



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: JAN 16 2014

OFFICE: CALIFORNIA SERVICE CENTER

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

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 a Pentecostal church. 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 Women's Discipleship Coordinator. The director determined that the petitioner failed to establish that the beneficiary had the requisite two years of membership in the petitioner's denomination immediately preceding the filing of the petition.

On appeal, the petitioner submits a letter from the [REDACTED]

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.

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner indicated that it is affiliated with the Pentecostal denomination. The petitioner submitted evidence that it is a tax-exempt religious organization under the group exemption awarded to the [REDACTED]. Accompanying the petition, the petitioner submitted an April 24, 2012, letter from [REDACTED] which stated that the beneficiary "has been an active member" of that church, identified as "A [REDACTED] Church," for the past 10 years. On the petition, the petitioner stated that "the Canadian and U.S. churches are Christian denominations and are linked by the [REDACTED]."

In a letter responding to a Request for Evidence (RFE), the petitioner stated that Assembly of God churches and [REDACTED] churches "are all directly affiliated with one another through the [REDACTED] which is the predominant association of the [REDACTED] denomination in the western hemisphere."

On May 6, 2013, the director denied the petition, finding that the petitioner had not established that the beneficiary had the requisite two years of membership in the petitioner's denomination immediately preceding the filing of the petition.

On appeal, the petitioner submits a letter from the chairman of the [REDACTED], which states that the [REDACTED] from the United States and Canada are under the umbrella and covering of the [REDACTED], and that all its member churches "have historic roots reaching back to the 1940s," and that the member denominations "have enjoyed collaborative ministry together, sharing the same purposes and doctrine." The [REDACTED] chairman further states that principal representatives of the [REDACTED] are "seated on the Executive Committee of the [REDACTED] working in unity and common purpose" and that member denominations "must accept, cooperate with, and be willing to be governed by [REDACTED] Statement of Faith, and Bylaws." The [REDACTED] chairman states that "[t]he Assemblies of God and the [REDACTED] of the United States and Canada, as members of [REDACTED], demonstrate the essential unity required by and shared by common creeds, forms of worship, doctrine, discipline, religious services and ceremonies."

The petitioner has established that the beneficiary's membership in the [REDACTED] Church represents membership in a religious group or community of believers that is governed or administered under a common type of ecclesiastical government. The similarities between the beneficiary's church and the petitioner include a recognized common creed or statement of faith shared among the denomination's members, a common form of worship and common indicia of a bona fide religious denomination. Accordingly, the petitioner has established that the beneficiary has the requisite two years of membership in a denomination of the same type as the petitioning organization 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. 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.

On the petition and in an accompanying letter, the petitioner indicated that the beneficiary would work in a part time (30 hours per week) position of "Women's Discipleship Coordinator." The petitioner submitted a "List of Duties" for the position, including:

- Provide physical and Spiritual oversight of approximately 40-50 female students.
- Helping students choose ministry tracks applicable to their goals and talents.
- Mentor students as they progress in their ministry tracks.
- Keep Students accountable to their ministry tracks and ministry expectations.

- Individual Counseling for students when they face issues or concerns.
- Help individual students with personal struggles when issues crop up.
- Facilitate Morning Prayer and Devotional times for students.
- Implement Scripture memorization process for each student.
- Administer appropriate discipline where ministry expectations are not followed by students. Determine whether the issue is deliberate or simply misunderstanding.
- Organize site choices for students working in "Adopt a Block."
- Administrative duties as required by the organization (the Movement).

On January 15, 2013 and March 21, 2013, USCIS requested additional evidence to demonstrate that the proffered position qualifies as a religious occupation. In a February 20, 2013, letter, the petitioner stated that the beneficiary has "served at the [petitioner] since October 2010," and stated the following regarding the proffered position:

[The beneficiary] is the Girl's Discipleship Director for our [redacted] [redacted] is a ministry training and discipleship school that is committed to the training [of] the next generation. . . .

[The beneficiary's] job duties as the Girl's Discipleship Director includes being involved in the planning and scheduling of weekly meetings to monitor the spiritual growth of the young women who participant [sic] in [redacted] She actively participates in weekly chapel services as well as participates in traveling services. She oversees the weekly schedule of 45 young ladies and has individual meetings with each one to discuss their goals during their commitment here at the [redacted] [The beneficiary] acts as a spiritual mentor with each individual she oversees, partnering in prayer as well as leading bible studies and weekly prayer meetings. The job description above is spread through a 40-hour workweek . . .

Although the regulation at 8 C.F.R. § 214.2(r)(3) allows for "limited administrative duties that are only incidental to religious functions," the petitioner has not submitted a schedule showing a breakdown of the proposed duties to establish the time spent on administrative versus religious duties. The petitioner must establish that the duties of the position primarily relate to a traditional religious function and clearly involve inculcating or carrying out the petitioner's religious creed and beliefs.

Further, while the petitioner initially stated that the proffered position is part-time, the petitioner's February 20, 2013, letter indicated that it is a full-time position. 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).

Additionally, in order to establish that the proposed position is a religious occupation, the petitioner must submit documentary evidence to demonstrate that the role of women's discipleship coordinator is "traditionally recognized" as a religious occupation within the petitioner's denomination. The petitioner also must establish that the beneficiary is qualified for the position "according to the denomination's standards."

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.