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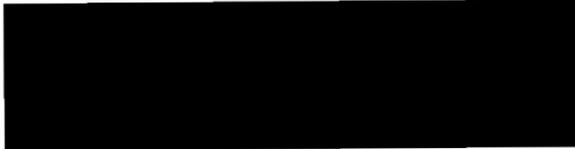
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: WAC 09 035 50770 Office: CALIFORNIA SERVICE CENTER Date: **JAN 07 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 sustain the appeal and approve the petition.

The petitioner is a nondenominational Christian church. It seeks to change the beneficiary's status to that of 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 director of religious media ministry. The director determined that the petitioner had not established that the beneficiary's proffered position qualifies as a religious occupation.

On appeal, the petitioner submits a brief from counsel and numerous documents (including some copies of previous submissions).

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 “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 petition on November 20, 2008. In section 2 of the Form I-129 petition, the petitioner provided the following information:

2. Describe the alien’s proposed duties in the United States.

As the Head of the Christian Media Ministry . . . [the beneficiary] will perform all of the following for our organization and will [serve] full time as our Manager of Christian Religious Media within our organization to provide and compose all Christian Music,

songs as well as religious hymns as well as to lead and train Christian worship and Church Musical Services involved in devout Christian and Evangelical Church Biblical Theology. Will also lead the Choir in song, teach the choir new songs and hymns, religious devotion. Will also provide Christian musical composition of new songs, hymns, pro five audio computer recording and editing with use of computers, Pro tools and Final Cut with use of English and Arabic language in reading, writing, composition. Will need to create new versions of old standardized religious Christian songs as well as composition of new songs for use in our services. Will be an integral part in the planning, preparation and scheduling of large Christian music festivals which are open to the entire Christian Arabic community as a whole for the purpose of presenting the Gospel to the unchurched and unaffiliated to bring them back into the Church by means of this Music Ministry; religious ministrations by means of composition, mixing and production of Christian themed songs, lyrics, Biblical stories told with music and words.

[The beneficiary] will be the person in charge of all of the religious Christian Music Ministry; all composition, music creation, recordings of songs, songs of praise and worship and the Church CD ministry through recorded sermons, bible studies and distributed CD's to our TV viewers. Will be in charge of all Christian Religious audio aspects of the Church and our Church produced programming. He will also be fully responsible for the Christian music, effects, introductions and dubbing specially translated segments into Arabic and/or into English as needed so that we can reach a wider range of the Arabic world here in North America, Canada, Europe and the Middle East and to spread the [l]ove of Christ through our TV ministry and Christian Music Ministry. [The beneficiary] will also work as our Choir and Music Director for our Church in establishment of the Choir, training of the Choir in religious themed songs and hymns, writing Christian themed music, Bible Themed music to better reach our visitors and viewers either in house and/or on our TV ministry. He will also teach our Sunday school classes, compose songs and lead the Church praise and worship in our in house services that are held on Sundays, Wednesday and Fridays also.

. . . 100% of the duties are religious in nature and in duty directly related to spreading the word of Christ, Evangelical Theology and Evangelism to those in our church and the thousands that view us on our TV ministries each and every week.

3. Describe the alien's qualifications for the vocation or occupation.

[The beneficiary] comes to us with an exceptional background with a Bachelor of Arts Degree from Egypt in Music in 1988, his extensive expertise as a sound engineer of Christian organizations, extensive hands on experience and expertise in acting as a Christian Music Director for various organizations and Christian Musical Events for over a period of 10 years, his extensive talent in the creation and composition of Christian music, Biblical musical storytelling, music composition, choir training with

Christian themes, religious songs and hymns, etc.; He has also worked extensively with Christian Arabic Church[e]s in the creation of Christian Music festivals for the Arabic Community; music outreach, training and directing of all praise and worship activities etc. He has also been employed since June, 1984 to the present time for the Shoubra El Sharkia Evangelical Church . . . Cairo as the Praise and Worship Leader and Director (music ministry).

In a separate statement, [REDACTED] of the petitioning church, listed essentially the job elements listed above, adding that the beneficiary “will train and supervise all audio technicians, and other volunteers so we can air broadcasting quality products.”

