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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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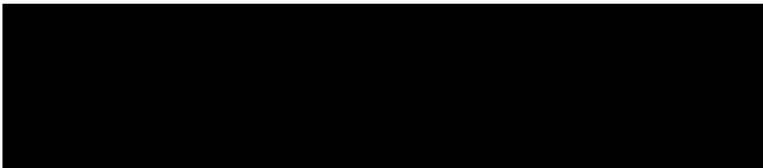
FILE: WAC 08 206 50930 Office: CALIFORNIA SERVICE CENTER Date: FEB 01 2010

IN RE: Petitioner:
Beneficiary:



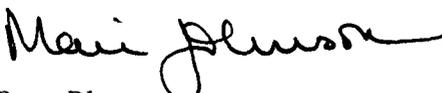
PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


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. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further action and consideration.

The petitioner is a member church of the Christian Reformed Church in North America. It seeks to extend the beneficiary's status as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act, to perform services as a youth trainer/coordinator. The director determined that the petitioner had not established that the position qualifies as a religious occupation.

On appeal, the petitioner submits arguments from counsel and copies of job announcements.

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.

U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. § 214.2(r)(1) state 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.

On the Form I-129 petition, the petitioner specified that the youth trainer/coordinator position is part-time, occupying 25 hours per week.

██████████ of the petitioning church, stated that the youth trainer is “[r]esponsible for the overall running and coordination of the youth program, including but not limited to Youth Outreach, Youth Sunday School, Saturday Youth Fellowship Group, Youth Bible Study, Youth Evangelism and Christian guidance on an as needed basis.” A more detailed list of the position’s responsibilities included such duties as: “Coordinate and implement efforts from Church administrators to recruit Youth into the Church”; “Responsible for the overall religious and/or social content of each Youth session and the implementation of the actual program”; and “Teach Bible study as it pertains to Youth.” ██████████ repeated the assertion that the position is part-time.

On December 3, 2008, the director issued a request for evidence (RFE) instructing the petitioner to establish the requirements for the proffered position. The director also requested:

the following evidence to establish that the proffered position relates to a traditional religious function in the religious denomination or organization: constitution; by-laws; and a letter from a Superior or Principal of the religious denomination or organization in the United States explaining how the position offered qualifies as a traditional religious function. Clearly indicate who has perform[ed] this function in the past.

In response to the notice, ██████████ asserted that the position of youth trainer/coordinator relates to a traditional religious function because the person in that position “serve[s] our African immigrants’ spiritual needs by providing counseling services, Bible Study, and African values with a focus on African Christian values.” ██████████ stated that the beneficiary was the first to hold the newly created position.

The director denied the petition on January 28, 2009, stating:

The petitioner failed to submit evidence showing that the position is recognized as a religious occupation related to a traditional function in the denomination. No submission of by-laws, letters from authorized officials of the religious organization in the United States, or other evidence indicating that the duties are directly related to the religious creed of the denomination, and that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time salaried occupation within the denomination.

On appeal, counsel states that the beneficiary’s “position is clearly related to the religious creed of her denomination, given that she is responsible for mentoring the youth of the congregation, developing lifetime commitment to the values of the church. Her outreach to these vulnerable members of the community supports the mission and development of the church.”

The director’s request for “a letter from a Superior or Principal of the religious denomination or organization” echoes language from *Matter of Varughese*, 17 I&N Dec. 399, 402 (BIA 1980). We find that the director’s use of this language appears to have been significantly removed from its original context. In *Varughese*, decided before special immigrant religious worker benefits were available to non-ministers, the issue to be decided by the “Superior or Principal of the denomination” concerned the credentials of an alien purporting to be a minister. Because the alien had been unable to produce proof of ordination, the Board of Immigration Appeals determined that a denominational official in the United States would need to verify the alien’s credentials. We do not find that these circumstances closely mirror the proceeding at hand, and therefore the director improperly relied on language from *Varughese*.

On appeal, the petitioner submits announcements for “Youth Director” positions at churches of other Christian denominations, but these, by nature, do not relate to the petitioner’s denomination. More persuasively, the petitioner submits a copy of a job announcement, in which a committee of the petitioner’s denomination sought to employ a “Youth Engagement Assistant.” The position described does not exactly mirror the beneficiary’s position – the advertised job focused on outreach for “the iEmbrace AIDS campaign” – but the announcement does confirm that the denomination actively seeks to engage and involve younger worshippers.

