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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

D13

DEC 08 2010



FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:

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 \$630. 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,

M. Deardorff
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 employ 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 music minister. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation and that the beneficiary seeks to enter the United States to work at least 20 hours per week.

On appeal, counsel asserts that the petitioner “believes that the duties to be performed by the minister of music are in accordance with its religious beliefs and creed” and that the beneficiary will work at least 20 hours per week. Counsel 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 first 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(r)(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 his letter accompanying the petition, counsel stated:

The Music Minister is responsible for leading the church singing, the worship services, and the choir in a way that is dynamic, inspiring and vibrant. The church is experiencing growth and is one of the distinctive aspects of the church. The music minister is responsible for the spiritual direction of the meeting choosing the music to be sung, inviting people to come to know Christ and encouraging many others to a deeper walk with God.

The Music Minister position will work with the Praise Team for Sunday morning as well as direct possible praise/worship activities on Wednesday night and assist/praise components in other departments as needed.

The record, however, contains nothing from the petitioner, such as a job offer, verifying any of the information contained in counsel's letter. 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 stated on the Form I-129, Petition for a Nonimmigrant Worker, that the beneficiary would be paid \$20,000 per year. The petitioner submitted no documentation to establish that the duties of the proffered position primarily relate to a traditional religious function and is recognized as a religious occupation within its denomination, and that the duties primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

In response to the director’s request for evidence (RFE) dated July 29, 2009, counsel again outlined the duties of the proposed position. However, the petitioner submitted no other documentation to establish that the position qualifies as a religious occupation as defined by the regulation. The petitioner submitted a weekly work schedule for the beneficiary for “worship service/youth’s leader” as follows:

| | | Monday | Tuesday | Wednesday | Tuesday [sic] | Friday |
|---------|---------|-------------------|------------|---------------|---------------|---------------------|
| 10:00AM | 10:30AM | Prayer | Prayer | Prayer | Prayer | Prayer |
| 10:30AM | 11:00Am | Meditation | Meditation | Meditation | Meditation | Meditation |
| 02:00PM | 03:00PM | Evangelism | Evangelism | Evangelism | Evangelism | Evangelism |
| 04:00PM | 05:00PM | | | Family Prayer | | Deliverance service |
| 08:00PM | 09:30PM | Prosperity Prayer | Visitation | Visitation | Visitation | Deliverance Service |

| | | Saturday | Sunday |
|---------|---------|------------------------------------|------------------|
| 10:00AM | 12:00PM | | Worship Services |
| 04:00PM | 05:00PM | | Worship Services |
| 07:00PM | 09:00PM | Youth and Teenagers Meeting Prayer | Worship Services |

The activities on the schedule do not correspond with the duties of the position as alleged by counsel. For example, the schedule does not include any work with the choir or other preparation for a music ministry and there is nothing to suggest that “praise/worship activities” are held on Wednesday. In denying the petition, the director determined that the duties as outlined in the schedule for the beneficiary do not establish that the duties are those of a religious occupation and that “it appears that the proffered position can be performed by volunteer members of the congregation.”

On appeal, counsel states:

Petitioner needs a person of faith to be the minister of music to lead the church’s choir, who demonstrates proven instrumental and vocal ability, and experience in planning services, selecting music, and coordinating band members. The minister of music will offer prayers and song leadership during the service, develop the

music program with new ideas and personal creativity, and a passion for worship and serving the gathered body of Christ.

Again, however, the record contains no documentary evidence to support any of counsel's assertions. As discussed above, the record does not contain a job offer or any other statements from the petitioner that outlines the duties of the position. Further, the weekly work schedule provided indicates that it is for a "youth's leader" and contains no duties or activities that would be consistent with an individual responsible for the overall music ministry of the church.

The petitioner has failed to establish that the proffered position qualifies as that of a religious occupation as defined by the regulation.

The second issue presented is whether the petitioner has established that the beneficiary will work at least 20 hours per week.

The regulation at 8 C.F.R. § 214.2(r)(1) provides 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:

. . . .

(ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week).

The petitioner failed to provide the information requested in part 5 of the Form I-129 regarding whether the position offered was full time or to indicate the number of hours per week that the beneficiary would be expected to work. The petitioner provided no other documentation about the proffered job in its initial submission.

In response to the RFE, the petitioner submitted a work schedule for "worship service/ youth's leader." The schedule includes prayer, meditation, evangelism, and visitation on Monday through Friday. The Friday schedule also includes two "deliverance services." Saturday's schedule shows a "youth and teenagers meeting prayer" and the schedule for Sunday shows three worship services.

In denying the petition, the director determined that this document did not reflect the duties of the proffered position of music minister and therefore did not sufficiently establish the number of hours that the beneficiary would be working in the proffered position. The director stated that as the petitioner's congregation consisted of only 92 members and the beneficiary would be the petitioner's third music minister, the petitioner had submitted insufficient documentation to establish that the beneficiary would work at least 20 hours per week.

On appeal, counsel asserts that the petitioner has churches in different locations and while it only has 92 members in Pompano Beach, Florida, where the beneficiary is scheduled to work, it has more members at its other locations. Counsel further states that the petitioner had petitioned for another individual as music minister at Pompano Beach, but when the petition was denied the individual left the country and thus the petitioner will have only two music ministers. According to counsel, the other music minister is in Orlando, Florida and that by employing a minister in Pompano Beach, the individual would not have to travel so far to provide music support for all services. The petitioner submitted documentation indicating that USCIS approved a Form I-140, Immigrant Petition for Alien Worker, for another individual under section 203(b)(3)(A)(1) of the Act to perform services as a music director with the petitioner. The record, however, does not establish ██████████ duties or where he is to perform them. The petitioner submitted no other documentation about the hours that the beneficiary would be scheduled to work as a music minister.

The petitioner has submitted insufficient documentation to establish that the beneficiary seeks to enter the United States to work at least 20 hours in a qualifying religious occupation or vocation.

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.