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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: WAC 09 059 50943 Office: CALIFORNIA SERVICE CENTER Date: **AUG 27 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,


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 church. 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 a youth sports coach. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation.

On appeal, counsel asserts that the petitioner has satisfied the four-part test to establish that the proffered position is a religious occupation. Counsel submits a brief 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.

In its December 16, 2008 letter submitted in support of the appeal, the petitioner identified the proffered position as "Fencing Emeritus Coach" and stated:

The Youth Sports Coach will provide sports training and instructions to our youth center for 35 hours weekly. Due to the fact that the position is full time, [the

beneficiary] will not engage in other secular employment. His duties include demonstrating techniques and methods of participation in fencing as well as other sports; evaluating athlete's strengths and weaknesses for possible recruiting or improving techniques for competition, preparing athletes for competition and/or championships. As Youth Sports Coach, [the beneficiary] will be paid \$2,000.00 per month plus room and board.

In response to the director's request for evidence (RFE), the petitioner stated that the proffered position was that of youth ministry trustee and sports coach/director and that the duties of the position included:

1. Supervise the youth ministry program including: worship, education, spiritual development, evangelism, missions, fellowship, support of families of youth.
2. Work with youth directors and leaders to develop youth sports activities and curriculum.
3. Oversee the planning of youth programs for special services, such as: Youth Sunday, Easter, Thanksgiving, Christmas.
4. Work with youth directors to recruit and train volunteers for leadership in youth ministry.
5. Oversee the care of equipment related to youth ministry. Purchase supplies, materials and equipment as authorized.
6. Coordinate youth activities with the church master program and facilities calendar.
7. Develop and implement programs to effectively transition youth from one grade to another.
8. Counsel youth and parents who need guidance.
9. Assist in worship at the request of the Senior Pastor. Teach Sunday morning classes.
10. Establish departmental goals and objectives by prioritizing related programs, managing the use of facilities, planning an appropriate budget, delegating tasks and evaluating progress regularly.
11. Work with appropriate committees, officers and leaders in carrying out the youth ministry of the church.
12. Attend staff meetings and retreats.
13. Attend board meetings as a resource and for informational purposes.
14. Cooperate with the church pastors, by performing any other duties when asked to do so.

In denying the petition, the director found that the petitioner had provided conflicting information about the duties of the proffered position and determined that the petitioner had not provided documentation to establish that the position of youth sports coach or youth ministry trustee and sports coach/director "is traditionally a permanent, salaried position requiring full-time services of a religious worker, nor that the position requires any particular religious education and/or training."

Counsel argues that the petitioner has established that the proffered position is a religious occupation as it meets the test outlined in previous AAO decisions:

The four part test consists of the following: (1) the duties of the position must be directly related to the religious creed or denomination; (2) the position must be defined and recognized by the governing body of the denomination; (3) the position is traditionally a full time salaried occupation within the denomination; and (4) specific prescribed religious training or theological education is required.

Counsel appears to rely upon AAO decisions issued before the implementation of new regulations on November 26, 2008. While the factors enumerated by counsel aided, and are still useful, in determining whether a position is a religious occupation, the regulation sets forth a different four-prong analysis which, as will be discussed further below, the petitioner has not met.

The new 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.

The first issue to be resolved, however, is that of the position that is being offered to the beneficiary. The petitioner stated in its December 16, 2008 letter and on the Form I-129, Petition for a Nonimmigrant Worker, that the proffered position was that of a youth sports coach with duties of teaching fencing and preparing individuals for competition and championships. The petitioner did not outline any duties of a religious nature. However, in response to the RFE, the petitioner expanded upon the title of the proffered position and outlined duties related to

religious work. The petitioner did not identify in its response to the RFE any duties associated with the position of sports coach or director. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Therefore, we will consider only the position offered to the beneficiary as indicated on the Form I-129 and outlined in the petitioner's initial submission. The petitioner makes clear in its December 2008 letter that the beneficiary's experience and qualifications in fencing are the primary qualifications for the proffered position. The record reflects that the petitioner has attempted to tailor the duties of the proffered position in an effort to qualify it as a religious occupation for purposes of this nonimmigrant visa petition. 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 not established that the duties of the proffered position of youth sports coach primarily relate to a traditional religious function, is recognized as a religious occupation within the denomination, and primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination, as required by the regulation at 8 C.F.R. § 214.2(3). The petitioner provided no other documentation regarding the position of youth sports coach subsequent to its initial submission.

Even assuming *arguendo* that the proffered position is that of youth ministry trustee and sports coach/director as subsequently claimed by the petitioner in the RFE and on appeal, the petitioner still has not established that the position is a religious occupation as defined by the regulation. As discussed previously, the petitioner did not identify any duties of a sports coach or director in its list of duties for the position. Additionally, counsel alleges on appeal that the letter from the Very Reverend Father Constantin Alecse, the parish priest and official who signed the petition on behalf of the petitioner, constitutes a letter from the denomination recognizing the position as a religious occupation. We note that Father Alecse also identified himself as the dean of the [REDACTED]. Nonetheless, we find the letter self-serving and without independent supporting evidence in the record. The petitioner provided no documentation to establish that the position of youth ministry trustee and sports coach/director exist in any other church or religious affiliate within the [REDACTED].

The petitioner has failed to establish that the proffered position of youth sports coach is a religious occupation.

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.