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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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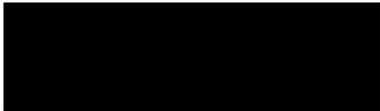


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **DEC 17 2010**

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(i)

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, initially denied the employment-based nonimmigrant visa petition for abandonment, but reopened the proceeding on the petitioner's motion. The director then denied the petition on its merits. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a church affiliated with Grupo de Unidad Cristiana de Mexico, a Christian denomination based in Tijuana, Mexico. 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 children's outreach minister. The director determined that the petitioner had not shown that the position is a religious occupation.

On appeal, counsel indicates that a brief will be forthcoming within 30 days. To date, eight months after the filing of the appeal, the record contains no further submission from the petitioner. We therefore consider the record to be complete as it now stands.

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 petitioner filed the Form I-129 petition on May 27, 2008. On that form, the petitioner indicated that the beneficiary's position would be full-time. A February 29, 2008 letter from [REDACTED] the [REDACTED] described the job offer:

[REDACTED]

By his previous experience on Computer Systems and Internet, [the beneficiary] will also be in charge of the Church's Website, coordinating the information from all Ministries in the Church to keep this Website updated.

On February 27, 2009, the director instructed the petitioner to submit additional evidence required by recent revisions to the regulations. The director advised: "Pursuant to 8 C.F.R. 103.2(b)(11) failure to submit **ALL** evidence requested **at one time** may result in the denial of your application" (emphasis in original). In the notice, the director instructed the petitioner to submit more details about the beneficiary's proposed duties, as well as "evidence to establish that the proffered position is recognized as a religious occupation related to a traditional function in this religious denomination or organization."

In an employer attestation included in the petitioner's response, under "Title of position offered," the petitioner wrote "Head Scout Master." A new "Position Description" reads:

The position held by [the beneficiary] is a new position in the Congregation, and there is no precedent for it. It includes a variety of responsibilities, including, but not restricted to:

- Head Scout Master for the Boy Scouts Group affiliated [with] the Congregation, with sessions every Saturday from 10:00 through 13:00 hours. At this moment [the beneficiary] has been training the leadership required and obtaining all permits required to operate this Group.
- Participation in the coordination of all Children's ministries (Sunday School, [REDACTED]). At the moment [the beneficiary] has been participating directly with the Sunday School, teaching classes to kinder[garten] and to preschool children.
- Assistance in the Information Systems, providing assistance to the diverse departments of the Congregation and helping and maintaining the Church's web site.

Apart from the three-hour period described for the beneficiary's work with a Boy Scout group, the petitioner did not specify the beneficiary's work schedule or show how much time the beneficiary would devote to each given task.

On September 8, 2009, more than six months after the director issued the above notice, the petitioner submitted a "[s]upplement to previously submitted response." The director had previously advised the petitioner of the regulation at 8 C.F.R. § 103.2(b)(11), which reads, in part: "All requested materials must be submitted together at one time, along with the original USCIS request for evidence or notice of intent to deny. Submission of only some of the requested evidence will be considered a request for a decision on the record." In addition, the regulation at 8 C.F.R. § 103.2(b)(8)(iv) states: "in no case shall the maximum response period provided in a request for evidence exceed twelve weeks, nor shall the maximum response time provided in a notice of intent to deny exceed thirty days. Additional time to respond to a request for evidence or notice of intent to deny may not be granted." Under these regulations, USCIS cannot accept the untimely supplement to the original response.

The director denied the petition on January 4, 2010, noting that "the beneficiary's work history shows a specialization more in the field of Information Technology than religious work," and that "the petitioner has not provided any information regarding the requirements for the position or provided any evidence to demonstrate how the beneficiary has satisfied such requirements." The director concluded:

The petitioner has not provided any evidence to show that the duties of the position are directly related to the religious creed or beliefs of the denomination, that the position is defined and recognized by the governing body of the denomination, or that the position is traditionally a permanent, full-time, salaried occupation within the denomination or petitioning religious organization.

