



U.S. Citizenship
and Immigration
Services



813

Date: **DEC 18 2012** 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, 8 U.S.C. § 1101(a)(15)(R)(1)

ON BEHALF OF PETITIONER:

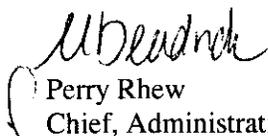


INSTRUCTIONS:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 a missionary. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation and that the petitioner's missionary program 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.

On appeal, counsel asserts that the petitioner has had part-time missionaries in the past and that, "although a small program . . . it nonetheless constitutes an established program for temporary, uncompensated missionary work as anticipated by the regulations." 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 first 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.

The petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that the proffered position is that of missionary and that the duties of the position are to:

Preach the word of God, in season and out of season, to as many as will hear it; communicate the specific message of our faith as explained by the pastor; to carry the gospel of comfort and deliverance to hospitals, jails, and convalescent homes; home visitation to the shut-ins and sick members of the church and give physical assistance with needed; visitation to residents in the local nursing homes; oversee the church's food pantry and clothing closet; and address the spiritual and material needs of the church and the community.

The petitioner stated that the beneficiary would be self-supporting and that it was submitting documentation to establish that the position was part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of mission work sponsored by the denomination.

In its September 12, 2011 letter submitted in support of the petition, the petitioner stated:

A missionary program is an established program for temporary, uncompensated work. One of the criteria for defining a missionary program is that foreign workers must have previously participated in R-1 status. As a new missionary program would not have foreign workers previously participating in R-1 status, it would not qualify as an established missionary program.

It is unclear from the petitioner's statement if it is defining its own missionary program or attempting to define what it believes are USCIS requirements for a missionary program. If the latter, it must be pointed out that USCIS does not set standards for a missionary program. While the regulation at 8 C.F.R. § 214.2(r)(11) does define what constitutes an established program for temporary, uncompensated work for the purpose of determining whether an individual will be considered self-supporting, the regulation does not purport to set a standard definition for all missionary programs. The AAO will further address the petitioner's claims regarding the beneficiary's self-support below.

In her request for evidence (RFE) dated October 18, 2011, the director instructed the petitioner to submit additional documentation in accordance with the regulation at 8 C.F.R. § 214.2(r)(3) to establish that the position qualifies as that of a religious occupation. The director also instructed the petitioner to submit a "detailed explanation as to the requirements for the position offered, and how the beneficiary meets those requirements," documentation to establish that the proffered position "is recognized as a religious occupation related to a traditional function in this religious denomination or organization," and a detailed description of the work to be done and how those duties relate to a traditional religious [function]."

In an undated statement submitted in response, [REDACTED] who signed the petition on behalf of the petitioner and identified himself as the "Administrative/Senior Pastor," stated that the beneficiary is assigned to the church as [REDACTED]. We also wanted to have a Filipino worship service in the church and [the beneficiary] will serve as an Associate Pastor under my leadership." In another undated statement, apparently to explain the beneficiary's qualifications, [REDACTED] stated:

The undersigned is firmly believe [sic] that this task Missionary/Pastor rendered by [the beneficiary] to [the petitioning organization]; likewise to the Filipino worship services in the Church was a mandated religious vocation. This is not limited only to [the beneficiary] but also to all men and women who wanted to commit themselves to the Lord's call, having sealed by the Holy Spirit and of our Lord Jesus Christ commissioning and is observed as religious function. According to the Lord Jesus Christ when He was still here on earth, he commissioned the twelve apostles to go into the world and preach the gospel which is the message of salvation to the whole world.

Furthermore, we observed and heard him the way he delivered the messages of the gospel to the church and to the Filipino's, including doctrines that most Christians observed and considered delicate when taught . . . He clearly explained the Word of God which is the basis of the Christian faith and doctrines. [The beneficiary] is well able to do this function preaching the Gospel to the people and [the petitioning organization] commissioning him for this purpose.

The petitioner submitted a copy of the beneficiary's March 20, 1992 diploma from the [REDACTED] and a copy of the beneficiary's [REDACTED]

December 8, 2002 certificate of ordination from the [REDACTED]. In his January 6, 2012 letter accompanying the petitioner's response to the RFE, counsel stated that three other individuals had "performed the functions as Missionary for [the petitioner] in the past" and that "all of these individuals are currently serving the church in other positions." Counsel references a list of the petitioner's workers; however, the list does not indicate any previous position held by any of the three individuals named by counsel.

