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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

① 13

[Redacted]

FILE: [Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: **OCT 22 2010**

IN RE: Petitioner: [Redacted]  
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.

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*  
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 a pastoral assistant. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation.

The director also determined that the petitioner had failed to provide evidence of the beneficiary's past compensation. The regulation at 8 C.F.R. § 214.2(r)(12) requires that any request for an extension of stay as an R-1 must include initial evidence of the previous R-1 employment (including Internal Revenue Service (IRS) documentation if available). A review of the record, however, indicates that the beneficiary was present in the United States pursuant to an E-2 nonimmigrant visa as a treaty investor. Therefore, the regulation at 8 C.F.R. § 214.2(r)(12) is not applicable in the instant petition. Furthermore, the issue of a beneficiary's prior R-1 employment is significant only insofar as it relates to the application to extend that status. An application for extension is concurrent with, but separate from, the nonimmigrant petition. There is no appeal from the denial of an application for extension of stay filed on Form I-129, Petition for a Nonimmigrant Worker, 8 C.F.R. § 214.1(c)(5). Because the beneficiary's past employment is an extension issue, rather than a petition issue, the AAO would lack authority to decide the question.

On appeal, counsel submits a brief in which he cites several bible verses that he states are evidence of the religious nature of the proffered position.

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 remaining issue 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.

The petitioner indicated on the supplement to the Form I-129 that the duties of the proffered position were “[t]o assist the pastor with worship services, lead bible study classes, oversee Sunday School programs, pastoral care and visitations.” The petitioner stated that the beneficiary would be paid \$24,000 per year.

In a request for evidence (RFE) dated March 11, 2010, the director sought additional information regarding the proffered position, advising the petitioner of the requirements of the regulation and instructing the petitioner as follows:

- **Requirements for the Position:** Provide a detailed explanation as to the requirements for the position offered, and how the beneficiary meets those requirements. Submit the religious denomination’s or organization’s by-laws, manuals, brochures, or guidebooks establishing the requirements for the

position. Provide detailed evidence that the beneficiary meets the denomination[’s or ] organization’s requirements . . .

- **Traditional Religious Function**: Provide the following evidence to establish that the proffered position is a religious occupation related to a traditional function in this religious denomination or organization: constitution; by-laws; and a letter from a Superior or Principal of the religious denomination or organization in the United States explaining how the position offered qualifies as a traditional religious function. Clearly indicate who has perform[ed] this function in the past.
- **Proffered Position**: What is the beneficiary’s job title? Provide a **detailed description** of the work to be done . . . Further, explain how the duties of the position relate to a traditional religious function. [Emphasis in the original.]

The petitioner, through its pastor [REDACTED] stated in its April 7, 2010 response that it was a member of the [REDACTED]. It further stated that the proffered position was that of pastoral assistant “and officially entitled [REDACTED] in the constitution of our denomination.” [REDACTED] also stated:

[The beneficiary] will be employed for 40 hours per week under my direct supervision. At least two years of seminary education is required for the position as a thorough knowledge of the [REDACTED] is required to be able to perform the job duties. All of the job duties relate to traditional religious functions as communal worship, Bible study, evangelism and bring up of children within the church are all mandates from the Bible.

The petitioner submitted a partial copy and a partial translation of the 2009 revised edition of the constitution of the [REDACTED] which counsel relies upon on appeal, asserting that this document is proof that the beneficiary’s position is recognized within the petitioner’s organization. The document does not comply with the terms of 8 C.F.R. § 103.2(b)(3), which provides:

*Translations.* Any document containing foreign language submitted to [USCIS] 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.

As the petitioner did not provide a full translation of the document, 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. We note, however, that the petitioner initially described the position as a pastoral assistant and not that of an evangelist. The petitioner submitted no documentation to establish that the two terms are

synonymous or that the position of pastoral assistant is recognized as a religious occupation within its denomination.

As previously stated, on appeal, counsel cites to several Bible verses in his brief. However, the petitioner submits no additional documentation to establish that the proffered position is recognized as a religious occupation within the denomination. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Accordingly, the petitioner has failed to establish that the position of pastoral assistant is a religious occupation within the meaning of the regulation.

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.