occupation within its organization.

Although the petitioner provided a copy of a job description, the record does not establish when the job was created. The record reflects that the beneficiary last entered the United States as a B2 nonimmigrant visitor on November 6, 2009. The petitioner’s letter of January 30, 2010 indicates that the petitioner’s mother resides in the United States as a permanent legal resident and that his father is present in the United States as an F-1 nonimmigrant student. The letter indicates that the proffered salary of [REDACTED] contemplates the beneficiary's receipt of free room and board by residing with his mother.

The petitioner stated that the beneficiary volunteered as a teacher’s aide with the petitioning organization during his association with the church. However, while the petitioner alleges that its membership had grown to the point that it needs the services of a ministry assistant, the petitioner provided no documentation of the number of youth in its congregation. The petitioner has provided no documentation of its new need for the proffered position and the evidence of record indicates that it was created for the purpose of providing employment specifically to the beneficiary.

The petitioner has submitted insufficient documentation to establish that the proffered position is a religious occupation within the meaning of the regulation.

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary has been a member of its religious denomination for two full years immediately preceding the filing of the visa petition. The regulation at 8 C.F.R. § 214.2(r)(1) provides 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.

The petition was filed on February 8, 2010. Therefore, the petitioner must establish that the beneficiary was a member of its denomination for the two years immediately preceding that date.

In his February 5, 2010 letter, counsel stated:

[The beneficiary] most recently entered the US on November 6, 2009 in B-2 visa status which is valid until May 4, 2010. During [the beneficiary's] presence in the US over the past two years, he began attending [the petitioning organization]. Due to repeated visits and visa extensions, [he] has been physically present in the USA as a member of the church for the requisite two years. He became a member of the Church in September 2007.

In its January 30, 2010 letter, the petitioner stated that the beneficiary had last entered the United States on November 6, 2009, and that he became a member of the petitioning organization in the same month. However, in a February 5, 2010 letter also submitted with the petition, [redacted] stated that the beneficiary had been a member of the church since September 2, 2007. A petitioner must resolve any inconsistencies in the record by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-92. The beneficiary's visa and passport indicate that he was admitted into the United States several times between February 2007 and February 2010. The beneficiary stated on his résumé that he has been a member of the [redacted] since 1998 although he has attended the petitioning organization since September 2007.

The record does not reflect that the beneficiary has been a member of the petitioning organization for two full years immediately preceding the filing of the visa petition.

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 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.