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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

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FILE:



Office:



NOV 22 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:

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

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 appeal will be dismissed.

The petitioner is a church. 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 officiating priest. The director determined that the petitioner had not established that the beneficiary is qualified for the proffered position and how it intends to compensate the beneficiary.

The petitioner asserts on appeal that the beneficiary “completed his study and is qualified” and that the petitioner would be responsible for the beneficiary’s “housing, medical, and feeding.” The petitioner provided copies of previously submitted documentation.

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 first issue presented is whether the petitioner has established that the beneficiary is qualified for the proffered position.

The regulation at 8 C.F.R. § 214.2(r)(1) defines religious worker as “an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister.”

In a December 1, 2009 "Letter of Attestation," the petitioner stated that as an officiating priest, the beneficiary's duties would include:

1. Assisting the Chief Priest with prayers and the promotion of spirituality.
2. Preparing sanctuary for service, and reciting sacred texts during worship.
3. Sharing information of a religious nature with all who seek spiritual counsel.
4. Assisting the Chief Priest in the administration of religious rites or ordinances.
5. In addition to [his] officiating duties, [he] will be expected to write, perform, and teach (to temple members) African religious songs for regular religious services and other temple related events.

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

An African Priest who practices the Ifa faith has made a formal lifetime commitment to this religious system through vows, investitures, and ceremonies in ways similar to the Catholic nuns, monks, brothers or sisters. The alien has been a fully initiated Priest for many years and he has an in depth knowledge about the language, philosophy, customs, and practices of the Ifa religious system necessary to carry out his duties.

The petitioner submitted a copy of a November 19, 2008 e-mail message from [REDACTED] discussing the [REDACTED] initiation cycles. In a December 5, 2009 letter, [REDACTED] of the [REDACTED] Nigeria, stated that the beneficiary "grew up in our temple and successfully passed [his] initiation ceremonies and traditional course of study for which [he was] conferred the title of . . . Priest." He further stated that "African traditional religion involves both oral and practical knowledge." The petitioner submitted no other documentation to establish the beneficiary's qualifications.

In a request for evidence (RFE) dated March 11, 2010, the director instructed the petitioner to submit documentation of the beneficiary's qualifications, including evidence of his ordination or other authority to conduct worship and perform sacerdotal duties.

In response, the petitioner stated:

The Officiating Priest must first be initiated before he can follow the spiritual path of Ifa. Preceding the initiation is a divination which clarifies the individual's spiritual path. A spiritual name is then given to the initiate to show that he has passed through the door of wisdom and enlightenment, and is now ready to join the members of the society of devotees. The minimum education for the position of officiating Priest is the equivalent of a High School Diploma. He must be trained to read and interpret the instrument of divination; trained to read the sacred kola nut; to commit to memory and recite the Ifa Corpus; knowledge of the history and abilities of the Orisa; knowledge of the prayers for each Orisa; fluency in the Yoruba language.

[] The training of an Officiating Priest involves oral and practical knowledge that he acquires as he studies with the older Priests who carry out religious duties. He learns by watching, listening and doing. The officiating Priest must have passed through the training of a least one spiritual teacher referred to as an "Oluwo[.]" He must have an "Ojugbona" (Officiating Priest) who guides him along with the Chief Priest in his spiritual training and duties which lasts many years.

The petitioner stated that the beneficiary "was initiated many years ago" and "has an in depth knowledge of the language, philosophy, customs, and practices of the Ifa religious system." The petitioner submitted a photograph that it stated depicts the beneficiary in a religious ceremony as part of his training. However, the petitioner provided no other documentation to establish that the beneficiary had been initiated and was otherwise qualified for the proffered position. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In denying the petition, the director found that the petitioner had failed to establish that the beneficiary completed his studies and practices or that the beneficiary was qualified for the proffered position.

On appeal, the petitioner submits a May 15, 2010 letter from [REDACTED], who identified himself as the national coordinator for [REDACTED] Nigeria. [REDACTED] stated:

[The beneficiary] completed his religious studies at Hattaf – Nigeria branch, and is, therefore, highly qualified to assist the Chief Priest . . . as an Officiating Priest . . .

[The beneficiary's] divination was done when he became a member of Hattaf and he was subsequently initiated into the temple in 2001. Divination and initiation details are both private religious matters which according to our religious practice cannot be made public.

