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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



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **DEC 08 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.

Thank you,

*Perry Rhew*  
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 withdraw the director's decision and will remand the petition for further action and consideration.

The petitioner is a "Chinese Christian mission." 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 regional campus minister. The director determined that the petitioner had not established that the beneficiary had been a member of its religious denomination for two full years preceding the filing of the visa petition, that the position qualifies as that of a religious occupation, and that the beneficiary will be employed for at least 20 hours per week. The director also determined that the petitioner provided contradictory information regarding the number of aliens for which it had petitioned.

On appeal, the petitioner states that the beneficiary "has been [an] active member of three religious denominations," including the petitioner, that the proffered position "is responsible [for] a full spectrum of duties that are of traditional religious functions," and that the beneficiary will work full time for the petitioning organization. The petitioner 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 first issue presented is whether the petitioner has established that the beneficiary was a member of its religious denomination for two full years immediately preceding the filing of the visa petition.

The regulation at 8 C.F.R. § 214.2(r) provides, in pertinent part:

(1) 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.

The petition was filed on January 6, 2010. Therefore, the petitioner must establish that the beneficiary was a member of its denomination for two full years immediately preceding that date.

In its December 30, 2009 letter submitted in support of the petition, the petitioner stated that the beneficiary “was accepted as a member of [the] [REDACTED] since” September 18, 2005. The petitioner provided no documentation to establish its affiliation with the [REDACTED]

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner stated that its “members” consisted of “over 1000 churches on the mailing list.” In a March 26, 2010 request for evidence (RFE), the director instructed the petitioner to “[s]ubmit evidence showing the cooperation and on-going cooperative relationship between local churches and” the petitioning organization.

In its April 19, 2010 response, the petitioner, through its managing director, [REDACTED] stated:

In accordance with its mission . . . [the petitioner] has been sending regional staff to the local university campuses to be involved in personal evangelism and discipleship, through Bible study groups, conferences, and seminars.

In January 2010, [the petitioner] entered a “Ministry Partnership Agreement for Campus Ministry Operations in Cleveland Area[.]” with the [REDACTED] According to the agreement, the beneficiary . . . is to be assigned as a full-time [member of the petitioner’s] staff to [REDACTED] as a missionary in charge of the Campus Ministry and assume the duties as a Regional Campus Minister.

The partnership agreement provides, in paragraph 3, “Operation Guidelines,” that the petitioner’s “staff may become member(s) or ministry staff of [REDACTED] as situations/requirements arise.”

The petitioner also submitted a copy of its mailing list which included the [REDACTED]. The petitioner submitted no documentation to establish that it belonged to the same denomination as the [REDACTED] or the [REDACTED]. The director denied the petition, finding that “there was no record showing that memberships of” the CBCGB and the petitioner were the same or that they belong to the same denomination.

On appeal, the petitioner states that the CBCGB, the [REDACTED] and the petitioner are all of the Protestant Christian Evangelical denomination “as they follow the same belief and teaching.” The petitioner submitted a copy of its articles of incorporation and bylaws which include its statement of faith, and a copy of what it states is the statement of faith for the CBCGB retrieved from its website. Additionally, the petitioner submits documentation reflecting that the CBCGB is one of its partner churches. The petitioner also submits an undated letter from [REDACTED] who identifies himself as an elder of the church and states that the petitioner and the [REDACTED] “are of the same evangelical protestant faith” and that:

[REDACTED] and [the petitioner] have supported each other spiritually and financially. [The petitioner] serves [REDACTED] in providing materials for training, publications, missionary information and mission support materials, and hosting conferences to promote evangelism and Christian teachings. [REDACTED] fulfills its mission as a local church sharing the vision of [the petitioning organization] to serve the believers through Sunday worship, communion, weddings, funerals, and fellowship.

The director noted that the membership list was grouped by donation levels and that the [REDACTED] contributed \$1,000. The AAO can find no relevance or significance to the [REDACTED] contribution level and whether it is of the same denomination as the petitioning organization.

We find that the petitioner has provided sufficient documentation to establish that the beneficiary was a member of its denomination for two full years immediately preceding the filing of the visa petition and we withdraw this determination by the director.

The second 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(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.

