

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

D₁₃

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: **OCT 21 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,

UPeadnick
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 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 its youth and young adult 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 director "denied the petition based on a different position [and] used the wrong standard of requiring that the position pre-exist (that it be salaried and that it has existed in the past) instead of only requiring . . . that it be full-time and salaried." [Emphasis omitted.] 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.

In a June 15, 2009 job offer, the petitioner stated that, in the proffered position, the beneficiary:

- will serve as director for youth and young adult and music ministry of [the petitioner]
- will be responsible for the spiritual growth of the young people as well as maintaining vibrant and contemporary Christian music in the church
- Provide leadership in Bible Studies for youth
- Coordinate the Church Band
- Assist the pastor in providing spiritual guidance for the youth
- Coordinate with the pastor in the planning and implementation of programs for youth.
- Coordinate with the Worship Committee on the choosing of songs and hymns appropriate and related to every Sunday Lectionary.

The offer indicated that the beneficiary would be expected to work at least 40 hours per week and would receive a salary of \$29,100 annually.

In its June 15, 2009 letter submitted in support of the petition, the petitioner stated:

[The petitioner] is in need of a Youth and Young Adult Minister, tasked as a coordinator of the youth and youth adult ministry of the Church as well as its Music Ministry. This is a traditional position within the denomination. Specifically, his duties will be to: Coordinate the ministry of the youth and young adults of [the petitioning organization]. He will plan and implement programs

relative to the spiritual development of the youth and young adults of the Church, including leading Bible studies for children, coordinating seminars (3 times a year) for leadership development for young adults, directing youth religious camps, and other programs such as youth and young adults evangelism and discipleship, which provides proper guidance to the youth and young adults in their religious journey . . . The Youth Minister may also give [advice] to youth and young adults in their spiritual problems and concerns and other matters pertinent to their spiritual growth and development.

Furthermore, he will coordinate the Music Ministry of the Church. Music is a vital part of the life of the church, reflecting the theological and Biblical foundation of our beliefs, and a big part of the youth and young adult ministry. The position requires that the Youth Minister choose appropriate hymns for the services as appropriate to the passage readings for each particular service, and lead the weekly practices and rehearsals of the band and choir. He will also make recommendations for the Worship Committee to meet the needs of the music ministry.

Finally, the Youth Minister will also perform other tasks that the Session may assign. The Session is the highest governing body of the church.

The petitioner further stated that “[o]nly a person with the proper theological and religious training can perform the duties of the position.” The petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that the beneficiary’s compensation would also include free lodging. The petitioner estimated its 2009 net annual income at \$30,000. With the petition, the petitioner submitted a July 14, 2008 article from an unidentified source reporting on the arrival of a youth director at [REDACTED]

The director denied the petition, finding that the job offer did not indicate that the position “requires religious training or education beyond that of a devout member of the belief [sic]” and that the “record does not demonstrate that the proposed duties of the position are sufficiently specialized in a theological doctrine so as to constitute a religious occupation.” The director separately evaluated the requirements of the music ministry, and found that the petitioner had not established that the position of “music minister” was a recognized occupation within its denomination.

On appeal, counsel states that the director “misrepresents” the job that is offered, which is that of a youth minister “with incidental duties” as a worship minister. Counsel asserts that the director failed to apply the provisions of the regulation at 8 C.F.R. § 214.2(r)(3), “discussing instead factors not based in current law.” Citing several cases, including *Camphill Soltane v. DOJ*, 381 F.3d 143 (3rd Cir. 2004), counsel argues that there is no requirement that a position must be full time and salaried.

We note that all of the cases cited by counsel in support of the appeal refer to regulations that were superseded by new regulations on November 26, 2008. Nonetheless, we concur with counsel that the current regulations do not require that a religious occupation must have specific training or must be full time and salaried. However, the regulations state that if the denomination requires a particular requirement or training for a position, the beneficiary must meet those requirements. The regulation also requires that the petitioner establish that the duties of the position primarily relate to a traditional religious function, are related to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination, and that the position is recognized as a religious occupation within the denomination.

The petitioner stated that the duties include planning and implementing programs relative to the spiritual development of its youth and directing youth in programs such as evangelism and discipleship. As counsel states, the duties of the music ministry are only incidental to the position offered. However, we disagree with counsel that the director “misrepresented” the proffer, rather the director appears to have analyzed the position separately in an attempt to approve the petition. On appeal, the petitioner submits advertisements for a director of youth ministries, director of Christian education and children/youth ministries, youth director and youth minister from [REDACTED] and a youth ministry director in [REDACTED].

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

Nonetheless, the petition cannot be approved as the record now stands. The petitioner stated that “[o]nly a person with the proper theological and religious training can perform the duties of the position.” However, the petitioner did not specify what constitutes the “proper theological and religious training” necessary for the position. Furthermore, the petitioner did not state how the beneficiary meets these requirements. The regulation at 8 C.F.R. § 214.2(r)(3) provides that the beneficiary must be qualified for the position according to the denomination’s standards. On remand, the director should address whether the petitioner has sufficiently identified the requirements for the position and whether the beneficiary has the qualifications to meet those requirements.

Additionally, the petitioner has not submitted sufficient verifiable documentation of 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.

The petitioner submitted a budget for its 2009 fiscal year, in which it budgeted \$29,100 for the director for youth and young adults and \$2,900 for the youth ministry. The budget is based on income of \$133,000. However, the petitioner submitted no documentation to establish that the figures used in the budget are realistic or based on realistic expectations. For example, the petitioner budgeted for congregational giving of \$92,000. However, information included on the March 23, 2008 order of worship indicated that contributions for 2007 were approximately \$33,800 or only about 37% of the budgeted amount for 2009. The petitioner stated in its June 15, 2009 letter that it had gross revenue of \$106,834.31 in 2008. However, the petitioner submitted no documentation of any other income and no documentation of expenditures. Therefore, the petitioner has not submitted any verifiable documentation of how it intends to compensate the beneficiary. Additionally, the petitioner submitted no documentation of the housing that it stated would be part of the beneficiary's compensation.

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.