Programs and pamphlets submitted earlier by the petitioner contain references to the petitioner’s youth group and programs. The petitioning church includes a religious school with before- and after-school programs.

Apart from the above factors, we note that the petitioner seeks a temporary nonimmigrant classification for the beneficiary, which the petitioner had initially stated was part-time (which is permissible under 8 C.F.R. § 214.2(r)(1)(ii)). There was no justification for the director to deny the position for lack of evidence that the position is traditionally permanent and full-time.

Accordingly, we withdraw the director’s decision. At the same time, review of the record reveals other issues that the director and the petitioner must address before the petition can be approved.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO’s *de novo* authority. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

In the initial submission, ██████████ stated that the position requires a “Bachelor’s Degree in Social Sciences and appropriate religious experience with youth.” Documents submitted with the petition show that the beneficiary holds a B.A. in Political Science and Philosophy from the University of Nairobi, Kenya, and an M.A. in Health Services Management from Webster University. The beneficiary also completed high school-level courses in Christian Religious Education, and later completed a psychology course, “Treatment of Children,” at Immaculata University. The petitioner did not state what “religious experience with youth” the beneficiary already had before she began working for the petitioner (at which time, presumably, she would already have needed such experience).

Following the issuance of the RFE, the petitioner submitted a revised job description in which ██████████ stated that the position requires “[a] Master’s Degree in Social Sciences and appropriate religious experience with the youth.” This assertion does not match ██████████’s earlier statement that the job requires a “Bachelor’s Degree in Social Sciences and appropriate religious experience with youth.” Furthermore, ██████████ did not explain how the beneficiary’s degree in Health Services Management is a “Master’s Degree in Social Sciences.” ██████████ also stated that the position is full-time, which contradicts the petitioner’s earlier repeated descriptions of the position as part-time.

██████████ stated that the beneficiary “worked extensively with young people in Kenya before she came to the US. She worked for the following companies: (1) Population and Health Services. [The beneficiary] worked under the family life education program that targeted the youth (2) Population Services International.” ██████████ did not explain how these positions involved “religious experience with youth.”

These materials, therefore, raise two issues: (1) If the position requires prior “religious experience with youth,” then the petitioner must show that the beneficiary possessed such experience before she began working for the petitioner. If her job with the petitioner was her first such experience, then clearly the position does not require such experience beforehand. (2) The petitioner has put forward contradictory claims, calling the job both part-time and full-time, and stating first that the position requires a bachelor’s degree, and later that it requires a master’s degree. Given these contradictory claims, a thorough and credible explanation is in order.

Doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92.

Finally, we return to the issue of the newly issued regulations. The RFE contained few direct references to the new regulations and did not mention several new documentary requirements. Therefore, the RFE did not provide the petitioner with the opportunity to provide newly required evidence and information. The petition cannot be approved unless and until the petitioner meets these requirements.

8 C.F.R. § 214.2(r)(8) requires that an authorized official of the prospective employer of an R-1 alien must complete, sign and date an attestation prescribed by USCIS and submit it along with the petition. The prospective employer must specifically attest to several facts concerning the petitioner, the beneficiary, and the position offered. The petitioner has provided some, but not all, of the information required in the attestation.

Also, 8 C.F.R. § 214.2(r)(12) requires that any request for an extension of stay as an R-1 must include initial evidence of the previous R-1 employment. Under 8 C.F.R. § 214.2(r)(12)(i), if the beneficiary received salaried compensation, the petitioner must submit Internal Revenue Service (IRS) documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of filed income tax returns, reflecting such work and compensation for the preceding two years.

Here, the petitioner has submitted copies of some pay receipts from 2008 showing withholding of taxes from the beneficiary’s salary, but the record does not yet contain the IRS documentation that the above-cited regulation requires.

For the reasons discussed above, the director's decision cannot stand and we hereby withdraw that decision. At the same time, however, the record as it now stands does not permit approval of the petition. Therefore, the AAO will remand this matter to the director. 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 Administrative Appeals Office for review.