

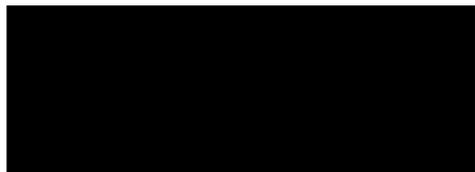
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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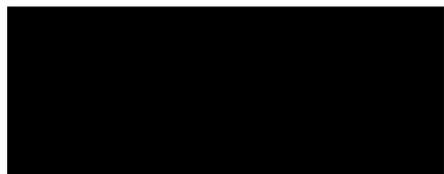
D13

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER NOV 09 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:



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,


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 Christian ministry. 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 an international partnership coordinator (IPC). The director determined that the petitioner had failed to establish that the beneficiary's intended position qualifies as a religious occupation.

On appeal, the petitioner submits a brief from counsel and documentation relating to the position.

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 August 24, 2009. In an accompanying letter [REDACTED] the petitioner's international associate director of administration, stated:

The position offered is International Partnership Coordinator. The essential duties and responsibilities in carrying out [the petitioner's] beliefs are the following:

- Consult on issues of theology, partnership, mission, and the church as it relates to the activity and belief of the organization.
- Write position papers and articles for publication on issues of theology, partnership, mission and the church as it relates to the activity and belief of the organization.
- Assist the editorial committee with the publication of [REDACTED] and review for issues of theology and mission.
- Organize, publish, and oversee the distribution of the triennial international [REDACTED]
- Develop and draft the first version of the [petitioner's] [REDACTED] in collaboration with the [petitioner's] Covenant Council.
- Formation of the Covenant Council to include recruitment and preparation of members.
- Assist the Director to facilitate travel, speaking, communication, department hospitality, editorial aid, and other routine activities.
- Maintain a speaking schedule, creating space for conversations and dialogue on issues of theology, partnership, mission and the church as it relates to the activity of the organization
- Serve as an Advisory Staff Member by serving as a Christian Peacemaker Teams (CPT) Reservist for up to 30 days per year; a CPT Reservist commits to

working on CPT projects for violence reduction through a ministry of Biblically-based and spiritually-centered peacemaking effort.

- Serve as an Advisory Staff Member by creating space for the development of a culture of peace and nonviolence in the community in consultation with specific field members and participants.
- Serve as an Advisory Staff Member by developing curriculum for [the petitioner's] staff as well as the populations of children [the petitioner's] communities work among.

On October 8, 2009, the director instructed the petitioner to “demonstrate that the coordinator position is recognized as an occupation related to religious traditional function(s) in this petitioning organization.” The director also requested further details about the beneficiary’s intended duties and work schedule.

In response, the petitioner provided the following breakdown of the beneficiary’s duties:

International Partnership Coordination: 45% Will schedule networking and partnership facilitation of all 10 [of the petitioner’s] global projects for the development and implementation of the partnership platform. Provide resources, counsel, and facilitation of theological, missiological and language formation of all Project Partnership Initiatives. Monitor and evaluate . . . overall platform development and design.

Initiate recruitment process for International Partnership Covenant Council and provide resources and preparation materials for council members.

Maintain scheduled communication with [the petitioner’s] International . . . Boards of directors and . . . Executive Directors.

Theological Research, Writing and Speaking Engagements: 30% Will work on writing position papers and articles for publication on issues of theology, partnership, mission and the church as it relates to the activity of the organization. The IPC would also be available to help[] with the editorial committee for [redacted]. The IPC would also be responsible for organizing, publishing and overseeing the distribution of the triennial [redacted]

Will provide consultation to increase internal dialogue and facilitation on the further formation of the identity of [the petitioner] as it relates to theology, partnership and mission pertaining to the activity of the organization through web forums and internal workshops.

IPC will be expected to maintain a speaking schedule to increase understanding and dialogue as it relates to theology, partnership and missions at college campuses, ecumenical initiative and churches, conferences, and events relating to the development and greater understanding the contexts within which [the petitioner’s] projects are based.

Peace and Justice Advisory Staff Position in collaboration with the Christian Peacemaker Teams: 15% Will serve as a Christian Peacemaker Teams Reservist on a project site for 30 days a year to facilitate cross organizational learning for violence reduction and theological reflection for development of curriculum on nonviolent communication and living.

On a weekly basis will devote the above mentioned time to research and development of in house training and workshops on the spiritual/theological interaction between [the petitioner] and undoing racism initiatives. Facilitate online forum for staff on the theology of Peace and Justice.

Office for International Partnership Manager: 5% Will assist in the coordination for [redacted] [W]ill work with the International Director to facilitate travel, speaking, communication, department hospitality, editorial aid, and other routine activities. [M]ay be asked to assume responsibilities such as helping lead and facilitate staff meetings, recording minutes for Associate Director meetings, participating on the Director's Travel Clarity Committee, contributing to grant-writing and donor relations, and the internal office manager for the Office for International Partnership.

