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

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FILE: WAC 09 084 51269 Office: CALIFORNIA SERVICE CENTER Date: NOV 23 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:

SELF-REPRESENTED

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 sustain the appeal and approve the petition.

The petitioner is a church of the Southern Baptist denomination and a member of the Baptist General Convention of Texas (BGCT). It seeks to extend the beneficiary's status 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 minister of music from May 21, 2009 to May 21, 2010. The director determined that the petitioner had not established that the beneficiary's position qualifies as a religious occupation.

On appeal, the petitioner submits letters from denominational officials and copies of previously submitted materials.

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.

The petitioner filed the petition on February 2, 2009. The sole issue under discussion is whether the position offered to the beneficiary qualifies as a religious occupation. The USCIS 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 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.

On the Form I-129 petition, under "Detailed description of the alien's proposed daily duties," the petitioner stated: "Leading our congregation into worship on our meetings, prepare special music, lead the choir and coordinate services." The petitioner's initial submission included a copy of the beneficiary's July 2006 ordination certificate.

On May 14, 2009, the director issued a request for evidence (RFE). The director advised the petitioner of the regulatory definition of a religious occupation, and instructed the petitioner to submit denominational publications "establishing the requirements for the position" as well as "detailed evidence that the beneficiary meets the denominations organization's [*sic*] requirements." The director also instructed the petitioner to submit documentation such as "a letter from a Superior or Principal of the religious denomination or organization in the United States explaining how the position offered qualifies as a traditional religious function."

In response, [REDACTED], stated:

A requirement for this position is ordination as a Music Minister which [the beneficiary] has received prior to applying with [the petitioning] Church. . . . In addition to the musical requirements for this position, [the beneficiary] has completed the church interview process with our church members and our Personnel Committee. . . . [The beneficiary] has re-vitalized the church choir through new organization, updating song selection, and securing music specials on a regular basis. As stated in the constitution of [the petitioning] Church a Minister of Music must show full support for the entire program of [the petitioning church] and as Minister of Music will work as leader of the music ministries at [the petitioning] Church.

[REDACTED] stated:

The position of Minister of Music (Worship Leader) . . . is an important position at [the petitioning] Church. In order to carry out our purpose as stated in our church Constitution it is necessary to have this person on staff. Worship ministers are essential for the ministry of the church in that they serve two main functions. . . . He organizes and coordinates the weekly Sunday worship services so that the congregation can worship God as the Bible instructs. His second function as music minister is to pastor the congregation in such a way that he is mindful of the people that he is helping. . . . The worship minister is simply a specialized pastor who focuses [on] one of the main functions of the church, that being worship.

[REDACTED], stated:

The Baptist General Convention of Texas does not exercise any ecclesiastical authority over any congregation. Each church is autonomous and determines their government and church structure. Each church determines needs for ministerial staff, including but not limited to: Pastors, Associate Pastors, Ministers of Music and Worship, Ministers of Education, Ministers of Youth, Ministers to Senior Adults, or any other officer they feel necessary to carry out their mission.

No church is required to have any of these officers. . . .

Neither the Baptist General Convention of Texas or the Southern Baptist Convention requires churches to fill specific ministry positions. That is a church decision.

A copy of the petitioner's constitution and bylaws indicated that the "Minister of Education and/or Music" "is responsible for leadership in the Religious Education and Music ministries of the church. He shall give special support [to] the full program of the church." The document also indicates that the "Minister of Religious Education and/or Music" shall be a regular member of the Church Council.

The petitioner listed five qualifications and eight responsibilities for the music minister. The qualifications are general and subjective rather than specific, formal criteria. For example: "He must have a cooperative and loving spirit." The responsibilities include: "Assist the Pastor in coordinating and implementing assigned projects" and "Assist the chairman of various church committees and serve as ex-officio member of assigned church committees." An accompanying job description includes twelve line items, such as: "Plan and lead music for worship services;" "Help promote the on-going spiritual growth of the choir;" and "Help coordinate and organize 1st Thursday ministry outreach each month."

The director denied the petition on July 13, 2009, stating:

[T]he petitioner submitted the religious organization's constitution which included the organization[']s bylaws. Section 2 under the section Minister of Education and/or Music describes the Minister of Education and/or Music. However, the Constitution has no indications that it was filed and accepted by the appropriate state. Therefore the documents is [*sic*] not convincing in establishing that the proffered position is recognized as a religious occupation related to a traditional function in the religious denomination.

On appeal, _____ states: "The reason that there is no indication that [the petitioner's] Constitution was filed and accepted by the appropriate state is that the state of Texas, which granted the charter to the Church, does not require and will not accept the Constitution and Bylaws of any organization." Rather than dismiss this assertion as unsupported, we turn to the director's assertions and note that nothing in the statute or regulations requires that a religious organization register its constitution or bylaws with state authorities. When the director denies a petition based on the petitioner's failure to meet a particular requirement, the director must show that the requirement exists before we can agree with that finding. While the burden of proof is on the petitioner, this does not permit the director to impose seemingly arbitrary evidentiary requirements.

The petitioner submits a letter from _____ of the BGCT, who states: "The position of music minister/worship leader is a commonly recognized vocational position in Baptist churches throughout Texas and the United States. . . . [T]he music minister or worship leader is one of the most common employment positions with churches that have more than one paid position."

[REDACTED] in his second letter, states:

It is common practice among churches related to the Baptist General Convention of Texas to enlist someone to lead Music and Worship. Smaller congregations may enlist a volunteer to fill this position while larger congregations employ someone to lead a congregation in coordinated music ministry from preschool through senior adults.

The Baptist General Convention of Texas recognizes and affirms the ministry positions as defined and determined by its affiliated congregations.

[REDACTED] of the Austin Baptist Association, states: "It is common practice for the churches to which we relate to employ a minister or person specifically for music and worship purposes."

[REDACTED] of Missions and Ministries at North Shore Baptist Associations, Hammond, Louisiana, states that, with the exception of churches with very few members, "all of our churches employ ministers of music/music directors ranging from part time to full time . . . as a normal, ongoing personnel practice in our churches."

The newly submitted letters, from a variety of levels within the Southern Baptist denomination, confirm prior information indicating that the minister of music position is common within the denomination, rather than a new position contrived as a basis for the petition. The petitioner has also explained the religious significance of the position. The director's rejection of that explanation appears to be baseless, as the director has not cited any state statute or regulation that would require the petitioner to register its constitution and bylaws with the state.

The petitioner has overcome the sole stated basis for denial of the petition. Review of the record does not reveal any apparent grounds of ineligibility.

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 met that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained. The petition is approved.