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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

[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date: DEC 28 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:

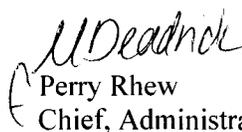
[REDACTED]

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 appeal will be dismissed.

The petitioner seeks to classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as a Quran/Islamic studies teacher. The director determined that the petitioner had not established that it qualifies as a bona fide nonprofit religious organization, how it intends to compensate the beneficiary, that the beneficiary qualifies for the proffered position, and that the petitioner needs the beneficiary's services.

Counsel asserts on appeal that the decision is arbitrary and in violation of law. Counsel submits a brief 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.

Counsel initially argues that the director failed to give the "standard 87 day period" in which to submit additional documentation. On June 1, 2010, the director notified the petitioner of her intent to deny the petition and advised the petitioner that any additional information must be received by July 1, 2010. The regulation at 8 C.F.R. § 103.2(b)(8)(iii) provides:

If . . . the evidence submitted does not establish eligibility, USCIS may: deny the application or petition for ineligibility; request more information or evidence

from the applicant or petitioner, to be submitted within a specified period of time as determined by USCIS; or notify the applicant or petitioner of its intent to deny the application or petition and the basis for the proposed denial, and require that the applicant or petitioner submit a response with a specified period of time as determined by USCIS.

Additionally, 8 C.F.R. § 103.2(b)(8)(iv) provides:

The request for evidence or notice of intent to deny will indicate the deadline for response, but in no case shall the maximum response period provided in a request for evidence exceed twelve weeks, nor shall the maximum response time provide in a notice of intent to deny exceed thirty days.

The record does not reflect that the director abused her discretion in issuing the petitioner a Notice of Intent to Deny (NOID) or in establishing the time period for the petitioner to respond. We note that the petitioner submitted no additional documentation on appeal.

The first issue presented is whether the petitioner has established that it is a bona fide nonprofit tax-exempt religious organization.

The regulation at 8 C.F.R. § 214.2(r)(3) defines a tax-exempt organization as “an organization that has received a determination letter from the IRS [Internal Revenue Service] establishing that it, or a group it belongs to, is exempt from taxation in accordance with section[] 501(c)(3) of the Internal Revenue Code [IRC].” Additionally, the regulation at 8 C.F.R. § 214.2(r)(9) provides:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the IRS showing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or
- (iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3), or subsequent amendment or equivalent sections of prior enactments, of the [IRC], as something other than a religious organization:
 - (A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;
 - (B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing

instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as books, articles, brochures, calendars, flyers, and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a statement certifying that the petitioning organization is affiliated with the religious denomination. The statement must be submitted by the petitioner along with the petition.

With the petition, filed on March 11, 2008, the petitioner submitted a copy of its May 12, 1997 constitution and bylaws and a document indicating that it had filed its articles of incorporation with the Commonwealth of Pennsylvania. The constitution does not contain the dissolution clause required by the IRS in determining whether an organization qualifies for tax-exemption under section 501(c)(3) of the IRC . *See* IRS Publication 557. The petitioner also submitted a copy of IRS Form 990, Return of Organization Exempt from Income Tax, for the year 2007. The IRS Form 990 is not signed or dated and contains no indicia that it was filed with the IRS. The petitioner submitted no other documentation to establish that it is a bona fide nonprofit religious organization.

In her NOID of June 1, 2010, the director instructed the petitioner to submit a letter from the IRS establishing that it is a bona fide nonprofit religious organization as defined by the regulation. In his July 1, 2010 letter submitted in response, counsel stated:

[The] current regulations do not apply. This petition was filed under prior regulation and, therefore, prior regulation should control the adjudication of this case. There was authority in the new regulations of November 2008 authorizing retroactive effect. However, that effect only applied to immigrant pipe line cases that were pending due to the expiration of legislation in Congress. The Petitioner filed this visa petition under prior regulation and does qualify under prior regulation and current regulation for approval. However, I respectfully request that the more liberal prior regulations please be applied.

The Petitioner is a non-profit religious organization. They submit the Articles of Incorporation as well as the Corporate Charter showing that they are a non-profit organization under the laws of the Commonwealth of Pennsylvania. Furthermore, they are affiliated with several Islamic organizations that are also non-profit religious organizations. The Petitioner submits a copy of their most recent federal income tax return.

The petitioner submitted a copy of a May 22, 1997 letter from the IRS assigning the petitioner an employer identification number. The petitioner also resubmitted the document acknowledging that it filed its articles of incorporation with the commonwealth, the copy of its constitution, and the IRS Form 990 for 2007.

