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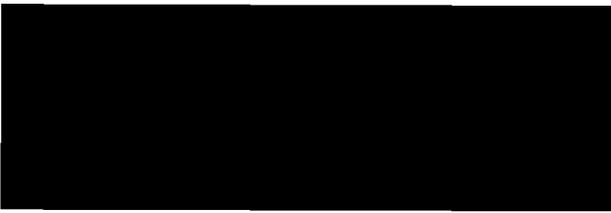
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **AUG 26 2010**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


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 appeal will be dismissed.

The petitioner is a school. It seeks to classify the beneficiary 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 an assistant book store manager and in its prayer ministry. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation.

The petitioner submits additional documentation in support of the appeal.

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 issue is whether the petitioner has established that the proffered position qualifies as that of a religious occupation or vocation.

The regulation at 8 C.F.R. § 214.2(3) provides that a:

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.

The regulation also provides that a:

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.

In its May 7, 2008 letter submitted in support of the petition, the petitioner stated that it had asked the beneficiary to remain after her schooling to be the assistant manager of the petitioner's bookstore, "to continue to support [the petitioner's] ministry in prayer, to be a part of our prayer team for conferences, and to counsel and pray for students." The petitioner further stated that the beneficiary would have a 30-hour workweek and would receive room, board and meals.

In a request for evidence (RFE) dated November 19, 2008, the director advised the petitioner of the requirements to establish that the proffered position was either a religious vocation or religious occupation. To establish that the position is a religious vocation, the director instructed the petitioner to:

Submit evidence that the beneficiary has made a lifelong commitment as practice in the religious denomination or organization, such as the taking of vows. Provide evidence concerning the nature of the vows that the denomination or organization requires. . . . Clarify whether the vocation is part of a structured religious order within the denomination or organization, such as a cloister, with its own ecclesiastical hierarchy.

To establish that the position is a religious occupation, the petitioner was instructed to:

- **Traditional Religious Function:** Provide the following evidence to establish that the proffered position is recognized as a religious occupation related to a traditional function in this religious denomination or organization: constitution; by-laws; and 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. Clearly indicate who has been performing this function in the past.
- **Proffered Position:** Provide a **detailed description** of the work to be done, specific job duties, level of responsibility, number of hours per week performing the work duties and the minimum education, training, and experience necessary to do the job. Further, explain how the duties of the position relate to a traditional religious function. [Emphasis in the original.]

In response, the petitioner stated that it “does not require vows from its members other than a declaration of a personal commitment to Jesus Christ” and that it “is not part of a structured religious order.” In a February 2, 2009 letter, the petitioner stated that the beneficiary is an ordained minister and that:

As a bible school, [the petitioner] strongly believes in and promotes the necessity of corporate and individual prayer. We asked [the beneficiary] to stay on as a member of the Prayer team to continue to support [the petitioner’s] ministry in prayer, to be a part of our prayer team for conferences, and to counsel and pray for students. This position cannot be defined by traditional work or education requirements; however, we affirm as a bible school the position of an intercessor, one who is called by God to a life of prayer, and we recognize this calling in [the beneficiary’s] life. . . .

[Her] responsibilities as a member of the Prayer Team include meeting daily at 6:00 a.m. and 7:00 p.m. for prayer with other Prayer team members. She regularly attends student Chapel services and is available to pray at conferences and for visitors. In addition, [she] is faithful to pray on her own time and consistently spends far more than the required 30 hours per week in personal prayer and fasting for [the petitioner]. Her responsibilities in prayer are primarily behind-the-scenes, but we recognize this position as essential to our ministry.

The petitioner provided no additional information regarding the beneficiary’s work as an assistant book store manager. On appeal, the petitioner abandons any discussion of the beneficiary’s work as an assistant book store manager and now claims that the proffered position “may be better described as that of our lead intercessor” and that she “is unique in that prayer is her primary function.” The petitioner states:

[The beneficiary] participates in a daily corporate morning prayer meeting from 6:00 a.m.-8:30 a.m., evening prayer meetings from 7:00-9:00 p.m., and all-night prayer from 11:00 p.m.-5:30 a.m. Additionally, she participates in school chapel services when school is in session and is available to pray for our students and visitors.

The petitioner submits documentation including information about the International House of Prayer, Morning Star Ministries, and *Christianity Today* to establish that the position of intercessor is a religious occupation. We do not find the petitioner's arguments persuasive.

First, the petitioner initially claimed that the beneficiary would work as an assistant bookstore manager and in its prayer ministry. By its response to the RFE, the petitioner also indicated that this position was as a religious vocation. However, the petitioner provided no documentation regarding the beneficiary's proposed work as a bookstore manager and no information to establish that the proffered position qualifies as a religious vocation as that term is defined by the regulation at 8 C.F.R. § 214.2(r)(3).

In response to the RFE, the petitioner stated that the beneficiary engaged in "corporate" prayer with other team members twice daily and engaged in personal prayer and fasting in excess of 30 hours per week. On appeal, the petitioner now asserts that the beneficiary also engages in all night prayer with team members for more than six hours per night. This would be a significant portion of the beneficiary's duties; however, the petitioner failed to mention this in any of its earlier submissions. If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The record reflects that the petitioner has continued to tailor the proffered position in an attempt to conform to the requirements of the regulation. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The petitioner has submitted no documentation to establish that the proffered position is a religious vocation that involves a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life. The petitioner states that it is nondenominational. However, it has submitted no documentation that the proffered position of assistant bookstore manager relates to a traditional religious function and is recognized as a religious occupation in any denomination or that the position is primarily related to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the petitioner.

The petitioner has failed to establish that the position of assistant bookstore manager and prayer team member is a religious vocation or occupation within the meaning of the regulation.

Beyond the decision of the director, the petitioner has failed to establish how it intends to compensate the beneficiary. The regulation at 8 C.F.R. § 214.2(r)(11) provides:

Evidence relating to compensation. Initial evidence must state how the petitioner intends to compensate the alien, including specific monetary or in-kind compensation, or whether the alien intends to be self-supporting. In either case, the petitioner must submit verifiable evidence explaining how the petitioner will compensate the alien or how the alien will be self-supporting. Compensation may include:

- (i) Salaried or non-salaried compensation. Evidence of compensation may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. IRS documentation, such as IRS Form W-2 or certified tax returns, must be submitted, if available. If IRS documentation is unavailable, the petitioner must submit an explanation for the absence of IRS documentation, along with comparable, verifiable documentation.

The petitioner stated that the beneficiary would be compensated with room and board equivalent to \$214.50 per week. However, the petitioner submitted no documentation to support this claim. Accordingly, the petitioner has failed to establish, through verifiable documentation, how it intends to compensate the beneficiary.

The petitioner has also failed to provide the attestation required by the regulation at 8 C.F.R. § 214.2(r)(8).

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO 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 (9th 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 petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.