Omaha Community Responsibilities: 5% Will assist in the planning and facilitation of Beggars Society in collaboration with the Coordination of Beggar Society. Community Contributions: The IPC would be expected to maintain routine community responsibilities such as Friendship Mentoring, Community Nights, etc.

Christopher L. Heuertz, the petitioner's international director, stated:

[The petitioner] exists as a Christian community committed to serving Christ among the most vulnerable of the world's poor. Our global activities are modeled after historical Christian missionary models which are rooted in a deep faith. . . . This intention has been realized in the establishment of multiple international organizations that have started faith-based projects that include children's homes, drop-in centers, hospices and advocacy programs. Each of these international organizations are locally registered and locally led. However, because [the petitioner] functions as a federation of similarly named organizations that share vision, staff and funding, the larger cooperative of [the petitioner's] organizations needs a coordinator for missiological partnership. . . .

The International Partnership Coordinator is the role [the petitioner] has developed to help facilitate the networking and relationship building among these missional partner organizations as well as to develop a stronger theology of missions and partnership for [the petitioner]. . .

Much of his role will require that he have a grasp and understanding of the history and theology that has shaped what modern Christian missionary activity has become. . . .

The International Partnership Coordinator will also require that [the beneficiary] command a grasp of how to lead discussions and meetings that include Christians from various traditions (Protestant, Catholic and Orthodox) with an understanding and sensitivity to the various liturgies represented by each tradition.

. . . He will also be expected to make several speaking trips each year where he will visit churches, Christian universities and religious conferences in order to discuss the theology and methodology of [the petitioner's] missionary activities. Finally, he will also be asked to make international visits to the [petitioner's] various . . . ministry sites for relationship building and face to face networking opportunities.

The director denied the petition on November 18, 2009, stating: "The petitioner did not explicitly describe the relationship of the position and [a] traditional religious function. Instead, the petitioner presented an overall picture of the organizational need for 'missiological partnership.'" The director also found that the petitioner had not submitted enough information about the beneficiary's specific work schedule. The director concluded that "the duties of the position are not regular religious duties and appear as coordinating events and promoting the organization[s] activities." The director also found that the petitioner had not provided sufficient information about how the petitioner first created the beneficiary's position.

On appeal, counsel contends: "At least 95% of the Beneficiary's job duties can be considered religious functions consisting of coordinating the implementation of the Petitioner's mission statement of helping the world's poor through Christian belief and action amongst the Petitioner's global satellite offices." Counsel claims: "The Beneficiary's duties include very little administrative or secular work and the little he does perform is only in furtherance of the implementation of the Petitioner's mission."

Counsel appears to understate the beneficiary's administrative responsibilities. The petitioner's own descriptions of the beneficiary's duties appear to indicate that administrative tasks occupy rather more than the five percent of his time that counsel claims on appeal. Nevertheless, we agree with counsel's broader point that the beneficiary's work is not primarily administrative in nature.

The petitioner submitted copies of meeting minutes and other materials showing the origin of the position that it now offers to the beneficiary. These materials indicate that the petitioner created the position out of a sense of genuine need, rather than simply as a pretext for seeking immigration benefits for the beneficiary.

We agree with counsel that the beneficiary's position appears to qualify as a religious occupation. We will withdraw the director's finding to the contrary. Nevertheless, a significant issue of concern remains. 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).

Section 101(a)(15)(R)(i) of the Act and the regulation at 8 C.F.R. § 214.2(r)(3) require that the beneficiary must have belonged to the petitioner's religious denomination for at least two years immediately preceding the filing of the petition. The petitioner has repeatedly acknowledged (in the Form I-129 supplement and in [REDACTED]'s introductory letter) that the beneficiary belongs to the [REDACTED] denomination, and the petitioner's initial submission included a letter from [REDACTED], senior pastor of [REDACTED], indicating that the beneficiary is "a member in good standing with the [REDACTED]." The petitioning organization, however, is not a component or affiliate of the [REDACTED]. Rather, the petitioner appears to be, in effect, the functional equivalent of a denomination in its own right, and the beneficiary's past membership in that denomination cannot count toward the requirement of membership in the petitioner's denomination.

The beneficiary's earliest claimed involvement with the petitioning organization (according to the beneficiary's résumé) was as [REDACTED] delegate in April and May 2009, just a few months before the petition's August 2009 filing date. Therefore, the petitioner has not claimed, much less satisfactorily established, that the beneficiary had the required membership or affiliation with the petitioner for two years prior to the filing date. This appears to be a significant obstacle to approval of the petition, but the director has, so far, not addressed this issue and must now do so.

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. 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.