The proffered position is that of regional campus minister. In its December 30, 2009 letter, the petitioner stated that the beneficiary's duties would include:

- Confer with other regional campus minister[s], congregation officials, and congregation organizations to encourage support of and participation in campus ministry education activities.
- Pray and promote spirituality. Assess, plan, implement and evaluate ministry programs for their effectiveness and efficiency. . . .
- Counsel and train individuals and group outreach activities through caring ministry and evangelism. Evangelism includes but not limited to one-to-one or group evangelism and bible studies. Counsel students . . . concerning their spiritual, emotional, and personal needs, and work with them by sharing God's love and help them to understand God's Word that leads them to accept Jesus as their personal Savior and to live a God honoring life.
- Serve as guest speaker in churches, seminars, retreats, missionary conventions, sharing the ministry of [the petitioner].
- Prepare and deliver sermons and other talks, Preach and teach in worship services, Sunday school classes, campus fellowship groups, retreats and other campus meetings.
- Train leaders of church, community, and youth groups. Conduct and train discipleship activities and other training activities by giving individual or group meetings. The trainees will include new believers, student leaders, and church members.
- Track and trend (to examine the commonalities to plan for future ministry) alumni for follow-up by self and [the petitioner's] headquarters staff, write friend and fund raising letters and conduct other donor follow-up activities, such as visitation, and phone class, to maintain his/her annual support level.
- Visit people in homes, hospitals, and prisons to provide them with comfort and support. Serve as a counselor from a biblical perspective for those

requesting help to resolve personal or family situations in group settings or in one-on-one meetings.

- Seek opportunity for individual growth as well as to ensure that all aspects of campus ministry activities are carried out effectively.

The petitioner stated that the beneficiary would be paid \$35,000 annually.

In her RFE, the director stated that the petitioner had not provided a work schedule for the different locations at which the beneficiary would work. She instructed the petitioner to:

Submit a timeline schedule showing specific date started and specific date ended at each work site, including occasional work site, and a weekly work schedule for each requested work site during each date period. In weekly schedule of each work site, please describe specific daily work in break-down hours. Please indicate the weekdays or weekend days and the complete address and contact information of when and where the beneficiary reports to work.

In its response, the petitioner stated that the beneficiary will work from an office within the [REDACTED] and that the [REDACTED] "regularly hosts" students from Case Western Reserve University where the beneficiary will minister. The petitioner provided a weekly schedule for the beneficiary showing the activities that he would be involved in from 7:00 am to 9:00 pm each day, from Tuesday to Friday and on Sunday. The petitioner indicated that the duties included a monthly meeting of the [REDACTED] board on Mondays from 7:30 pm to 9:00 pm and "[r]egularly party or hiking with the Case students on Saturday."

In denying the petition, the director stated:

Although the petitioner[']s bylaws has [sic] made a statement regarding cooperation with local churches to support to evangelize and motivate Chinese students and professionals . . . it does not establish a missionary program or a specific regional campus minister position. Submitted bylaws, flyers, brochures, and annual reports [] show only a general promotion of Christian religion. Therefore, it has not established that the offered position is a traditional occupation.

On appeal, the petitioner submits a more detailed schedule of the duties of the proffered position. It also stated that the director's conclusion is incorrect as it "was established as a missionary group to work with local churches to provide spiritual and financial support to local churches." As discussed previously, [REDACTED] stated that it had a supporting relationship with the petitioner that includes missionary information, mission materials, training materials and publications from the petitioner with [REDACTED] serving as a host church "sharing" the petitioner's vision "to serve believers through Sunday worship, communion, weddings, funerals, and fellowship." The petitioner submitted documentation that it has relationships with other "partner" churches.

The petitioner has submitted sufficient documentation to establish that it has a cooperative relationship with other churches to support its activities. The petitioner has also submitted sufficient documentation to establish that the beneficiary will work as a minister in promoting this work. We find that the petitioner has submitted sufficient documentation to establish that the proffered position is a religious occupation as defined by the regulation.

The third issue 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. However, on the Form I-129 Supplement, the petitioner attested that the beneficiary would work at least 20 hours weekly.

