



**U.S. Citizenship
and Immigration
Services**

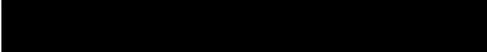
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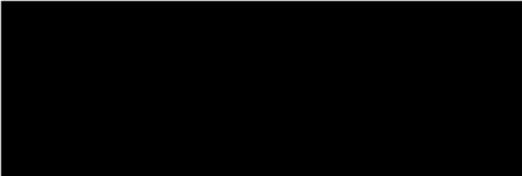


FILE: WAC 07 258 53963 Office: CALIFORNIA SERVICE CENTER Date: **NOV 19 2009**

IN RE: Petitioner: 
Beneficiary: 

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.



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 AAO will withdraw the director's decision and remand the petition to the California Service Center for further consideration and action pursuant to new regulations.

The petitioner is a Protestant Christian church of the Assemblies of God denomination. It seeks to change the beneficiary's status to that of 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 to children and teenagers until June 1, 2010 (the petitioner did not specify a date for the intended employment to begin). The director determined that the petitioner had not established that the beneficiary's intended position qualifies as a religious occupation.

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.

U.S. Citizenship and Immigration Services (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.

8 C.F.R. § 214.2(r)(3) defines a "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 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 filed the petition on September 4, 2007. In a letter accompanying the initial filing, [REDACTED] of the petitioning church, repeatedly stated that the petitioner seeks to classify the beneficiary "as a Special Immigrant Religious Worker," and that the petitioner intends to employ the beneficiary "in a full-time permanent capacity." [REDACTED] also repeatedly referred to regulations at 8 C.F.R. § 204.5(m), which apply to special immigrant religious workers rather than R-1 nonimmigrants. [REDACTED] also referred to "the Form I-360," the form number for the special immigrant petition. Thus, this letter contains numerous, consistent references to the petitioner's intent to employ the beneficiary permanently. Rather, the petitioner filed a Form I-129 nonimmigrant petition, on which the petitioner indicated its intent to employ the beneficiary only until June 1, 2010.

The petitioner listed several qualifications for the proffered position, indicating that a qualified candidate "[m]ust be a born again Christian," "[m]ust have two years minimum of theological training" and "[m]ust have one year minimum experience as a Christian worker with children and teenagers." The duties of the position included the following examples:

Visitation in the community with the purpose of making children and teenagers friends to get them more interested in learning about the Bible and the Christian faith. . . .

Help Christian teenagers to develop their skills and giftings. . . . Establish bible clubs to help and strength[en] their study skills. . . .

Counseling children and teenagers in troubled situations.

On August 21, 2008, the director issued a request for evidence instructing the petitioner to provide a detailed description of the beneficiary's intended position, the requirements for that position, and how the beneficiary meets those requirements. In response, the petitioner essentially repeated the previously stated requirements and duties, and submitted a copy of the beneficiary's April 2007 diploma from Latin American Bible Institute in San Antonio, Texas.

The director denied the petition on December 16, 2008, stating "the claimed duties are too broad and nonspecific to convey any understanding of the beneficiary's actual, day-to-day activities." The director quoted extensively from the former regulations at 8 C.F.R. §§ 214.2(r)(1), (2) and (3)(ii), but the regulations, as quoted, were no longer in effect at the time of the director's decision. USCIS had published new R-1 regulations on November 26, 2008, which replaced the older regulations that the director quoted. Supplementary information published with the new rule specified: "All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). Therefore, the director should have adjudicated the petition under the new rule, but did not do so.

On appeal, the petitioner submits further evidence of the beneficiary's religious activities. Upon review of the materials in the record, it is not clear why the director doubts or disputes the religious nature of the beneficiary's occupation. While the record is not rich with specific details about the beneficiary's exact activities, the descriptions provided do not seem to be ambiguous as to whether the beneficiary's duties are religious or secular.

We hereby withdraw the director's decision. The director must adjudicate this petition under the regulations now in effect. The petitioner's prior submissions appear to meet many, but not all, of the new documentary requirements in those regulations. If the director believes there is reason to doubt that the beneficiary's activities are recognized as a religious occupation within the Assemblies of God denomination, then the proper remedy would be to request confirmation from an authorized official of the denomination that individuals who perform the beneficiary's functions are routinely paid church employees, rather than volunteers.

The director must issue a new decision based on the new regulations promulgated on November 26, 2008. Because the new regulations include substantial new evidentiary requirements, the director must also afford the petitioner an opportunity to submit all such evidence that the petitioner did not initially submit, or that the director has not previously requested. 8 C.F.R. § 103.2(b)(8). As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The matter is remanded to the director, California Service Center, for the issuance of a request for evidence and a new decision in accordance with the requirements of the new regulation published at 73 Fed. Reg. 72276 (Nov. 26, 2008). If the new decision is adverse to the petitioner, it shall be certified to the Administrative Appeals Office for review.