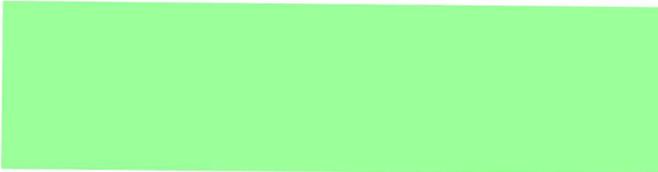


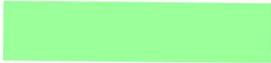
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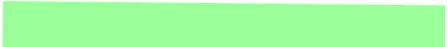
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
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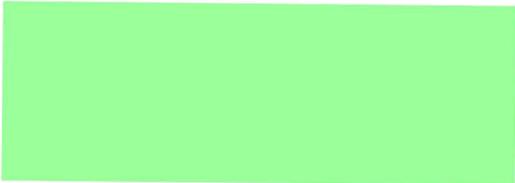


DATE: **JUL 18 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,


Ron Rosenberg
Acting 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 remand the petition for further action and consideration.

The petitioner is a private religious school operated by [REDACTED]. It seeks to classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R) of the Act, to perform services as a science teacher. The director determined that the petitioner had not established that the beneficiary's position qualifies as a religious occupation.

On appeal, the petitioner submits a brief from counsel, affidavits, and various supporting exhibits. Counsel requests oral argument, "because the issues presented in this case implicate First Amendment rights." U.S. Citizenship and Immigration Services (USCIS) has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, counsel states that the request for oral argument rests on the issue of "First Amendment rights," because "[t]he government here has categorically denied visa protection to religious organizations whose religious beliefs dictate their teachings in the realm of science." Counsel cites federal case law in support of the proposition that the government must be neutral in matters of religion, and cannot prefer one religious denomination over another. The denial of the petition, however, did not rest on governmental disapproval of the petitioner's religious beliefs or teachings. Rather, at issue was the petitioner's failure to meet its burden of proof, which is not a First Amendment issue. The written record of proceedings fully represents the facts and issues in this matter. Also, because the only stated ground for denial is to be withdrawn, the request for oral argument is moot.

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.

USCIS regulations at 8 C.F.R. § 214.2(r)(1) state 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” 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.

8 C.F.R. § 214.2(r)(3).

The petitioner filed the Form I-129 petition on October 29, 2012. The initial submission included a letter from [REDACTED] principal of the petitioning school, indicating that the beneficiary “will be responsible to teach all Seventh through Twelfth grade Sciences.”

On November 5, 2012, the director issued a request for evidence, noting several deficiencies in the petitioner’s initial submission. Among other things, the director instructed the petitioner to provide additional details about the beneficiary’s intended duties, and evidence that her position qualifies as a religious occupation. The director listed the regulatory requirements of a religious occupation.

In response, the petitioner submitted an unsigned statement intended to address the director’s concerns. The statement indicated that the beneficiary

teaches the following science classes: 7th grade Life Science, 8th grade Earth Science, 9th grade Physical Science, 10th-11th grade Chemistry, and 9th-12th grade Health. In the year 2012-2013 [the beneficiary] will teach the same classes for 7th, 8th and 9th grade, but will teach 10th-11th grade Biology, and teach 12th grade Physics.

A copy of the petitioner’s 2012-2013 class schedule shows that the beneficiary taught each of the above classes for one 45-minute period each day. [REDACTED] stated:

The position of Science teacher at [the petitioning] School qualifies as a traditional religious function first and foremost from the obvious fact that we are a “Christian” school. . . . It is important to us . . . that we have teachers on staff that hold to the same beliefs as we do and [the beneficiary] does.

The regulatory definition of a religious occupation requires that the duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination, and that the duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination. 8 C.F.R. § 214.2(r)(3). [REDACTED] letter and the petitioner’s unattributed statement did not address these concerns. The assertion that “we are a ‘Christian’ school” does not assure blanket eligibility for all employees. Occupations with primarily administrative duties, for example, facially do not qualify as religious occupations.

The director denied the petition on January 24, 2013, stating: “The job as science teacher is secular. The work schedule submitted into evidence clearly shows the beneficiary working almost 100% of her time teaching science. The beneficiary would not be working as a religious worker.”

In the initial appellate statement, counsel states: “the USCIS unconstitutionally applied 8 C.F.R. 214.2(r) against Petitioner.” The cited regulation and its subclauses are the regulations that pertain to nonimmigrant religious worker petitions. Counsel, in the initial statement, does not elaborate on the assertion that the director unconstitutionally relied on pertinent regulations.

