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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

[Redacted]

DATE: **JAN 10 2014** 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) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)

ON BEHALF OF PETITIONER:

[Redacted]

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,

*U. Rosenberg*

f Ron Rosenberg  
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. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further action and consideration.

The petitioner is an Islamic organization. It seeks to classify the beneficiary as a nonimmigrant 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), to perform services as a philosophy and religious teacher. The director determined that the petitioner failed to establish that the beneficiary had the requisite two years of membership in the same type of religious denomination as the petitioner immediately preceding the filing of the petition.

On appeal, the petitioner submits a brief from counsel, printouts of online news articles, a letter from the petitioner, a "Life Membership Certificate" from [REDACTED] a letter from [REDACTED] a letter from [REDACTED] and copies of documents already in the record.

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.

The USCIS regulation at 8 C.F.R. § 214.2(r)(3) states, in pertinent part:

*Definitions.* As used in this section, the term:

*Denominational membership* means membership during at least the two-year period immediately preceding the filing date of the petition, in the same type of religious denomination as the United States religious organization where the alien will work.

*Religious denomination* means a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes one or more of the following:

- (A) A recognized common creed or statement of faith shared among the denomination's members;
- (B) A common form of worship;
- (C) A common formal code of doctrine and discipline;
- (D) Common religious services and ceremonies;
- (E) Common established places of religious worship or religious congregations; or

(F) Comparable indicia of a bona fide religious denomination.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on October 9, 2012. The petition and supporting documentation identified the petitioner as an Islamic organization. On the Religious Denomination Certification, the petitioner stated that it is affiliated with the denomination [REDACTED]. On the Form I-129 Supplement R, the petitioner described its relationship to “the organization abroad of which the beneficiary is a member:”

[REDACTED] The Religious non-Profit Organization in the State of Texas, File Number [REDACTED] and [REDACTED] are the same purpose Organization are working with the world and [REDACTED] [REDACTED] is the founding leader of [REDACTED] an [REDACTED] an organization with branches and centres in more than 90 countries around the globe, working for the promotion of peace and harmony between communities and the revival of spiritual endeavor based on the true teachings of Islam. And [the petition’s signatory] is a Managing Director and Organizer for the United States.

[The beneficiary] is a member of [REDACTED] [REDACTED] as a [REDACTED] TEACHER. Her [REDACTED] is her membership number.

[The beneficiary] was served as a [REDACTED] Teacher at [REDACTED] since 2006-2008. [The beneficiary] had been working for two year as Teacher [REDACTED]

Accompanying the petition, the petitioner submitted an undated letter from [REDACTED] [REDACTED] stating that the beneficiary worked from 2006 to 2008 as a “[REDACTED] Teacher.” A letter from the petitioner defined [REDACTED] as the “recitation of holy poetry.” The petitioner also submitted undated letters from [REDACTED] [REDACTED] both confirming the beneficiary’s affiliation with their organizations for the “last 10 years.”

In addition, the petitioner submitted printouts of articles from the website [REDACTED] including an article about a visit by [REDACTED]

On January 17, 2013, USCIS issued a Request for Evidence (RFE), in part requesting additional evidence that the beneficiary has the required two-year membership in the religious denomination or organization prior to filing the petition.

In a letter responding to the notice, the petitioner described [REDACTED] as an organization founded by [REDACTED] which focuses on peace through the teachings of Islam. The petitioner stated:

[The beneficiary] is also a part of this holy service to human beings and Islam by the platform of [REDACTED]. She has dedicated her life to educate the women, because unfortunately a large number of women in community still do not have access to basic education, and thus no religious education as well that ultimately creates a smoky picture of religion, social life, humanity, peace, harmony and modern age. She is an expert in her style, she know [sic] how to teach and deal with the women, girls, and kids of the community. She recites Quran with its meanings and makes her audience understand the real meanings. She teaches and recites [REDACTED] (this is a poetic way to pay respect to the Holy Prophet). She worked as a volunteer in the organization, has proved herself very effective and successful in the tasks given to her. ...

The petitioner submitted an unsigned document, "Clarification of Past Compensation," stating that the beneficiary "had been working since for two years (2006-2008), as an volunteer working in this Organization in [REDACTED]"

On May 2, 2013, the director denied the petition, finding that the petitioner failed to establish that the beneficiary has been a member of the same denomination as the petitioner for at least the two years immediately preceding the filing of the petition. The director noted that the experience letters submitted with the petition were undated, and also found that the petitioner had not established "that there is an institutional relationship or a common governing body shared by the petitioner and the beneficiary's previous church abroad as required."

Contrary to the director's statement, the regulations do not require the petitioner to demonstrate "an institutional relationship or a common governing body" between the petitioning organization and the beneficiary's previous religious organization in order to establish the beneficiary's denominational membership. The regulation at 8 C.F.R. § 214.2(r)(3) instead defines "religious denomination" as a religious group that is administered under a "common type" of government, in addition to having one or more of the listed characteristics in common. Further, the definition of "denominational membership" includes membership in the "same type of religious denomination" during the two-year period immediately preceding the filing of the petition.

On appeal, the petitioner submits a "Life Membership Certificate" from [REDACTED] issued to the beneficiary on December 13, 2009. The petitioner submits a letter from [REDACTED] dated May 15, 2013, stating that [REDACTED] is a parent organization of the college and that the beneficiary is a life time member and "has been associated with us on a voluntary basis." The petitioner also submits a letter from [REDACTED] dated May 17, [illegible], stating that the previous letter was undated as an oversight, and

reaffirming that the beneficiary “has been associated with us as a [REDACTED] for last 10 years on volunteer [sic] basis.”

