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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



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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: OCT 04 2010

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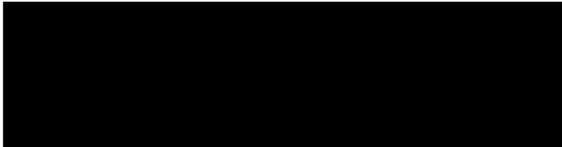
Petitioner:

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:

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, with a fee of \$585. 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 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 a monk. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation.

On appeal, counsel states that the beneficiary is an ordained monk, a member of a religious vocation, and will live and work with other monks. The petitioner submits 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 USCIS regulation at 8 C.F.R. § 214.2(r)(3) provides the following relevant definitions:

Minister means 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.

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.

Religious vocation means a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life. The religious denomination must have a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. Examples of vocations include nuns, monks, and religious brothers and sisters.

Religious worker means 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.

On its Form I-129, Petition for a Nonimmigrant Worker, the petitioner stated that the proffered position was that of "Religious Worker," which would pay wages of \$33,378. In an attachment, the petitioner stated that the beneficiary would be a monk and service the petitioner's website. On the Form I-129 Supplement, the petitioner described the duties of the position as:

Will be a *religious worker* in the church. Conducting tours and presentations for our members and responsible for web content and maintenance for the church in addition to all religious duties of a monk in our church.

[Emphasis added.]

The petitioner further stated that the beneficiary would be provided with room and board "as well as a salary for his corresponding *lay position* as a programmer in our church (emphasis added)."

In its January 20, 2009 letter submitted in support of the petition, the petitioner stated that the proffered position was that of monk and did not "carry a salary other than room and board. However, any other ancillary activities where a salary would be required would be paid at the appropriate rate." The petitioner outlined the beneficiary's duties as follows:

9:00 a.m.	Study of religious texts and review verse quotations.
12:00 p.m.	Lunch breaks
1:00 p.m.	Carry out small group presentations and tours for visitors to our facility
4:00 p.m.	Update Religious postings and schedules on our Web Portal
5:00 p.m.	Dinner Break
6:00 p.m.	Religious Meditation.

He will also assist in development of our message through our Web portal and other computer functions ancillary to this task while pursuing enlightenment through meditation and study.

The director denied the petition, finding that the description of the duties of the position was insufficient to establish that the position qualifies as a religious occupation.

On appeal, counsel asserts that the "petition and corresponding letter . . . clearly established that the beneficiary . . . has been ordained a monk" and that his ordination as a monk "is patently within the definition of" a religious vocation as defined by the regulation. Counsel further states that "[a]s with a nun, a monk[']s vocation is the primary duty within the religious organization and there are usually secondary or [ancillary] duties to their vocations." Counsel submits a copy of an excerpt from the Foreign Affairs Manual (FAM), which states that members of a religious vocation "may engage in any type of activity within their religious vocations, denomination, or its affiliate."

We note that the FAM, which the United States Department of State uses to administer consular visa processing, is not binding on the U.S. Citizenship and Immigration Services (USCIS) in the administration of the Act. Further, we cannot fault the director for his apparent confusion regarding whether the proffered position is that of a religious vocation or occupation. As previously indicated, the initial job title listed by the petitioner on the Form I-129 was that of a "religious worker." Similarly, the detailed description provided by the petitioner in the supplement to the I-129 indicated again that the beneficiary "will be a religious worker . . . conducting tours and presentations . . . and [be] responsible for web content and maintenance. As it relates to salary, while one would expect that an ordained monk has taken a vow of poverty, the petitioner indicated that the beneficiary would be receiving a salary for his "lay" work and that any "ancillary activities where a salary would be required would be paid at the appropriate rate." The beneficiary's receipt of a salary is inconsistent with the vows of poverty normally associated with monks and their lifestyles. Further, the petitioner's statement that the beneficiary would be paid for additional work is contrary to counsel's argument that any work performed by the beneficiary as a monk is part of his work in his religious vocation.

Moreover, the documentary evidence submitted to demonstrate that the beneficiary is a monk is deficient. The sole documentation cited by counsel regarding the beneficiary's qualifications consists of "the petition and a corresponding letter" from the petitioner.

In a request for evidence (RFE) dated April 30, 2009, the director instructed the petitioner to provide evidence of the beneficiary's religious vocation in accordance with the regulation at 8 C.F.R. § 214.2(r)(3). In its undated response, the petitioner stated that the beneficiary took vows on October 4, 2008 and would be coming to the United States "to further his religious studies and perform daily monastic functions." The petitioner submitted a certified translation of an unidentified document that stated that the beneficiary had "achieved the status of a monk." The petitioner, however, submitted no official documentation of the beneficiary's ordination records, e.g., copy of the vows, a record of the proceedings or an official statement from the individual who administered the vows. 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)). The petitioner also submitted copies of partially translated documents. The documents do not comply with the terms of 8 C.F.R. § 103.2(b)(3), which provides:

Translations. Any document containing foreign language submitted to [U.S. Citizenship and Immigration Services] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Therefore, as the petitioner submitted only partial translations of these documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The petitioner also submitted photographs that it stated were of the beneficiary "with our [REDACTED] and various church members at various events throughout the years. Please note he is wearing our monastic robe on more than one occasion." Annotations on these documents indicate that they were from the years 1998, 2005 and 2006. As the beneficiary was allegedly ordained as a monk in 2008, the credibility of these documents is questionable. Further, the documents do not identify the beneficiary in any context.

The petitioner has provided insufficient documentation to establish that the beneficiary has been ordained as a monk and therefore that the petitioner has established that the beneficiary seeks to enter the United States to work in a qualifying religious vocation. As discussed previously, the petitioner's unsupported statements regarding the beneficiary's purported ordination do not meet its burden of proof. *Matter of Soffici*, 22 I&N Dec. at 165.

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).

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.