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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



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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:

SELF-REPRESENTED

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition on November 16, 2009. 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 initially submitted its appeal on December 21, 2009. However, the director returned the Form I-290B, Notice of Appeal or Motion, because U.S. Citizenship and Immigration Services (USCIS) records reflected that the petition had been withdrawn. The petitioner resubmitted the appeal on January 13, 2010, stating that it was unaware "that notice had been served to withdraw the case." The petitioner stated that it had informed its counsel that it would not appeal the decision but later decided to pursue an appeal on its own. The record of proceedings does not include a request from the petitioner to withdraw its petition or that USCIS approved such a request. Accordingly, the record does not reflect that the petitioner withdrew its petition and the appeal was timely filed on December 21, 2009.

The petitioner is a church. It 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 Christian day school teacher. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation.

The petitioner asserts on appeal that the director's "statement that 'the beneficiary's duties are similar to that of a regular education administrator' is not entire accurate." The petitioner submits no 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 issue presented is whether the petitioner has 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.

In Part 5 of the Form I-129, Petition for a Nonimmigrant Worker, the petitioner stated that the position was that of “Christian Day School Teacher,” and described the job as “Religious teacher, principal and administrator.” In section 2 of the Form I-129 Supplement, the petitioner stated:

[The beneficiary] will function as a religious teacher, principal and administrator at Seminole MEC Christian Day School. Her duties will include: 1) day to day administration and leading of the Christian School, 2) staff training and development in religious teaching, 3) discipline and motivation of student body, 4) leading of staff prayer meetings.

The petitioner stated that the beneficiary would receive a salary of \$37,000 annually and that the church would provide for her lodging and transportation needs. In its August 13, 2009 letter submitted in support of the petition, the petitioner stated that the beneficiary would also be responsible for “ordering school materials, curriculum, and supplies” and “functioning as contact person for the religious school board and pastor.”

The petitioner submitted a copy of its constitution and guidelines and a copy of the constitution of the Evangelical Mennonite Conference. Neither of the documents addresses a school or educational system or the religious occupation of day school teacher or principal. The petitioner submitted a copy of the Seminole Mennonite School Handbook, which describes the school as a private Christian day school offering education from kindergarten through the 12th grade. The handbook further states that the school uses “the A Beka curriculum, which integrates the Bible into every subject. We also integrate the Anabaptist view of theology, which reinforces our beliefs as Mennonites.”

The handbook states that the school was founded in 1978 and is run by the church, which elects or appoints a chairman of the school board. A school administrator is appointed by the school board and approved by the church membership.

He works more directly with the staff and the principal, particularly in the more mundane school operations, in a pastoral role. In this way, the administrator is constantly on the job as a liaison between the school board and the school staff. He is also to be available for general counsel and guidance among the teachers in matters different from or beyond the principal’s jurisdiction.

The principal is responsible for the everyday school schedule and directly guides the teachers in their overall school responsibilities. He/she receives his/her orders from the school board, usually via the administrator. Thus, he/she is there “on the floor” to implement that which the membership and board ask him/her to in terms of goals, policies, and learning processes. The principal is the person in charge of school discipline, and in general, carries out the disciplinary measures that need to be meted out as teachers spot different needs. The principal will be available for individual counsel among the students as the need arises. He/she also sees to staff training, orientation, guidance, and counseling on a day-to-day basis to help teachers perform to their utmost potential in their different obligations.

In an October 8, 2009 request for evidence (RFE), the director requested additional information about the proffered position, including the daily duties and evidence to establish that the position is recognized in the petitioner’s denomination as a religious occupation related to a traditional religious function.

In response, the petitioner submitted a job description outlining the duties of the proffered position, as well as job descriptions for teachers, board chairman, administrator and assistant administrator. The petitioner also resubmitted a copy of the school’s handbook highlighting the school philosophy of instilling religious beliefs and faith into its curriculum and the requirement that teachers must be fully committed to the philosophy. The school’s enrollment form requires a statement of faith from the parent. The handbook indicates that a bible course is a requirement for grades 10 through 12.

The director denied the petition, finding that the proffered position was similar to that “of a regular education administrator” and there is no evidence that the petitioning organization offers religious programs or certificates. On appeal, the petitioner states that “the position requires agreement with and cooperation with Mennonite doctrine and teachings” and that the handbook “openly states” that the school ‘has been dedicated to a Christian philosophy of education from its beginning.’”

The evidence reveals that the principal of the petitioner’s school is responsible for setting the religious tone of the school as directed by the church membership. The principal is responsible for the school curriculum and training and supervision of teachers. The principal also counsels both teachers and students as required. We find that the petitioner has submitted sufficient documentation to establish that the proffered position primarily relates to a traditional religious function, is recognized as a religious occupation within the denomination, and that the duties of the position primarily relate to and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

The petitioner has submitted sufficient documentation to establish that the proffered position is a religious occupation within the meaning of the regulation.

Nonetheless, the petition may not be approved as the record now stands.

The regulation at 8 C.F.R. § 214.2(r)(16) provides:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS [U.S. Citizenship and Immigration Services] through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization’s facilities, an interview with the organization’s officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The record does not indicate that a compliance review or onsite inspection of the petitioner’s premises has been conducted. The matter is remanded to the director to determine what if any additional verification of the petitioner’s claims is warranted. 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.