On appeal, counsel states:

The conclusion that the beneficiary's computer skills used by the Church to recruit and retain parishioners are administrative and do not fall within the purview of religious activity reflects a prejudiced and overly restrictive view of religion.

To deny a Church the services of a former banker; who is now dedicating his life to his Church; because he knows how to use a computer, is reminiscent of the 17<sup>th</sup> Century values most recently exhibited by radical fundamentalists in Afghanistan.

The opinion indicates a rigid disregard for the needs of Churches to adapt to contemporary standards in order to recruit, grow and cultivate a congregation. Those efforts include not only Sunday School, but also youth activities such as Scouting as well as adult communication tools such as the internet. The use of those means to communicate a religious message does not make the message “administrative” anymore than the use of radio or television for a ministry would convert it from a ministry to some other form of show business.

In short, the restrictionist logic of the denial has the effect of officially imposing personal views of a government officer to deny religious freedom to others. The power of the executive over immigration should not be allowed to abrogate its responsibilities under the First Amendment.

At issue in this proceeding is not the petitioner’s or the beneficiary’s free exercise of religion, but rather a secular benefit (immigration status). Determining the status or duties of an individual within a religious organization is a distinct question from determining whether that individual qualifies for status or benefits under our immigration laws and authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982). No alien has a First Amendment right to immigration benefits, whether or not that alien seeks employment with a religious organization. As USCIS explained in the preamble to its revised regulations, USCIS did not intend the rule to “impose a ‘categorical bar’ to any religious organization’s petition for a visa or alien’s application for admission. Instead, the rule sets forth the evidentiary standards by which USCIS will adjudicate nonimmigrant and immigrant petitions.” 73 Fed. Reg. 72276, 72283-84 (November 26, 2008).

The director did not deny the petition “because [the beneficiary] knows how to use a computer,” or because the petitioner has embraced modern technology. Rather, the director denied the petition because the petitioner failed to establish that its religious denomination recognizes the beneficiary’s duties as a religious occupation – a requirement that, among other things, helps to ensure that a given position meets a legitimate religious need, rather than simply serving as a pretext for seeking immigration benefits for a given alien. The petitioner has not submitted any evidence to contest this finding. Previously, the petitioner admitted that the position was newly created and “has no precedent.” There is no evidence that other congregations in the petitioner’s denomination employ workers in similar occupations.

Also, the regulatory definition of “religious occupation” at 8 C.F.R. § 214.2(r)(3) states that the beneficiary’s duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination, and cannot be primarily administrative or support positions. The burden is on the petitioner to show that that the beneficiary’s duties are

primarily religious rather than administrative or support. The petitioner has indicated that the beneficiary's duties include a combination of religious and secular functions, but has not shown which type of function predominates. The petitioner has provided minimal detail about the beneficiary's intended job.

Of particular concern is the assertion that one of the beneficiary's paid duties is to serve as "Head Scout Master for the Boy Scouts Group affiliated [with] the Congregation." The petitioner has not claimed or established any formal affiliation between itself and the Boy Scouts of America, and there is no evidence that the petitioner's religious denomination has a history of paying workers to serve as scoutmasters. Nevertheless, the petitioner considered the beneficiary's intended work as a scoutmaster to be so important that, in its attestation, the petitioner stated that the beneficiary's job title would be "Head Scout Master." The petitioner has not produced sufficient evidence to establish the primarily religious nature of the beneficiary's intended work, or to show that the denomination recognizes such work as an occupation. Therefore, we agree with the director's finding that the petitioner has not shown that the beneficiary's intended position is a religious occupation.

Beyond the director's decision, we note another deficiency in the petitioner's evidence. 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 petitioner has claimed that the beneficiary would work full-time, receiving room and board. The regulation at 8 C.F.R. § 214.2(r)(11)(i) requires the petitioner to submit verifiable evidence explaining how the petitioner will compensate the alien, which 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. Internal Revenue Service (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. The record does not contain IRS documentation or an explanation for its absence, and the petitioner has not provided verifiable evidence that it will provide room and board to the beneficiary.

The AAO will dismiss the appeal 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. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.