The petitioner has submitted sufficient evidence to establish that the beneficiary has been a member of the same type of religious denomination as the petitioning organization for at least the two years immediately preceding the filing of the petition.

The above discussion indicates that the petitioner has overcome the only stated basis for denial of the petition. The AAO will withdraw that basis and, therefore, the denial decision.

However, review of the record shows additional grounds of eligibility that have not been established. The AAO may deny an application or petition that fails to comply with the technical requirements of the law 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 (9<sup>th</sup> 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 USCIS regulation at 8 C.F.R. § 214.2(r)(16) reads:

*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 AAO will remand the petition in order for the director to determine whether the petitioner has satisfied the regulatory requirements at 8 C.F.R. § 214.2(r)(16) as discussed above.

Further, the petitioner has not submitted sufficient evidence to establish that the beneficiary will be employed in a qualifying position.

The USCIS regulation at 8 C.F.R. § 214.2(r)(3) includes the following definitions:

*Minister* means an individual who:

(A) Is fully authorized by a religious denomination, and fully trained according to the denomination’s standards, to conduct religious worship and

perform other duties usually performed by authorized members of the clergy of that denomination;

(B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;

(C) Performs activities with a rational relationship to the religious calling of the minister; and

(D) Works solely as a minister in the United States which may include administrative duties incidental to the duties of a minister.

*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.

*Religious vocation* means a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life. The religious denomination must have a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. Examples of vocations include nuns, monks, and religious brothers and sisters.

*Religious worker* means an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister.

The USCIS regulation at 8 C.F.R. § 214.2(r)(10) requires the petitioner to submit the following documentation if the alien will work as a minister:

(i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and

(ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological education is accredited by the denomination, or

(iii) For denominations that do not require a prescribed theological education, evidence of:

(A) The denomination's requirements for ordination to minister;

(B) The duties allowed to be performed by virtue of ordination;

(C) The denomination's levels of ordination, if any; and

(D) The alien's completion of the denomination's requirements for ordination.

On the Form I-129 petition, the petitioner stated that the beneficiary will be working as a "Philosophy and Religious Teacher" at [REDACTED] and described the proposed duties as:

His [sic] responsibilities include leading five time obligatory daily prayers and deliver Friday Sermon, Nikah (wedding) Sermon, to lead funeral prayer, teaching Holly [sic] QURAN and Islamic education, to elaborate problems related to purity, prayer, fasting, etc. guide the Muslim community about different Sharia Issues, lead the Traveeh prayer in Ramadan.

On the petition, the petitioner also provided the following description of the beneficiary's qualifications for the position offered:

[The beneficiary] graduated from [REDACTED] In 89-90, and certificates courses are attached from Islamic College and institutes.

Accompanying the petition, the petitioner submitted a job offer letter, dated May 13, 2011, which listed the beneficiary's proposed duties as:

Recite the compelling [REDACTED] after every prayer in the Holy month of Ramadan.

Teach children recitation, memorization and understanding of the Holy Qur'an in a classroom environment on a daily basis

Edify children about the history, concepts and specifics of Islam

Weekly lecture on Islamic education to female attendees

Develop and execute programs designed to improve the quality of life amongst the Muslims living in this country and to provide social services to our community

Devise and Implement Islamic programs, activities, objectives and strategies assuring they are timely carried out effectively and efficiently

Develop appealing strategies, ensuring [REDACTED] can bring more Muslims to participate in daily prayers and social community activities

Carry out, arrange and participate in annual [REDACTED] festivities, monthly [REDACTED] and other Islamic events.

Upon further expansion of [REDACTED] you will train [REDACTED] recitation to other potentially talented individuals (female)

Organize frequent [REDACTED] competition amongst your trainees to evaluate their capabilities so you can get the best out of them

Development of Islamic campaigns to accommodate the goals of [REDACTED] and further consolidate its position in all Islamic communities around the country

The petitioner submitted a "Summary Report For: 21-2021.00 Directors, Religious Activities and Education," from O-NET OnLine. The petitioner also submitted copies of the beneficiary's secondary school and university diplomas, as well as certificates and awards from various [REDACTED] recitation competitions. As discussed previously, the petitioner submitted a letter from [REDACTED] For Women, stating that the beneficiary worked as a [REDACTED] Teacher from 2006 to 2008, and letters from [REDACTED] confirming the beneficiary's Naat recitation for their organizations for the "last 10 years." Additionally, the petitioner submitted a letter from [REDACTED] stating that the beneficiary worked as a teacher from April 23, 2001, to December 19, 2002.

Although the title of the proffered position is "teacher," the petitioner's description of the beneficiary's proposed duties such as delivering sermons and wedding and funeral prayers indicate that the position may be ministerial, instead. The petitioner must establish whether the proffered position is that of a minister or a religious occupation. If the proffered position is ministerial, the petitioner must submit evidence in accordance with 8 C.F.R. § 214.2(r)(3) and (10) to demonstrate the petitioner's acceptance of the beneficiary's credentials and that she is fully authorized and fully trained according to the denomination's standards.

In the alternative, to establish that the proposed position is a religious occupation, the petitioner must submit documentary evidence to demonstrate that the role of philosophy and religious teacher is “traditionally recognized” as a religious occupation within the petitioner’s denomination. The petitioner also must establish that the beneficiary is qualified for the religious occupation “according to the denomination’s standards.” Although the petitioner listed the beneficiary’s qualifications and an O-NET OnLine report summarizing typical requirements for similar positions, the petitioner did not set forth the specific requirements that one must meet to qualify for the proffered position.

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. 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.