In a subsequent brief, counsel states:

[The petitioner] hired [the beneficiary] specifically for her specialized expertise in inculcating religious doctrine and biblical teachings in the science curriculum. Indeed, the science classroom is [the beneficiary's] religious mission field. Her classes do not simply reflect a Christian emphasis, nor are they merely bookended with prayer. Rather, [the beneficiary] intentionally infuses each science class with religious instruction, teaching her students how Christian beliefs inform scientific interpretation, developing her students' worldview through the lens of Scripture, and channeling the awe of scientific discovery into glorifying the Creator. . . .

But the USCIS rejected [the beneficiary's] religious worker visa under the misguided assumption that teaching science cannot be religious. This simplified conclusion ignores the reality of the facts in this case – [the beneficiary] underwent six years of undergraduate and graduate training on the precise issue of integrating science and religion; she assisted in writing and publishing textbooks that inculcate religion through science; she was hired specifically to teach science with religious doctrine and biblical teachings undergirding the curriculum.

[redacted] senior pastor of [redacted] states in an affidavit that the petitioner "is a member of the [redacted] . . . and concurs with the Association's declaration that education is inherently religious." The petitioner submits "[redacted] a pamphlet published by the [redacted] The pamphlet sets forth the Association's opinion that state authorities should not have any jurisdiction over educational institutions because "[e]ducation is inherently religious."

The petitioner submits copies of excerpts from two A Beka Books textbooks that credit the beneficiary's participation as a contributor: [redacted] (which lists the beneficiary as a "contributor") and [redacted] (which lists her as an "author/editor"). The religious content of these books goes well beyond explaining the diversity of life through biblical creation rather than evolution by natural selection. The books contain a number of sidebars with headings such as "Creation Clip" and "Science and Creation," attributing active divine participation in the design and execution of natural principles and processes.

The petitioner also submits copies of excerpts from teacher's editions of textbooks that the beneficiary uses in her classes. The textbooks, published by Bob Jones University, include instructions to teachers such as "help the students conclude that it is indeed our Creator God Who is the Intelligent Designer of all (explain *omniscient* and *omnipotent* – all-knowing and all-powerful," and "Jesus . . . turned water into wine (John 2:1-11). Ask your students for some examples of how chemistry might do that." The book *Foundations of Chemistry* asserts that "people cannot accurately perceive reality, including chemistry, without the light of God's truth (Ps. 119:130)."

Lesson plan overviews continue this pattern of integrating religion throughout the curriculum. For example, on days 99 and 100 of the school year, the lesson plan for chemistry (Chapter 11C: Liquids) includes the following “Bible Integrations”:

Using skills and processes in a way that pleases the Lord
Death as God’s penalty for sin
Everlasting life for those who place faith in Christ

The teacher’s instruction for day 30 of earth science (Chapter 4A, General Description of the Sun) is: “Emphasize to your students that the sun is special because God designed it to make the Earth possible.”

Whereas some religiously-affiliated private schools will hire teachers of other faiths to teach secular subjects, the petitioner’s *Faculty Handbook* requires every teacher to “give evidence of knowing Christ as personal Savior”; the *Student Handbook* assures parents and students that “[a]ll faculty members are born-again Christians.” The petitioner’s non-discrimination statement mentions “race, color, national and ethnic origin,” conspicuously omitting creed. Both the faculty and the student body of the petitioning school are self-contained within the petitioner’s defined religious beliefs, which is not a universal trait among church-affiliated schools. The petitioner has shown that, while the beneficiary teaches some scientific concepts in her classes, the presentation and perspective of the teaching is pervasively and unavoidably religious. The submitted materials likewise show that this perspective extends beyond the petitioning school, to publishers and religious education organizations, indicative of denominational-level recognition (even if the record shows that the petitioner and related organizations eschew the term “denomination” as such).

Much of counsel’s appellate brief focuses on constitutional issues, the Religious Freedom Restoration Act, and related law. Because the evidence submitted on appeal is sufficient to overcome the stated basis for denial (which was, in essence, a burden of proof issue), further discussion of those issues of law would be moot. When considering such issues of law, it remains that the petitioner has approached the government seeking a government benefit, and it is the government, rather than the petitioner or any private body, that makes the final determination of eligibility for that benefit. While the determination of an individual’s status or duties within a religious organization is not under the purview of USCIS, the determination as to the individual’s qualifications to receive benefits under the immigration laws of the United States rests within USCIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

For the reasons discussed above, the petitioner has overcome the grounds for denial stated in the director’s decision. The matter will be remanded for the director to determine whether the petitioner has satisfied the regulatory requirements at 8 C.F.R. § 214.2(r)(16). In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

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 Administrative Appeals Office for review.