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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

PUBLIC COPY

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D13

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER DATE: NOV 22 2010

IN RE: Petitioner:
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:

[redacted]

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 and will remand the petition for further action and consideration.

The petitioner is a church. 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 music minister. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation.

On appeal, counsel asserts that the proffered position is "plainly complicit [sic] with statutory requisites for a religious worker as delineated in" the regulation. Counsel submits a brief and 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 or vocation.

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.

On the Form I-129 Supplement, the petitioner stated:

> As the Music Minister, the Alien will direct the music ministry of the church such as the choir during worship service. The Music Minister will also minister to the member in the music ministry, such as the choir members, by providing traditional religious duties such as teaching the Bible, offering prayers and spiritual counseling.

In its December 16, 2009 letter submitted in support of the petition, the petitioner stated:

> The Music Minister will be responsible for planning, leading and developing all aspects of music ministry for our church including appropriate music and hymn selections for worship service, training and ministering to members involved in the music ministry such as the pianist, choir members, etc. and supervising their performance during worship and other special services. The Music Director must have a strong background in both education and experience in church music and must also adhere to our church's statement of faith. Furthermore, since the Music Minister will also be responsible for spiritual well-being of our church members in music ministry, he/she must be able to teach from the Bible and offer prayers, spiritual counseling and perform other related traditional religious duties.

The petitioner stated that the beneficiary would receive an annual salary of "approximately $24,000."

The director denied the petition, finding that the petitioner had not established that the proffered position was recognized as a religious occupation within its denomination or that it is a "traditional, permanent and salaried position requiring a religious background within its facility or in the denomination at large."

The petitioner stated that it is a member of the and a member of the United Presbyterian Church in the United States. On appeal, counsel states that the "denomination's guidelines indicates that a is a position which is not solely concerned with the aesthetic qualities of music, but also acts as a spiritual leader and guide for those members which operate under their authority."

The petitioner submits a copy of the booklet "Guidelines for the Employment of Church Musicians in Presbyterian Churches," which is published by the Presbyterian Association of Musicians (PAM). The booklet recognizes three categories of musicians: the functional church musician, the vocational church musician and the pastoral church musician. It describes the latter as incorporating all of the skills of the other two categories plus:

> a creative contribution to the total church program through the generation of ideas;
> pastoral concern for all persons (and their family members) who provide musical leadership in the church's music program;
> professional leadership in developing the fullest and best use of congregational music (hymnody, psalmody, etc.) through the Christian education program as well as public worship of the church.

The PAM offered recommendations for the selection of musicians, such as "Minister of Music, Director of Music, Organist, Choir Director, or other title" and their entry level compensation based on education.

We find that the petitioner has submitted sufficient documentation to establish that the position of music minister qualifies as that of a religious occupation as defined by the regulation.

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

The petitioner has not established how it intends to compensate the beneficiary. The regulation at 8 C.F.R. § 214.2(r)(11) provides:

> *Evidence relating to compensation.* Initial evidence must state how the petitioner intends to compensate the alien, including specific monetary or in-kind compensation, or whether the alien intends to be self-supporting. In either case, the petitioner must submit verifiable evidence explaining how the petitioner will compensate the alien or how the alien will be self-supporting.

The petitioner stated that the beneficiary will be compensated at the rate of "approximately $24,000" yearly. The petitioner submitted copies of Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, reflecting that it paid the beneficiary wages of $4,800 in 2007 and $19,200 in 2008. The petitioner also submitted a copy of its unaudited 2008 financial report and 2009 budget. The document does not have a line item for salary for the music minister and does not reflect any payments paid to the beneficiary in 2008 or budgeted for 2009.

On remand, the director shall address the issue of how the petitioner intends to compensate the beneficiary.

The matter will be remanded. 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 AAO for review.