

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**

D13

DATE: **DEC 31 2012** OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(i)

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.

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal from that decision. The matter is now before the AAO on a motion to reopen and reconsider. The AAO will grant the motion to reopen, dismiss the motion to reconsider and affirm the dismissal of the appeal.

The petitioner is a Christian church belonging to the United Pentecostal Church International (UPCI) denomination. 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 director of programs. The director determined that the petitioner had not established that the position qualifies as a religious occupation. The director also found that the petitioner had not provided sufficient information about the qualifications for the position or how the beneficiary meets those qualifications.

In this decision, the term "prior counsel" shall refer to [REDACTED] who represented the petitioner prior to the filing of the present motion. The term "counsel" shall refer to the present attorney of record.

On motion, the petitioner submits statements from counsel, Rev. [REDACTED] of the petitioning church, and a district official of UPCI. The petitioner also submits background materials about UPCI and translated copies of certificates issued to the beneficiary.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The petitioner, on motion, does not show that the prior decision was based on an incorrect application of law or USCIS policy, or that the decision was incorrect based on the evidence of record at the time of that decision. Therefore, the motion does not meet the requirements of a motion to reconsider, and the AAO will dismiss that motion. The petitioner has, however, submitted new evidence in support of newly claimed facts, and so the AAO will consider the submission as a motion to reopen.

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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(1) states 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;
- (ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);
- (iii) Be coming solely as a minister or to perform a religious vocation or occupation as defined in paragraph (r)(3) of this section (in either a professional or nonprofessional capacity);
- (iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and
- (v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

RELIGIOUS OCCUPATION

The first issue under consideration is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 214.2(r)(3) defines “religious occupation” as 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 that 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.

(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 filed the Form I-129 petition on November 23, 2010. The director denied the petition on May 25, 2011, and the AAO dismissed the petitioner's appeal on March 22, 2012. The AAO's dismissal notice included a summary of the issue up to that time. Rather than repeat the entire dismissal decision, the AAO incorporates that notice here by reference and will repeat brief quotations as necessary for context.

Rev. [REDACTED] introductory letter of November 18, 2010 indicated that the beneficiary had solicited donations for the renovation of a barn on newly purchased church property. [REDACTED] stated that the church intended to use the renovated structure, when complete, as

a food bank, an informational resource center for Governmental and community services, a gym for our youth, English as a second-language classes, and other assistance to our lower income members. In her role as Director of Programs [the beneficiary] will be responsible for leading the various members of the church in their efforts to develop this expanded programming to be conducted on the new property. This will include the many programs described above and additional Christian education programs for our members. [The beneficiary] will also be responsible for developing fundraising programs to be held on the new property.

The Director of Programs remains a vital religious position to The Church community and entails a great deal of responsibility. As Director of Programs, [the beneficiary] oversees all church programs, such as community meetings, inviting other religious speakers to The Church and our ongoing fundraising efforts. [She] oversees all adult, youth, and child religious programs from weekly prayer meetings to baptisms. In her role as Director of Programs, [the beneficiary] also organizes all special activity-related events, including Christmas and Easter. These events require a great deal of organizational and administrative responsibility, as well as experience, faith, and knowledge of the beliefs and practices of The Church. Of key importance is [the beneficiary's] work overseeing The Church's capital fundraising and macro programs which directly contribute to The Church's continued growth.

The director, in a March 11, 2011 request for evidence, asked the petitioner to explain how the beneficiary's duties relate to a traditional religious function. In a response dated April 21, 2011, [REDACTED] stated:

The Director of Programs . . . oversees all church programs including religious speakers, community meetings and special events held at The Church. As the Director of Programs [the beneficiary] oversees various types of religious programs from weekly prayer meetings to baptisms of children and new church members. Her daily duties include a variety of administrative tasks including coordinating with The Church accountant, depositing tithes and offering from Sunday services, managing and operating The Church's business office. [The beneficiary] spends at least 10 hours a week on purely administrative tasks. [She] is also responsible for ensuring the successful direction and organization of the majority of The Church's religious programming including: (1) acting as ministry leader coordinator [5 hours/week] (2) supervising the "Friends Meeting Group" [10+ hours/week] (3) coordinating the UNGIDOS ministry conference [3-20 hours/week, varying seasonally], (4) directing church choirs [2-4 hours/week], (5) leading community outreach ministry [2-3 hours/week] and (6) directing church-wide fasting known as "Forty Days of Fire" [1-10 hours per week from January to June].

In denying the petition on May 25, 2011, the director found:

The majority of the beneficiary's duties are administrative in nature. . . . No evidence was submitted to show that the duties of the position are directly related to the religious creed or beliefs of the denomination, that the position is defined and recognized by the governing body of the denomination, or that the position is traditionally a permanent, full-time, salaried occupation within the denomination or petitioning religious organization.