The director denied the petition, finding that the petitioner had not identified any specific qualifications for the job and did not "claim that the position offered requires any special theological training or education and the record contains no evidence that the church has ever employed full-time, salaried employees to carry out these functions." The director stated that while counsel indicated that three other people had served as missionaries with the petitioning organization, "there is no evidence that they served as missionaries."

On appeal, counsel states "it is well-established law that the role of Missionary is a 'religious occupation'" and that the evidence submitted shows that the duties of the position primarily relate to a traditional religious function and is recognized as a religious occupation within the denomination and primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination. Counsel asserts that the role of the petitioning organization is "to 'communicate God's word through evangelism' and 'to bring people to Jesus Christ to be members in His family, develop them to Christ like maturity, in the church and t mission filed in the work, in order to magnify God's name,'" a role that is set forth in its affiliation agreement with the First Samoan Full [REDACTED]. Counsel further asserts that these responsibilities form the "purpose of missionary work."

The AAO will withdraw the director's decision. The title of a position is not dispositive of whether or not it is a religious occupation for purpose of this visa classification. The duties of the position must also be considered. Although the petitioner refers to the proffered position as missionary, throughout its supporting documentation it also refers to it as "missionary/associate pastor." The duties of the position involve preaching and visits in order to carry out the religious mission, duties normally associated with a ministerial position. The AAO notes that many religious organizations employ lay ministers who are not ordained yet still are authorized to preach and administer the gospel. In the instant case, the petitioner has stated that the beneficiary met its requirements for the position and submitted his diploma and ordination certificates.

The regulation does not require specific religious education or training for a position to qualify as a religious occupation. Nor does the regulation require that in order for the position of missionary to qualify as a religious occupation, the petitioner must establish that it is part of an established program for temporary, uncompensated missionary work.

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

Nonetheless, the petitioner has not established that its missionary program is an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination and therefore has not established how it intends to compensate the beneficiary.

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.

The petitioner indicated on the Form I-129 that the beneficiary would be self-supporting. In its September 12, 2011 letter, the petitioner stated that a "missionary program is an established program for temporary, uncompensated missionary work" and that "a missionary program is that foreign workers must have previously participated in R-1 status." The petitioner also stated that the beneficiary has been in R-1 status in the United States since 2008, implying that the beneficiary's status as an R-1 nonimmigrant religious worker proves that the petitioner has an established program for temporary, uncompensated missionary work.

Counsel states on appeal, "[W]e note that the new regulations specifically provide for the admission of unpaid or 'self-supporting' missionaries at 8 C.F.R. § 214.2(r)(1)(ii) [sic]." Counsel then quotes the language cited-above at 8 C.F.R. § 214.2(r)(11)(ii)(A)(B). Counsel does not reference subsection (C) of the regulation, which sets forth the specific evidence the petitioner must provide. The record does not reflect that the petitioner has submitted documentation demonstrating that it has an established program for temporary, uncompensated missionary work or that the denomination maintains missionary programs both in the United States and abroad. On appeal, the petitioner states that three of its current workers had previously served as missionaries. However, the petitioner submits no documentation to establish their participation in a missionary program and whether or not they were compensated for their missionary work. The petitioner submitted no other documentation to establish the existence of a temporary uncompensated missionary program within its organization. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r. 1972)).

Additionally, the petitioner submitted no documentation demonstrating that the denomination maintains missionary programs both in the United States and abroad and no documentation that it provides formal training to its missionaries as required by 8 C.F.R. § 214.2(r)(11)(ii)(C). The

petitioner has therefore failed to 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

Additionally, the petitioner did not complete questions 14 and 15 of the Form I-129, which requests information regarding the gross and annual income of the petitioning organization and provided no documentation regarding its financial status and ability to compensate the beneficiary.

Accordingly, the petitioner has failed to submit documentation in accordance with the regulation at 8 C.F.R. § 214.2(r)(11) to establish how it will compensate the beneficiary.

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.