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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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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: OCT 04 2010

IN RE:

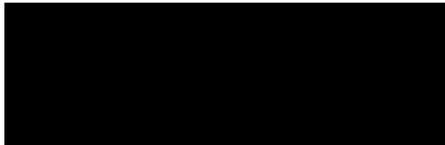
Petitioner:

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:



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 AAO will dismiss the appeal.

The petitioner is a Protestant Christian church belonging to the Church of the Brethren denomination. 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 a pianist/music director. The director determined that the petitioner had not established that the position qualifies as a religious occupation.

On appeal, counsel indicates that a brief will be forthcoming within 30 days. To date, more than seven months after the filing of the appeal, the record contains no further substantive submission from the petitioner. We therefore consider the record to be complete as it now stands.

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 31, 2009. On the attestation accompanying the petition form, the petitioner stated that the beneficiary's proposed daily duties were to "[l]ead the Korean Language Worship Service and other related activities in the Korean ministry of the church." The petitioner indicated that it also employs a "Minister of Music" who "[o]verses church choir, plays piano, organ and other instruments during worship and praise. Manages the music program of the English service of the church." The record identifies one [REDACTED] as the petitioner's minister of music. Clearly, the minister of music position is separate and distinct from that of the music director/pianist.

In a letter accompanying the petition, [REDACTED] the petitioner's senior pastor, stated: "The Beneficiary's basic job duties are planning and choosing choir music for the Korean service choir, instructing and leading choir practices on weekdays as well as serving as a piano accompanist for various worship services playing hymnals."

The petitioner submitted copies of various revisions of its bylaws. These documents describe the petitioner's corporate governance, but the pastor is the only employee (as opposed to officer) mentioned in these materials. The petitioner also submitted the first few pages of the denomination's *Manual of Organization and Polity*. The table of contents refers to a section on "Congregational Structure," but that section is not in the record. The available submission does not indicate whether or not the *Manual* discusses non-ministerial religious occupations.

On September 30, 2009, the director instructed the petitioner to provide additional information about the beneficiary's intended position, including evidence that the petitioner's denomination recognizes the position as a religious occupation that relates to a traditional religious function. In response, the petitioner submitted a list of "Church Staff," showing [REDACTED] as the minister of music, but not identifying any pianist/music director.

██████████ stated: "It is impossible to express how dependent a congregation is on their church musicians, they are essential to contemporary Christian worship." He did not address the difference between a minister of music, which the petitioner has employed since 1993, and a pianist/music director, which the petitioner does not claim previously to have employed. He added: "We desire to see a person with a Bachelors degree in Piano or music with a strong background in Church and sacred music." The beneficiary claims some prior experience as a church pianist, but in Presbyterian churches. The beneficiary does not claim any comparable experience in the petitioner's denomination.

The director denied the petition on January 25, 2010, acknowledging the role of music as "a component of the worship services of many religious denominations," but concluding that "[p]laying piano is considered an essentially secular occupation." The director found that the petitioner submitted nothing from any official source to show that the denomination recognizes the position of a pianist/music director as a religious occupation relating to a traditional religious function (as opposed to, for instance, a role more suited to a volunteer from the congregation or community).

On appeal, counsel requests "30 days to submit additional evidence. We are in the process of obtaining a letter from a Superior or Principal of the denomination of the Church of the Brethren recognizing the music director/pianist as a traditional and essential religious function and occupation." The record contains no further submission from the petitioner or from counsel, and therefore counsel's statement on appeal makes up the entire appeal.

Counsel asserts that the role of a pianist "is essential in conducting services . . . from the beginning to the end of the worship service." The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). We do not question that music plays a significant part in the petitioner's religious services, but the question does not end there.

The regulatory language at 8 C.F.R. § 214.2(r)(3) makes it clear that the duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination. These are two related, but nonetheless separate requirements. By way of analogy, one could make a very strong case that tithe-paying congregation members are even more essential than music to the operation of a church; the congregation would literally not exist without them. This, of course, does not mean that attending church and making donations amount to a religious occupation. Within the realm of music, many churches have not only a pianist or organist, but also a choir, but it does not logically follow that the choir members are usually paid employees of the church, rather than members of the congregation who devote some of their time each week to enhancing the religious service.

Counsel asserts that the director failed to consider the "music directing aspect of the beneficiary's position wherein she conducts the Church choir and trains them in church music." The petitioner offered very little information about that aspect of the beneficiary's position, and therefore there was not

much for the director to take into account. When considering this argument, we must examine the plausibility of the claim that the beneficiary will work 35 hours per week, earning a salary of about \$22,000 per year.

Tax documents identify twelve church employees in 2009, but on the Form I-129 petition and other materials in the record, the petitioner indicated that it had only four paid employees at the time of filing. Of those four paid employees, only [REDACTED] was said to earn more than \$12,700 per year. In contrast, the beneficiary's stated salary is said to be \$22,000 per year. A church directory identifies 38 members of the petitioner's [REDACTED]. Other listings show that the main congregation of the petitioning church exceeds 100 members. Counsel, in correspondence dated December 21, 2009, had asserted that the average attendance for the petitioner's English language services is 37, while the average attendance for the Korean language services is 15.

Materials in the record refer to one Korean-language service per week, but there is no indication that the petitioner employs any paid workers in its [REDACTED]. The Korean-language pastor, [REDACTED] is not named as a paid church employee either on staff lists or on tax documents. The petitioner has not explained why the beneficiary's work with 38 parishioners (including herself), less than half of whom routinely attend services, pays almost twice as much as [REDACTED] minister of music position with a larger congregation; why the beneficiary would receive a salary when even the Korean-language pastor does not; or how the beneficiary's work would realistically occupy the 35 hours per week that the petitioner has claimed. With respect to this last point, in the request for evidence, the director had instructed the petitioner to specify the beneficiary's intended work schedule. The petitioner's response to the request ignored this instruction. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. 8 C.F.R. § 103.2(b)(14). When the petitioner or counsel claims that directing a choir for a congregation typically composed of 15 people is a full time job, it is certainly material to ask how, specifically, the beneficiary would devote her time.

It is certainly possible that, under some circumstances and in some religious denominations, the position of pianist/music director qualifies as a religious occupation relating to a traditional religious function. In this instance, however, the petitioner has not met its burden of proof to show this to be the case. The petitioner's evidence is incomplete, and what the petitioner has submitted does not appear to be consistent with the petitioner's claims regarding the beneficiary's offer of employment.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will dismiss the appeal.

ORDER: The appeal is dismissed.