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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:

Office: CALIFORNIA SERVICE CENTER Date: DEC 08 2010

IN RE:

Petitioner:
Beneficiary:

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,

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 dismiss the appeal.

The petitioner is a Christian missionary organization. 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 multilingual communications specialist at the petitioner's International Communications Network (ICN). The director determined that the petitioner had not shown that the position qualifies as a religious occupation.

On appeal, the petitioner submits a brief from counsel, a witness letter, and background materials.

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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(1) states 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:

(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;

- (ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);
- (iii) Be coming solely as a minister or to perform a religious vocation or occupation as defined in paragraph (r)(3) of this section (in either a professional or nonprofessional capacity);
- (iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and
- (v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

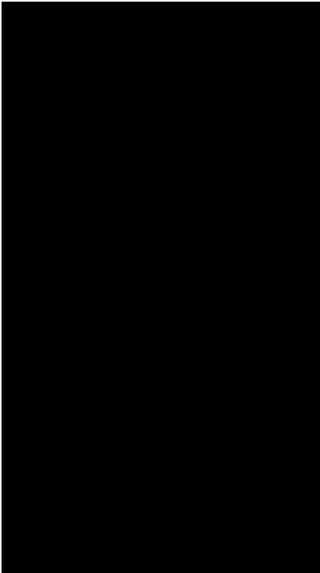
The USCIS regulation at 8 C.F.R. § 214.2(r)(3) defines a religious occupation as an occupation that meets all of the following requirements:

- (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 petitioner filed the Form I-129 petition on May 26, 2009. On the petition's accompanying attestation, the petitioner stated that the beneficiary's proposed daily duties consisted of "[p]roduction of discipleship and recruiting initiatives including video, design and web development in multiple languages."

On July 24, 2009, the director instructed the petitioner to submit additional "evidence to establish that the proffered position is recognized as a religious occupation related to a traditional religious function." In response, the petitioner (in an unsigned statement) indicated that ICN has fifteen employees in the following positions:

Position Title



Description

Operations Manager
Graphic Design
Finance Manager
Research & Information
Communications
Mobilization
Pastoral
Data Entry, Secretarial
Video Editor
Graphic Design
[The beneficiary's position, as described on Form I-129]
Research & Information
Bookkeeping
Overall Director
Assist[ant] to Director

Regarding [redacted] and the beneficiary's position, the petitioner stated:

Our office handles [the petitioner's] global communication needs. . . .

Most of our staff tend [to] work out on the field . . . and we have very few that feel a specific calling to serve as support staff (communication, administration etc.) A major focus in our specific office is to help our mission stay connected, communicate internally and externally about the services and needs of staff, projects and ministries globally, and help connect needs with resources (people, material and financial).

[redacted] goal is to:

1. Assemble a cohesive physical team on-site in Colorado Springs . . .
2. Build a multi-cultural, multi-lingual team to effectively and sensitively . . . communicate internal information . . .
3. Increase the effectiveness and quality of our service to the rest of [the petitioning organization] globally

. . . Apart from extensive video and web personnel needs in-house, even our on-site systems and data require a full-time systems administration person. Since we do not have such [a] person, [the beneficiary] can also help with the systems administration skill sets in times of dire need. At the moment we have just one part-time video editor (we need at least two full-time editors) and no one on site to handle our website management (we need at least three web programmers in-house to handle our existing websites – not counting several new ones we plan to develop and maintain for the mission).

Two members of our staff have spent in Ukraine . . . and were able to work directly with [the beneficiary] on several video and graphic design projects. They were able to observe his high level of skill first hand and highly recommended him as a person we would greatly benefit from if he were able to join our staff. . . .

[The beneficiary's] several years of experience working on the field both in technical expertise (hardware and software related) and in multi-cultural/multi-lingual environments gives us an unparalleled boost in our effectiveness at our location.

The director denied the petition on January 4, 2010, stating that the beneficiary's duties appear to be secular, involving technical tasks such as video editing and web design, rather than inherently religious and relating to traditional religious functions within the petitioning organization. On appeal, [REDACTED]

[REDACTED] states:

[T]he communications that the worker will be creating are religious in nature. These tools are used by missionary workers in the field. Our organization produces such communication tools as video presentation of the Christian Gospel in the language of the people of a specific tribal group, or the production of written teaching material for a missionary to use to teach the Christian Faith. We also produce video web materials, and written materials to teach and recruit Christians to become missionary workers. . . .

[W]e believe that the job position relates to the traditional religious function within the Christian faith of presenting the gospel of Jesus Christ. . . . [W]e have found that the ability to communicate the gospel and biblical teaching through modern means of technology is an absolute requirement. . . .

We have in the recent past, hired an outside firm to try to do some of the work of our organization and maintenance of the [the petitioner's] web site. To date, we have not been pleased with the results. We believe it is because . . . a secular worker is not understanding what is important, what is biblical or spiritual, or what would be of interest to those seeking to become missionary workers with our organization. . . .

We have found that in this job position, the job duties require an individual to have the same faith as the others in [the petitioning organization], and that they have the same religious experiences as well. . . . We believe that the creation of [a religious communications] tool is religious work, whether it involves video creation and editing, language dubbing, web site development and design, and the design and editing of written materials.

Printouts from [REDACTED] submitted on appeal, contain the following assertions:

We design, produce, and distribute a major portion of [the petitioner's] foundational teaching resources as well as other missions resources. This includes gathering the

necessary content (written, audio, and visual), editing and designing it for appropriate audiences, producing the finished products, and distributing it to the audiences. We collaborate on various projects with our skills in content gathering, writing, photography, video (shooting & editing), print, web and video design, etc.

. . . One single brochure cannot cover all the [petitioner's] informational, recruiting and cultural communication needs. . . . New technologies make it possible to customize brochures by translating them into local languages, adding ministry/base contact information, addressing security issues, etc. to suit various cultural and local needs. [The petitioner's] ministries and bases can now order generic printed brochures, order a CD of the artwork for local printing, or work with [REDACTED] to customize designs for your specific use.

. . . We provide online resources, networking and tutorials in communication basics including writing, photography, video, and proper telephone etiquette.

The information submitted on appeal refers to [REDACTED] in general, rather than the beneficiary's specific role as a multilingual communications specialist. The information provided does not indicate that [REDACTED] multilingual communications specialist is involved in inherently religious activities. Rather, it appears that the beneficiary's role is the organization, presentation and distribution of content that happens to be religious in nature. The beneficiary's role, therefore, appears to be essentially one of administrative and technical support, rather than religious in and of itself. The petitioner has acknowledged that it attempted (albeit unsuccessfully) to farm this work out to contractors. We acknowledge the petitioner's assertion that it prefers to have its own workers perform these tasks, although the petitioner has offered only vague, general explanations as to how the contractors' work was unsatisfactory.

The petitioner's overall religious character is beyond dispute. The petitioner has not, however, shown that the duties of its multilingual communications specialist relate to a traditional religious function rather than to secular, administrative tasks. We agree with the director's finding in this regard.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will dismiss the appeal.

ORDER: The appeal is dismissed.