

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

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

D13

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **SEP 15 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, 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 is a church. It seeks to classify the beneficiary status 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 missions media projects director. 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 duties of the proffered position relate to evangelism, which is one of the traditional religious functions of the petitioning organization. The petitioner resubmitted a copy of the letter of employment addressed to the beneficiary.

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(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 December 11, 2008 letter offering the beneficiary employment as its missions media project director, the petitioner outlined the duties of the position as follows:

1. Publications and Advertisements- including Billboards, Television, Radio and the Internet;
2. Video projection including editing using your knowledge of the word of God;
3. Updating the church's website;
4. Managing the online prayer requests and the church's bookstore; and Coordinating conferences both within the U.S. and overseas

The petitioner stated that the beneficiary would receive a \$2,000 monthly salary.

On February 18, 2009, the director requested additional information about the proffered position, instructing the petitioner:

- **Traditional Religious Function:** Provide the following to establish that the proffered position is recognized as a religious occupation related to a traditional function in this religious denomination: constitution; by-laws; and a letter from a Superior or Principal of the religious denomination or organization in the United States explaining how the proffered position offered qualifies as a traditional religious function. Clearly indicate who has perform[ed] this function in the past.

- **Proffered Position**: Provide a **detailed description** of the work to be done, specific job duties, level of responsibility, number of hours per week performing the work duties and the minimum education, training, and experience necessary to do the job. Further, explain how the duties of the position relate to a traditional religious function. [Emphasis in the original.]

In his March 18, 2009 letter accompanying the petitioner's response, counsel stated:

[The] letter of offer of employment provided required detailed information as to the nature of the position offered. The requirement for this position is not stated in the Church's by-laws, but the Director of operations has stated in the letter from the church has explained [sic] what criteria was employed to extend her the position.

The employment letter, signed by [REDACTED] as director of operations, stated that the offer of employment was based on the beneficiary's performance and her "sound knowledge of the Bible, which is paramount to the offered position." The petitioner did not, however, provide further detailed documentation or information regarding the proffered position.

The director denied the petition, determining that the petitioner had failed to provide sufficient documentation that the position is recognized as a religious occupation within its denomination and that it relates to a traditional religious function.

On appeal, counsel asserts:

*This function involves spreading the word of God through the media. Therefore, when a person occupying this position does publications and advertisement, he/she must use the Word of God, this is Evangelism.*

The Missions Media Director in this denomination must have a good knowledge of the creed and belief of this denomination and be able to inculcate this belief into the functions of the position to carry out the duties and responsibilities. Moreover, the position does not involve primarily administrative functions of support positions. Although the Director must perform minimal administrative functions, such as meetings with the heads of different departments, the Pastors, Board of Directors of the church and so on. [sic] The duties of this position *required several hours a day to be considered a full time position. This position involves some sort of specialization in animation and computer graphics. When the church first started some other person volunteered for the position but now that the church now opened its 5 million dollar facility and because of the enormous expansion, it is almost impossible for anyone to volunteer for the position.*

We note first that counsel's assertions regarding the administrative requirements of the position and the time requirement for the position are not supported by evidence in the record. 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). Additionally, the director specifically requested the petitioner to provide a detailed description of the work to be performed, including the number of hours to be spent in performing the required duties. The petitioner failed to provide the requested documentation. This alone is grounds to deny the petition. 8 C.F.R. § 103.2(b)(14).

The petitioner has not identified the denomination to which it belongs and provides no documentary evidence that the position is recognized as a religious occupation within its denomination. Further, while counsel asserts that the position involves inculcating the petitioner's religious beliefs, the petitioner submitted no documentation to establish that the beneficiary, in the proffered position, will be responsible for the religious content of the materials she will publish, edit, or advertise.

The petitioner has failed to establish that the proffered position is a religious occupation within the meaning of the regulation.

Beyond the decision of the director, the petitioner has failed to establish 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 stated that it would compensate the beneficiary at the rate of \$2,000 per month. The petitioner submitted a copy of an accountant's compilation report for the month of March 2007. As the compilation is based primarily on the representations of management, the accountant expressed no opinion as to whether they fairly present the financial position of the petitioning

organization. In light of this, limited reliance can be placed on the validity of the facts presented in the financial statements that have been submitted. No further supporting documentation is included in the record to reflect the assertions made by the accountant in the financial documentation, or contained within the unaudited financial statements. Further, the compilation reflects only one month of the petitioner's financial year.

The petitioner has provided no verifiable documentation of how it intends to compensate the beneficiary.

Further, the petitioner has failed to meet the requirements of the regulation at 8 C.F.R. § 214.2(r)(8), which requires the petitioner to submit a detailed attestation with details regarding the petitioner, the beneficiary, the job offer, and other aspects of the petition. The record contains no such attestation.

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 (9<sup>th</sup> 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.