On November 26, 2008, as required under section 2(b)(1) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008), USCIS promulgated a rule setting forth new regulations for immigrant religious worker petitions. While counsel asserts that the current regulations do not apply to the instant case, he submits no documentation to support his statements. In fact, to the contrary, supplementary information published with the new rule specified:

All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information. 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

As the instant petition was pending on November 26, 2008, it is subject to the requirements of the new regulation. On appeal, counsel states that, at the time the petition was filed:

[T]he regulations did not require that the 501(c)(3) certificate be submitted. Under prior regulations the Petitioner could submit documentation that would qualify the Mosque for approval as an organization under Section 501(c)(3) of the IRS code. (See former 8 C.F.R. §214.2(r)(2)). The documentation submitted at that time in February of 2008 did comply with that requirement. The Petitioner submitted the Articles of Incorporation showing that they were a non-profit organization, the constitution and by-laws of the [petitioner], the statement of the Department of Treasury with the employer i.d. number, the [form] 990 tax return for organizations exempt from income tax for 2007, financial reports and other information regarding the [petitioner]. All of this documentation established that the organization was a non-profit religious organization. The application of the current regulations requiring unequivocally a 501(c)(3) certificate took effect after the long delay by U.S. CIS in adjudicating this petition. The new regs did not take effect until November of 2008, and they were prospective (effective immediately) not effective retroactively to a case that was filed in February of 2008. Therefore, the Service Center Director's denial of this case based on the lack of a 501(c)(3) is clearly erroneous and in violation of the law.

Counsel's argument is without merit. First, the superseded regulation at 8 C.F.R. § 214.2(r)(3) provided that evidence that the organization qualified as a non-profit organization could consist of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

To meet the requirements of 8 C.F.R. § 214.2(r)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the IRS was required. In the alternative, to meet the requirements of 8 C.F.R. § 214.2(r)(3)(i)(B), a petitioner had to submit the documentation required by the IRS to establish eligibility for exemption under section 501(c)(3) of the IRC as it relates to religious organizations. This documentation included, at a minimum, a completed IRS Form 1023, the Schedule A supplement, if applicable, and a copy of the organizing instrument of the organization, which contains a proper dissolution clause and which specifies the purposes of the organization.

The petitioner did not submit a copy of IRS Form 1023. Additionally, as previously discussed, the petitioner's constitution and bylaws do not include the dissolution clause required by the IRS. Thus, despite counsel's argument to the contrary, the petitioner failed to establish that the petitioner qualified as a tax-exempt, nonprofit religious organization under the superseded regulation.

Additionally, counsel submits no documentation to support his contention that the current regulation is inapplicable to the instant petition. As previously discussed, supplementary information published with the rule specified that the regulation applied to all pending cases. The petition was pending on the effective date of the regulation; therefore, the provisions are applicable to the current case.

The petitioner has failed to establish that it is a bona fide nonprofit tax-exempt religious organization.

The second issue is whether the petitioner has established how it 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.

The petitioner indicated on the Form I-129, Petition for Nonimmigrant Worker, that it would pay the beneficiary \$18,500. With the petition, the petitioner submitted an unsigned, undated and uncertified copy of IRS Form 990 for 2007. As discussed above, nothing in the record indicates that the return was filed with the IRS and to support the statements contained within the IRS form. In her NOID, the director instructed the petitioner to submit documentation to establish how it intends to compensate the beneficiary pursuant to the above-cited regulation.

In response, the petitioner resubmitted the IRS Form 990 and a copy of a financial report for 2007 that includes a budget for 2008. The budget includes a sum of \$80,000 for "teachers." However, the document does not indicate that the sum includes the salary for the beneficiary. Counsel also stated that the letter from [REDACTED] indicated that the school "is a thriving organization and that they have sufficient resources to employ the beneficiary at a salary of \$18,500 per year." The September 2, 2008 letter from [REDACTED] however, does not address the petitioner's financial resources. Furthermore, even assuming that the letter contained such language, the assistant director's unsupported statement would not constitute sufficient documentation to establish how the petitioner would compensate the beneficiary. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In denying the petition, the director stated that the petitioner had not submitted "current evidence showing budgets or money set aside to establish the petitioner's intent to compensate the beneficiary." On appeal, counsel asserts that the documentation submitted by the petitioner established its ability to pay the beneficiary and that the petitioner was not given sufficient time to compile additional documentation. Nonetheless, as previously indicated, the petitioner submitted no additional documentation on appeal to establish how it intends to compensate the beneficiary. It has provided no documentation to establish that it has paid the beneficiary the proffered salary in the past or evidence that it has compensated a similar position.

The petitioner has failed to provide sufficient verifiable documentation to establish how it intends to compensate the beneficiary.

The third issue is whether the petitioner has established that the beneficiary is qualified for the proffered position.

The regulation at 8 C.F.R. § 214.2(r)(3) defines religious worker as “an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister.”

With the petition, the petitioner submitted a copy of a January 27, 2008 “experience certificate” from the Pak Shama School and College certifying that the beneficiary had “served with this institution from [REDACTED]. She has worked as a teacher in the subject of Islamic Studies and Al – Quran.” The petitioner submitted no other documentation regarding the requirements of the position or how the beneficiary met those requirements.