The petitioner stated that the position at [REDACTED] where the beneficiary is to work, is a new position. In her RFE, the director instructed the petitioner to submit documentation of its activities at other locations:

Submit announcement bulletin, college facility usage permission records/billings or other publication showing evidence of the petitioner has been implementing other missions and services at college campuses.

Such evidence may include pastoral care programs, preaching programs, youth programs, counseling programs, Sunday school classes, leaders teaching program curriculum and schedule, class registration and enrollment procedure, .. etc. . . . with verifiable documentation.

In response, the petitioner submitted a copy of its "standard" position description for a campus ministry missionary, a copy of a document it stated is of a special outreach meeting from December 11-13, 2010, a photograph of what it stated depicts a fellowship supper gathering and a copy of a March 21, 2010 registration form, and a "contact list of new students" who attended a

welcome party. The flyer is not accompanied by an English translation as required by the regulation at of 8 C.F.R. § 103.2(b)(3), which provides:

*Translations.* Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Additionally, the documents are dated after the filing date of the petition. 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. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

The petitioner submitted the "Ministry Partnership Agreement" with the [REDACTED] for the beneficiary's services, and documentation regarding the [REDACTED] worship services and its usage agreement with the [REDACTED]. The petitioner also submitted a weekly schedule of the beneficiary's proposed hours indicating that he would work in excess of 40 hours per week. The petitioner submitted no documentation of its activities in any other locations.

In denying the petition, the director determined that the petitioner had not submitted the requested information and therefore failed to establish the "work activities of the missionary position." On appeal, the petitioner submits information from its website on its campus ministry, flyers about its campus ministry program, and a copy of a "prayer calendar" showing its various locations including its campus ministries.

We find that the petitioner has submitted sufficient documentation to establish that the beneficiary will work at least 20 hours per week as a campus minister.

Finally, while the director found discrepancies in the number of religious workers that the petitioner claimed it had petitioned for, the record is not clear that this was a simple omission or a deliberate intent to mislead USCIS. We find that the petitioner provided a reasonable explanation of this inconsistency on appeal.

We therefore withdraw the director's decision denying the petition. Nonetheless, the petition cannot be approved as the record now stands.

The record does not establish how the petitioner 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.

(ii) *Self support.*

(A) If the alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.

(B) An established program for temporary, uncompensated work is defined to be a missionary program in which:

- (1) Foreign workers, whether compensated or uncompensated, have previously participated in R-1 status;
- (2) Missionary workers are traditionally uncompensated;
- (3) The organization provides formal training for missionaries; and
- (4) Participation in such missionary work is an established element of religious development in that denomination.

(C) The petitioner must submit evidence demonstrating:

- (1) That the organization has an established program for temporary, uncompensated missionary work;
- (2) That the denomination maintains missionary programs both in the United States and abroad;
- (3) The religious worker's acceptance into the missionary program;
- (4) The religious duties and responsibilities associated with the traditionally uncompensated missionary work; and

- (5) Copies of the alien's bank records, budgets documenting the sources of self-support (including personal or family savings, room and board with host families in the United States, donations from the denomination's churches), or other verifiable evidence acceptable to USCIS.

On the Form I-129 Supplement, the petitioner stated that it would pay the beneficiary \$35,000 per year in addition to \$2,576 "in ministry and mileage reimbursement expense." Additionally, in its December 30, 2009 letter, the petitioner stated that the beneficiary would be paid "directly from [the petitioner's] account." However, although its partnership agreement with [REDACTED] provides that the petitioner "will be responsible for salary compensation and benefit," for each staff member, the agreement also requires [REDACTED] to deposit \$30,000 annually into the beneficiary's "individual account [with the petitioner] as part of the missionary financial support." During an onsite inspection of the petitioner's premises on April 11, 2008 in connection with another petition, the petitioner stated that the beneficiary of that petition was "presently employed by the Petitioner through an affiliated church. The affiliate church pays the [beneficiary's] room, board, and direct salary at the Campus Ministry where the [beneficiary] is a minister and the Petitioner pays all of the [beneficiary's] benefits such as health, life and retirement."

The record does not sufficiently establish how the petitioner intends to compensate the beneficiary. Additionally, the record does not establish that the beneficiary is self-supporting and that the proffered position is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.

The record is remanded for the director to address the issue of whether the petitioner has established how it intends to compensate the beneficiary.

The matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.