In a letter translated by [REDACTED] of Shoubra El Sharkia Evangelical Church, stated:

[The beneficiary] has been an active member and worker in the church since [A]ugust 1979, and till the present time.

The church was honored to have [the beneficiary] as an active minister for the church both locally and internationally in the following fields:

- 1 – Local praise and worship leader.
- 2 – Church choir director.
- 3 – Scheduling and planning for the praise celebration and evangelistic crusades.
- 4 – Ministering with Sunday school and preparatory school kids.
- 5 – Special CD songs production (the last cassette was a healing touch).
- 6 – Was in charge of all audio production.

[The beneficiary] has represented the church in many evangelistic and worship services from 1984, and till the present time. . . .

[The beneficiary] was a fulltime employee and Shoubra Elsharkia Evangelical church paid [the beneficiary] a *monthly amount of 2,000 Egyptian pounds.*

Other witnesses attested to the beneficiary’s occasional work for other Christian organizations. For example, [REDACTED] of the Egypt Bureau of SAT-7, stated: “SAT-7 is a Christian Satellite Channel that broadcasts its Arabic programs to the Middle East and North Africa viewers. SAT-7 certifies that [the beneficiary] had participated on freelance basis in different worship programs as a Christian Music Director during the period from 2004 to 2008.”

The petitioner submitted copies of certificates from the Episcopal Training Center, Cairo, reflecting courses that the beneficiary completed in 2004.

On January 5, 2009, the director instructed the petitioner to submit “a detailed explanation as to the requirements for the position offered, and how the beneficiary meets those requirements”; “evidence to establish that the proffered position is recognized as a religious occupation related to a traditional function in [the petitioner’s] religious denomination or organization”; and “a **detailed description** of the work to be done,” with an explanation of “how the duties of the position relate to a traditional religious function” (emphasis in original).

In response, _____ essentially repeated earlier descriptions of the beneficiary’s job duties, including music composition, organization of “large Arabic Christian praise and worship celebrations,” and teaching “special classes . . . about theological, Biblical aspects of true worship.”

The director denied the petition on February 9, 2009, stating that the petitioner had submitted no evidence that the position “has been a traditional, full-time, salaried position in the past.” The director also stated that, for the position described, “it may be necessary for one to have a musical background, but it has not been demonstrated that a religious background is required.”

On appeal, counsel argues: “The position offered is not a secular position that can be performed by a secular individual and this is not a position that can be performed by a part time lay and/or volunteer position but must be performed by a full time paid individual.”

Counsel correctly asserts: “Not all Churches have a governing body and head of office or head organization” that can provide guidance about church policy. In this instance, the petitioner has credibly shown that the beneficiary has worked for other churches in a full time capacity performing work that is essentially similar to his intended duties at the petitioning church.

_____ states:

This is a new position in the sense that it is different from just Choir and Music director which has been partially filled by _____. Pastor _____ accepted only \$1,000.00 monthly allowance since he had a good paying job. We had the help of volunteers and in many cases we had to subcontract the work to other Christian Arabic organizations.

Please bear in mind that due to the recent growth in our ministry . . . we felt the inherent need to hire a full time paid person to fill the job of Director of Religious Media Ministry.

The petitioner submits copies of job announcements and other information showing that a number of churches have offered paid, full time positions with duties comparable to the beneficiary’s responsibilities at the petitioning church.

While the record indicates that the beneficiary’s specific position, as a specific combination of duties, is newly created, the individual elements of that position credibly relate to traditional

Christian religious functions including composition of sacred music, religious translation, and religious broadcasting. The petitioner has also shown that other churches have employed the beneficiary in positions comparable to the position offered in the petition.

The director has emphasized the position's training requirements. 8 C.F.R. § 214.2(r)(8)(ii) requires the petitioner to attest that the beneficiary is qualified for the position sought, but there is no regulation stating that a position can only be a religious occupation if it requires a certain amount of religious training or education. If a given position has a known training requirement, then the petitioner must show that the beneficiary meets that requirement, but this does not mean that the absence of detailed training requirements is, itself, a primary basis for denying the petition.

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 met that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained. The petition is approved.