The petitioner appealed the decision, and prior counsel stated that [REDACTED] April 2011 letter omitted many lesser duties of a religious nature. Prior counsel maintained that the beneficiary's "teaching and leadership duties primarily relate to a traditional religious function recognized by leaders of her religious denomination and are primarily related to inculcating and carrying out the religious creed and beliefs of The Church." The AAO notes the atypical capitalization of "The Church," which appears both in prior counsel's statements and in letters signed by [REDACTED]. Witnesses (many of whom indicated affiliation with denominations other than UPCI) referred to the beneficiary as a lay minister. [REDACTED] of [REDACTED] the petitioner's parent organization, asserted that the beneficiary "has been granted a Christian Workers License under the direction of the United Pentecostal Church International and is therefore duly licensed as a minister and Director of Programs for the [petitioning] church." The identical phrase, with identical capitalization, also appeared in letters signed by [REDACTED] secretary, and by [REDACTED] in Washington, D.C.

The AAO, in dismissing the appeal, found that the appeal included no documentary evidence of UPCI denominational recognition of the beneficiary's position as a religious occupation. The AAO also observed that the petitioner did not submit a copy of the license mentioned above. The AAO stated: "in its initial correspondence, the petitioner stressed that the duties of the position are

primarily administrative in nature with a special emphasis on fundraising. The outline of the beneficiary's daily duties does not establish that the beneficiary will be primarily engaged in religious work." The AAO found that the beneficiary's position appeared to be "tailored to her specific and unique skills," rather than a position found at other UPCI churches.

On motion, the petitioner submits a new letter from [REDACTED] stating that the beneficiary "held a Christian Worker's License which is provided for under the General Constitution of the United Pentecostal Church (UPCI), under Article VII, *Ministry*, Section 1, *Christian Worker's License*." The petitioner does not submit a copy of the *General Constitution* or the relevant portion thereof. The petitioner does, however, submit a printout from UPCI's official web site, <http://www.upci.org>. That web site includes the denomination's *Manual* for 2012, including the General Constitution.¹ Article VII, Section 1 of that document reads, in full: "a Christian Worker's License may be issued by the pastor for local workers in his or her own assembly." Thus, rather than establish denominational recognition for the petitioner's original title and duties as initially described, the petitioner established denominational recognition for the "Christian Worker's License" that the petitioner never mentioned prior to the denial of the petition. The beneficiary's original title, "director of programs," is a phrase that never appears in the General Constitution or anywhere else in the *Manual*.

[REDACTED] did not state how the license related to the beneficiary's work. He stated that the license is a requirement "to be a Local Christian Prisoner Fellowship Chaplain," but he did not state that the beneficiary is such a chaplain. [REDACTED] also did not state when the beneficiary received this license. This is a significant omission because neither the petitioner nor any witness mentioned the license prior to the appeal, when exactly the same sentence about the license appeared in three letters. The petitioner's motion includes a copy of a November 19, 2007 letter in which [REDACTED] discussed the beneficiary's qualifications, but there is no reference to any license.

The license itself, reproduced in the record, bears the heading "Christhian Worker's Lincense" [sic]. The "Christhian Worker's Lincense" lists the beneficiary's title as "Evangelist Minister," another phrase that appears nowhere in the *Manual* or General Constitution. The back of the license refers to the "United Church Pentecostal International," a garbling of the denomination's actual name which is "United Pentecostal Church International." The AAO has serious doubts about this error-ridden and undated document.²

¹ Source: <http://ca.upci.org/moduleUploads/2012%20MidYear%20UPCI%20Manual.pdf> (excerpt added to record November 28, 2012).

² The UPCI web site printout in the record identifies "the Pentecostal Publishing House" (PPH) as a component of the denomination. PPH sells blank "Christian Worker's License" credential documents, for individual churches to complete and issue to their workers. The documents shown on the PPH web site at <https://pentecostalpublishing.com/node/3977> and <https://pentecostalpublishing.com/node/3978> do not resemble the "Lincense" document reproduced in the record. (Printouts added to record November 28, 2012.) According to PPH, the Christian Worker's License "identifies Christian workers for visitation work in hospitals and prisons," consistent with [REDACTED] reference to "a Local Christian Prisoner Fellowship Chaplain." The petitioner's earliest descriptions of the beneficiary's duties did not mention "visitation work in hospitals and prisons," which further reinforces the conclusion that the beneficiary neither held nor needed a Christian Worker's License when the petition was filed in 2010, and that the petitioner issued the "Lincense" to the beneficiary for immigration purposes.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92.

Given the total absence of any evidence that the beneficiary held the "Christian Worker's License" at the time the petitioner filed the petition, the AAO concludes that the petitioner likely issued the document to the beneficiary specifically to address the director's concerns. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998).

