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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



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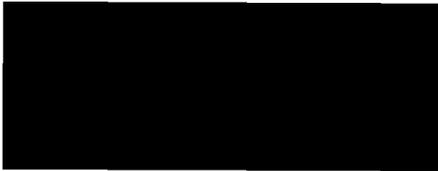


FILE: WAC 08 236 50544 Office: CALIFORNIA SERVICE CENTER Date: **AUG 26 2010**

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:



**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,



† 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 church. 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 missionary. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation.

The petitioner submits a letter and 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 presented 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:

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 a letter submitted with the petition, counsel stated that the beneficiary would be employed as a missionary in Bedford, Massachusetts and that:

The Beneficiary has been and will continue to perform a variety of religious related work . . . such as; [sic] lead children and teenagers in their spiritual and personal development, organize, prepare and perform the youth ministry activities and events and communicate with the youth and their parents and keep them informed of upcoming events, instruct students, individually and in groups; read books to entire classes or to small groups; provide a variety of materials and resources to children to explore, manipulate and use, both in learning activities and in imaginative play.

The Beneficiary will be responsible for a series of programs and activities to give young people a chance to participate in Church life, develop their own faith and spirituality and discover new friendship.

The Beneficiary will also continue to assist the Pastor in the counseling of members, such as with parents with children trouble, and youth problems, as well as work on the local church's leadership training and formation, focusing on the growth and expansion of the church.

Nothing in the record, however, supported any of these statements by counsel. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner submitted insufficient documentation to establish the duties of the proposed position or that the duties primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

The petitioner submitted a copy of the bylaws of the General Council of the Assemblies of God, with which it is affiliated. Article XIV of the bylaws provides for world missions and outlines the purpose, strategy, organization, and selection of missionaries. Section 1 outlines the strategy of the missions division:

- (1) The widest possible evangelization of the spiritually lost through every available means;
- (2) The establishment of indigenous churches after the New Testament pattern;
- (3) The training of national believers to proclaim the gospel to their own people in an expanding mission to other people; and
- (4) The showing of compassion for suffering people in a manner representing the love of Jesus Christ.

Section 4 of Article XIV provides that missionaries shall be selected by the World Missions Board, and that with the exception of "world service" candidates such as nurses and teachers, are required to be ordained by the General Council.

The director concluded that the petitioner had not followed the guidance of the General Council in its selection of the beneficiary as a missionary and that the duties of the proffered position do not establish that it is a religious occupation within the meaning of the regulation.

On appeal, the petitioner states:

As a Missionary, the beneficiary will continue to perform the following duties:

- To establish new churches and help in the Ecclesiastic and Services organization;
- To preach the Word of God in homes, prisons, hospitals, schools and etc.;
- To teach the Word of God to the new members in family groups, Sunday Bible School and theological Schools;
- To organize the Social Assistance (Feeding, Housing) and medical assistance by establishing association with governmental and non-governmental entities.
- To provide Pastoral Counseling for couples, youth teens, families and any person who seek spiritual help assistance
- To assist pastors in areas of: Biblical, Ministerial and Ecclesiastic Theology, as well as Ecclesiastic Administration.

While the duties of the proffered position as outlined by the petitioner on appeal appear to fall within the parameters of the position of missionary as provided in the bylaws of the General Assembly, the record does not clearly establish that the position of missionary as it exists in the petitioning organization is the same as that contemplated by the bylaws. First, as noted by the director, the record does not establish that the beneficiary was selected for the position by the World Missions Board. Further, the record does not reflect that the beneficiary has been

ordained. Therefore, she does not meet the requirements of the position of missionary as that position is described in the bylaws and the petitioner does not indicate that ordination is a requirement for missionary in the petitioning organization. A position is not a religious occupation or vocation because it is titled, for example, "minister" or "missionary." The petitioner must show that the position qualifies as a religious occupation or vocation. Whereas the position of missionary is recognized in the petitioner's denomination, the record does not establish that the position offered to the beneficiary is the same as that described in the organization's bylaws or that it is recognized as a religious occupation within the petitioner's denomination as required by the regulation at 8 C.F.R. § 214.2(3)(A).

Furthermore, even if the proffered position is that of missionary as provided for in the denomination's bylaws, the record does not establish that the beneficiary is qualified for the position. As discussed above, she has not been ordained, which, according to the bylaws, is a requirement for serving as missionary. The regulation at 8 C.F.R. § 214.2(r)(3) provides that the alien must be qualified for the proffered position.

Accordingly, the petitioner has failed to establish that the proffered position is a religious occupation within the meaning of the regulation.

Beyond the decision of the director, the petitioner has failed to meet the requirements of the regulation at 8 C.F.R. § 214.2(r)(8), which requires the petitioner to submit a detailed attestation with details regarding the petitioner, the beneficiary, the job offer, and other aspects of the petition. The record contains no such attestation.

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 (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 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.