[REDACTED] further stated that "African Traditional Religious study is both a practical and oral system" and that "upon completing his primary divination and initiation, [the beneficiary] received and completed his spiritual training under Chief Priest [REDACTED] in 2007." [REDACTED] stated that since the beneficiary "has finished his spiritual training," he was "conferred the title of Officiating Priest" and is "completely qualified to serve as Officiating Priest." The petitioner submitted a copy of a May 8, 2007 "Certificate of Completion" awarded to the beneficiary for his successful completion of "officiating priestess training." The petitioner submitted no documentation to support [REDACTED] statement regarding the privacy of initiation and divination ceremonies within the petitioner's religious denomination and submitted no other documentation to establish that the beneficiary had satisfied all training and practical

requirements for the proffered position. Further, we note that the "Certificate of Completion" refers to the beneficiary's completion of "priestess training" rather than "priest training." It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988).

We find that the petitioner has failed to submit sufficient documentation to establish that the beneficiary is qualified for the proffered position.

The second issue is whether the petitioner has 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. Compensation may include:

(i) *Salaried or non-salaried compensation.* 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.

(ii) *Self support.*

(A) If the alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.

(B) An established program for temporary, uncompensated work is defined to be a missionary program in which:

- (1) Foreign workers, whether compensated or uncompensated, have previously participated in R-1 status;
- (2) Missionary workers are traditionally uncompensated;
- (3) The organization provides formal training for missionaries; and
- (4) Participation in such missionary work is an established element of religious development in that denomination.

(C) The petitioner must submit evidence demonstrating:

- (1) That the organization has an established program for temporary, uncompensated missionary work;
- (2) That the denomination maintains missionary programs both in the United States and abroad;
- (3) The religious worker's acceptance into the missionary program;
- (4) The religious duties and responsibilities associated with the traditionally uncompensated missionary work; and
- (5) Copies of the alien's bank records, budgets documenting the sources of self-support (including personal or family savings, room and board with host families in the United States, donations from the denomination's churches), or other verifiable evidence acceptable to USCIS.

In a December 1, 2009 letter submitted in support of the petition, the petitioner stated that the beneficiary would not receive a salary but would receive "housing, food, medical, and transportation instead of a paycheck or use of personal savings." The petitioner also stated that temple members could volunteer to send donations towards the beneficiary's living expenses.

With the petition, the petitioner submitted letters from two individuals who promised to donate \$100 to the support of the beneficiary and the officiating priestess for whom the petitioner also petitioned for entry into the United States as a nonimmigrant religious worker. However, the petitioner submitted no documentation of the housing that it stated it would provide or of its ability to provide for the other nonsalaried compensation that it stated it would provide to the beneficiary.

In her RFE, the director instructed the petitioner to provide evidence of compensation in accordance with the regulation. In response, the petitioner stated that the beneficiary would share a house with the chief priest and the other assistants. The petitioner submitted a photograph that it states is of the three-bedroom house and stated that the living arrangements could be verified during the onsite visit. The petitioner provided no documentation to establish its ability to provide other nonsalaried compensation, such as food and transportation.

On appeal, the petitioner submits a May 16, 2010 letter from the chief priest [REDACTED], who states that the beneficiary would share his house and that the temple had allocated \$5,000 for food for the beneficiary and the officiating priestess and \$5,000 for their 2010 medical expenses. The petitioner also submits documentation of the insurance on Chief Priest Atanda's home, which shows that it is titled in his name, and resubmits the letters of promised support from two of its congregants.

The petitioner submits a copy of its 2010 budget in which it allocates \$5,000 for groceries and \$5,000 for medical expenses for the officiating priest and priestess. However, there is nothing in the record to suggest that the budgeted income is based on realistic expectations. The budget indicates that \$35,000 will be generated from membership dues. In its April 10, 2010 response to the RFE, the petitioner stated that it had 500 members. However, the record does not reflect how many of these are dues paying members or the amount of dues expected to be and are actually collected. On the Form I-129, the petitioner stated that it had a gross annual income of \$48,100. A copy of its treasurer's report for November 2005 through February 2006 reflects income for the four-month period of \$8,127.76 or an average of \$2,031.94 per month or \$24,383.28 for the year. The record does not provide sufficient documentation that the petitioner can expect an annual income from dues of \$35,000. Without supporting documentary evidence, the petitioner cannot meet its burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner submits documentation reflecting that the beneficiary would reside in the home of the chief priest and would receive monetary support from other individuals. Support received from others is not part of the compensation provided by the employing organization. 8 C.F.R. § 214.2(r)(11). The regulation 8 C.F.R. § 214.2(r)(11)(ii) permits uncompensated religious work only as part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the petitioner's denomination. The petitioner does not claim, and submits no documentation, to establish that the proffered position is that of an established program for temporary, uncompensated missionary work.

The petitioner has therefore failed to submit competent and verifiable documentation of how it intends to compensate the beneficiary.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.