Counsel, on motion, maintains that "[a]ny limited administrative duties performed by the Director of Programs are **incidental** to her religious functions" (counsel's emphasis). The aforementioned 2007 letter from [REDACTED] also specified that the beneficiary's "primary responsibility will be to head the fundraising efforts for The Church to purchase a new building of worship." [REDACTED] November 18, 2010 letter, subsequent to the purchase of the building, stated that the beneficiary had solicited help in renovating the building, but [REDACTED] also referred to ongoing "fundraising . . . activities" at the new site. In the same letter, [REDACTED] stated: "Of key importance is [the beneficiary's] work overseeing The Church's capital fundraising and macro programs which directly contribute to The Church's continued growth."

In his latest letter, dated April 19, 2012, [REDACTED] states:

I would . . . like to clarify what I mentioned previously with respect to fundraising by the Director of Programs. The Director of Programs at our Church is NOT responsible for fund raising. [The beneficiary], as our Director of Programs has been instrumental in soliciting various church members to aide [sic] in the renovation by donating a wide range of services (painting, electrical work, construction) but this has always been in her religious capacity, helping our congregation give back time and money to our religious mission. But any such activities by her have always been incidental to her role as Director of Programs.

(Emphasis in original.) The above statement does not "clarify" [REDACTED] letter of 2007. It contradicts that letter, changing fundraising duties from "primary" to "incidental" and claiming that the beneficiary's work related to "renovation" even though the 2007 letter specifically referred to "fundraising efforts for The Church to purchase a new building of worship." In light of the rather definitive 2007 statement, the petitioner's subsequent attempts to reduce the extent of the beneficiary's fundraising duties are not persuasive.

[REDACTED] claim that the beneficiary is completing her studies "to be awarded the UPCI Ministerial License" is not relevant, because the issue is whether the beneficiary was eligible for benefits as of the 2010 filing date, not whether her duties have since evolved or whether she intends,

at some future point, to engage in more plainly religious duties. 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. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978).

The petitioner's newly submitted evidence does not establish that the beneficiary's position, as described in the initial submission and in response to the request for evidence, meets the requirements of a religious occupation as defined in the USCIS regulation at 8 C.F.R. § 214.2(r)(3). The AAO will reaffirm its previous finding to that effect.

QUALIFICATIONS

The second issue under consideration relates to the beneficiary's qualifications for the position sought. The regulations at 8 C.F.R. §§ 214.2(r)(3) and (8)(ii) indicate that a religious worker must be qualified for the occupation or vocation in which the beneficiary seeks employment.

The AAO, in its March 22, 2012 decision, stated:

In denying the petition, the director . . . determined . . . that the petitioner had failed to provide evidence that the qualifications for the proffered position are recognized by the governing body of its denomination.

On appeal, the petitioner submits letters attesting to the importance of the lay ministry and music in the petitioner's denomination and the importance of the role the beneficiary plays in the petitioning organization. Nonetheless, as discussed above, the petitioner has not provided sufficient documentation to establish that the position of director of programs is recognized as a religious occupation within the denomination and that the denomination has set specific requirements for the position. Accordingly, the petitioner has failed to establish that the beneficiary is qualified for the position according to the standards set by the denomination.

Counsel, on motion, claims that the beneficiary "possesses a Christian worker's License . . . which entitles her to develop and implement programs of an evangelical nature." The AAO has already discussed significant problems with the "Christhian Worker's Lincense." Furthermore, the record contains no persuasive evidence that the license "entitles [the beneficiary] to develop and implement programs of an evangelical nature." ██████████ indicated that the license is for specific purposes such as prison visitations. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Other materials newly submitted on motion include several Spanish-language certificates (with translations) that the petitioner issued to the beneficiary, such as a certificate stating that the beneficiary "has completed those studies corresponding to accreditation as [a] Teacher in Christian Counseling." All of these certificates date from 2011, after the petition's 2010 filing date, and therefore they do not address the issue of the beneficiary's qualifications as of 2010.

Earlier certificates are irrelevant to religious work and/or predate the beneficiary's 2003 baptism into the UPCI denomination. For instance, the petitioner submitted a copy of a 1996 "computing courses" certificate that the beneficiary earned at age 18, with no direct explanation of its relevance.

The petitioner, on motion, has not satisfactorily addressed or overcome the AAO's prior finding regarding the beneficiary's qualifications – specifically, that the petitioner has not established what the qualifications are for her position, or that the beneficiary met those requirements before the petition's filing date. The AAO will affirm its prior finding in this regard.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will dismiss the appeal.

ORDER: The motion to reconsider is dismissed. The motion to reopen is granted. The AAO's decision of March 22, 2012 is affirmed.