In her NOID, the director requested additional information about the position and how the beneficiary qualified for it. Specifically, the director instructed the petitioner to:

Provide a detailed explanation as to the requirements for the position offered, and how the beneficiary meets those requirements. Submit the religious denomination's or organization's by-laws, manuals, brochures, or guidebooks establishing the requirements for the position. Provide detailed evidence that the beneficiary meets the denomination[’s or] organization's requirements including the beneficiary's academic degree, transcripts, certificates, etc.

In a June 24, 2010 statement, [REDACTED], the petitioner's spiritual leader, stated:

The requirements for this position are that the person must be a member of our faith. We also have required that the individual have some basic know how in teaching. [The beneficiary] has been employed as a teacher of Islamic studies outside of the United States two (2) years prior to coming to this country. Therefore, she is an experience[d] religious teacher teaching Islamic studies.

In denying the petition, the director stated that the petitioner did not provide “a detailed description of the beneficiary's past activities nor explained that the position offered requires any special religious training,” as is usually the case for a religious instructor. On appeal, counsel asserts that the documentation provided clearly establishes that the beneficiary meets the petitioner's requirements for the job and that her “credentials” have been accepted by the petitioner.

The petitioner stated that its only requirements for the position are that the individual be a member of its faith and has some teaching “know how.” The record sufficiently establishes that the beneficiary meets these basic criteria, and we withdraw the director's determination to the contrary. However, as will be discussed further below, the petitioner's very minimum and basic requirement for the position raises the issue as to whether the proffered position is a religious occupation as defined by the regulation.

The director further determined that the petitioner had not established a need for the beneficiary's services thus raising the question of whether she will work at least 20 hours per week.

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

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).

On August 20, 2008, an immigration officer (IO) visited the petitioner's premises for the purpose of conducting an onsite inspection to verify the petitioner's claims in the petition. The IO reported that although the petitioner alleged to have had enrollment of 40 children during the previous school year, "[t]he actual space that could be designated for classrooms was not commensurate to accommodate the teaching needs of 40 children with the diverse range of ages consistent with the" teaching of children from pre-kindergarten through 12th grade, as claimed by the petitioner. The IO also stated that [REDACTED] the individual with whom she spoke, "could not identify students enrolled in the school for [the] 2008-2009 school year."

The director notified the petitioner of the IO's findings in her NOID. In response, counsel asserted that the information from the site inspection was "incorrect" and that

The Petitioner submits actual photographs of the Islamic Center and the classrooms. He submits additional documentation including the schedule of classes, the teachers that are providing the services, etc. which clearly indicate that there are at least four (4) classrooms in the Center. The photographs speak for themselves. This is an Islamic Center and the size of these rooms would clearly accommodate 40 students (10 students per room).

The petitioner submitted a "schedule of classes" that reflects classes are taught in the Koran on Sunday through Thursday from 8:30 am to 3:00 pm in four different sessions and by four different instructors. The schedule indicates that two classes are held on the first floor and two on the second floor. The petitioner also provided a list identifying three teachers, two substitute teachers and one teaching assistant, who teach subjects including science, social studies, literature, reading, writing, history, health and Islamic studies to students from kindergarten through 12th grade. We note that [REDACTED] listed in the class schedule as teaching "Koran in Arabic (Arabic Higher Academic)," is not identified as a teacher or substitute teacher on the petitioner's list of teachers. Additionally, the petitioner's schedule of classes identifies, for example, "Koran in Arabic/Basics (Lower Academics)." The record is not clear as to what classes are actually taught by each individual during the specified period. The petitioner also identifies 15 students enrolled in its school for the 2009-2010 school year and 17 students enrolled in grades pre-kindergarten through grade five. The petitioner submitted no documentation for the 2008-2009 school year.

The petitioner apparently submitted photographs on a compact disc that could not be viewed by the director. The director determined that the documentation submitted by the petitioner was insufficient to establish that it would employ the beneficiary for at least 20 hours per week. On appeal, counsel asserts that the petitioner was not aware that the photographs could not be viewed and submits them on appeal. However, the photographs do not readily depict a training environment capable of teaching up to 40 individuals nor does anything in the photographs rebut the findings of the IO.

The petitioner has submitted insufficient documentation to establish that the beneficiary will work for the petitioner at least 20 hours per week in a qualifying religious occupation or vocation.

Beyond the decision of the director, as raised earlier, the petitioner has not established that the proffered position qualifies as that of a religious occupation.

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 petitioner submitted no documentation with the petition to establish that the position qualifies as that of a religious occupation. Although the petitioner stated that the proffered position requires some teaching “know how,” it does not explain what constitutes teaching “know how” within its organization or denomination. In his June 24, 2010 response to the NOID, [REDACTED] attested that the duties of the position related to a traditional religious function “specifically teaching and preaching our religious beliefs to our young people.”

However, the petitioner submitted no documentation to establish, as required by the above-cited regulation, that the duties of the position primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination and that the duties primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). It is not sufficient to state that the beneficiary is qualified for the position and meets the requirements of the denomination without specifying what the requirements are and how the beneficiary meets them.

Accordingly, the petitioner has failed to submit sufficient documentation to establish that the proffered position is a religious occupation as defined by the regulation.

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 (9th 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 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.