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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



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: NOV 17 2010

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

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,

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 identifies itself as a member church of the Churches of Christ denomination. 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 an associate minister. The director determined that the petitioner had not established that the beneficiary's intended position qualifies as a religious occupation.

On appeal, the petitioner submits letters from church officials and copies of credential documents.

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.

The petitioner filed the Form I-129 petition on July 22, 2009. The attestation that accompanied the petition instructed the petitioner to give a “[d]etailed description of the alien’s proposed daily duties.” The petitioner stated: “Assist the minister with daily administration activities, which include preaching, teaching Bible classes, developing educational curricul[u]m, organize community evangelism activities, assist in the develop[ment] of worship visual aids, and work with the office manager.” The petitioner indicated that the beneficiary is qualified for the position because he “has been formally trained in ministry and is a graduate of the Trinidad School of Preaching and Freed-Hardeman University, and has been preaching and involved in the ministry for approximately seven years.” The petitioner indicated that it also employed a “minister/therapist” and an “office manager.”

On August 27, 2009, the director instructed the petitioner to submit additional evidence regarding the nature of the beneficiary's intended position. The director specifically requested the following:

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, etc.

Provide a **detailed description** of the work to be done, specific job duties, level of responsibility, number of hours per week performing the work duties and the minimum education, training, and experience necessary to do the job.

In response, the petitioner submitted a copy of the previously submitted attestation. The petitioner did not directly address many of the director's specific questions.

The director denied the petition on December 22, 2009, stating: "The duties of the beneficiary are primarily administrative activities. Assisting with daily administration activities [is] clearly not a religious function."

On appeal, [REDACTED] minister at the petitioning church, states: "While the word administration was used in the job description, it refers to the management operations of our organization. . . . Administrative duties are the primary responsibility of the Office Manager."

The petitioner's office manager, [REDACTED], stated that she is responsible for handling mail, typing, copying, obtaining office supplies, and other such functions.

Looking at the petitioner's initial description of the beneficiary's duties, it is not evident that those duties are primarily secular. The word "administration" does appear in that description, but that does not automatically disqualify the beneficiary any more than the omission of the word "administration" would automatically qualify an alien whose duties are largely administrative. Other listed duties – "preaching, teaching Bible classes, developing educational curricul[u]m, [and] organiz[ing] community evangelism activities" – appear to be religious in nature.

[REDACTED] on appeal, lists "preaching" among "[t]he primary functions of the associate minister," and states: "One of the main functions of a minister is to proclaim/preach the word of God." This indicates that, as the title implies, the beneficiary would work as a minister, not in a religious occupation. The regulation at 8 C.F.R. § 214.2(r)(3) defines a minister as an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and
- (D) Works solely as a minister in the United States which may include administrative duties incidental to the duties of a minister.

The available evidence indicates that the petitioner seeks to classify the beneficiary as a minister, and not as a worker in a religious occupation. Therefore, the director erred by considering the beneficiary's intended position only under the definition of a religious occupation. The director must issue a new decision, addressing how the beneficiary's work conforms to the definition of a minister. The petitioner must also submit evidence to show what formal procedures (if any) exist for ministers in the Churches of Christ denomination (such as licensure or ordination), and to show that the beneficiary possesses the necessary qualifications as a minister in that denomination, as required by the regulation at 8 C.F.R. § 214.2(r)(10).

The petitioner's initial submission included a Certificate of Graduation from the Trinidad School of Preaching and Teaching, indicating that the beneficiary "successfully completed the course of Biblical Studies." The certificate does not indicate whether or not completion of this course qualifies the beneficiary as a minister in the Churches of Christ denomination.

Review of the record shows additional issues that require resolution. 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 (9<sup>th</sup> 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 regulation at 8 C.F.R. § 214.2(r)(9) requires the following initial evidence relating to the petitioning organization: (i) a currently valid determination letter from the Internal Revenue Service (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. (Additional requirements at 8 C.F.R. § 214.2(r)(9)(iii) only apply to organizations that are not, themselves, churches.)

The petitioner has not submitted a copy of an IRS determination letter to show that it is tax-exempt in its own right, or covered by a group determination. Documentation from state tax authorities do

not establish federal tax exemption, and neither does a letter showing that the IRS issued the petitioner an employer identification number.

Also, the petitioner has claimed that it intends to pay the beneficiary \$350 per week, but the petitioner has submitted no financial documentation. The regulation at 8 C.F.R. § 214.2(r)(11)(i) requires the petitioner to submit verifiable evidence explaining how the petitioner will compensate the alien or how the alien will be self-supporting. 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.

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.