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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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Services

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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: SEP 16 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 extend the beneficiary's 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 "musical directress." 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's decision is "arbitrary, capricious, an abuse of discretion, a violation of the Due Process Clause . . . , contrary to the agency's statutes, contrary to the agency's regulations, contrary to the agency's case law, and contrary to the facts in the record of proceedings." Counsel submits a brief 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(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 its December 3, 2008 letter submitted in support of the petition, the petitioner stated:

As a Musical Directress of our church, [the beneficiary] will be responsible for overall direction and management of our Music Department. Her responsibilities are as follows:

- As a Musical Directress, she will plan and direct church music for religious occasion and events, assist in music selection for liturgy, and prepare Music Program of the church.
- As a Choir Directress, she will plan and direct choir music for Sunday worships, educate new members for the importance, privilege & responsibility of serving God by singing, and lead choir in rehearsals and in actual performance.
- As a Pianist, she will play the piano in all congregational singing of all services and assist in music selection for piano.

The petitioner also stated that the beneficiary had completed a training program in Music Education and Teaching Procedures in Manila, Philippines and that this program was the equivalent to a Bachelor of Music Education in the Philippines. The petitioner submitted a copy of a March 24, 1984 certificate indicating that the beneficiary received a Bachelor of Science in Commerce from [redacted] in Tacloban City, Philippines; a copy of a December 9, 1993 "Certificate of Participation" form the [redacted] and [redacted] Administrators indicating that the beneficiary completed the "Training Program on Music

Education and Teaching Procedures conducted from July 12 to October 25, 1993;" a copy of the beneficiary's transcripts from the institution; a copy of a transcript from the [REDACTED] indicating that the beneficiary attended one year at the institution, from 1994-1995, with studies in the College of Education; and a May 26, 2004 certification from the [REDACTED] indicating that the beneficiary had been enrolled in the institution since the summer of 2002 and was pursuing a Master of Arts in Education.

In a request for evidence (RFE) dated March 11, 2009, the director requested additional information regarding the proffered position, 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 denominations organization's [sic] requirements including the beneficiary's academic degree, transcripts, certificates, etc.
- **Traditional Religious Function**: Provide the following evidence to establish that the proffered position is recognized as 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 been performing this function in the past prior to the beneficiary.
- **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 original.]

In its March 23, 2009 response, the petitioner stated that singing "is part of a Worship service in Baptist churches accompanied by musical instruments, primarily, the piano." The petitioner further stated:

The general responsibilities of the Music Directress are as follows:

- Assume over-all charge of the Music Ministry of the church.
- Supervise and coordinate the following areas of the music ministry at [the petitioning organization]: choirs, singers, & musicians for both Sunday worship services and the Wednesday night service, multi-media, choral music, children's and teen choirs, and special music. The objective is to unify the

music ministry, provide strong, deliberately planned music for worship so anyone attending any service will leave having had an equal opportunity to participate in worship.

- Coordinate special services (e.g. wedding, funeral, Lord's Supper, cantatas, Mission Conference, Church Anniversary).
- Coordinate with the Pastor in preparing monthly and yearly themes which is the basis for choosing the music.
- Prepare the schedules for special number songs, choir songs, congregational songs, song leaders, singers and instrument players for the regular services and special occasions.
- Prepare the Programme for the Sunday Worship Services and Wednesday Prayer Meeting.
- Supervise/coordinate with the soundmen for the taped music and final practice of the songs.
- Schedule seminars on music to train, equip singers, instrument players and all those involved in the Music Ministry.
- Evaluate, select, purchase and supervise maintenance of resources (supplies & equipment, songbooks and song sheets, piano and organ).

As a Choir Directress:

- Just trained one to direct the choir and now assists him in choir rehearsals – vocalization, voice quality, learning the song, etc.
- Orient the new choir members on the “Qualifications of the Choir Members” and the “Rules and Regulations” realizing the importance, privilege and responsibility of serving God in this ministry.

As a Pianist:

- Play in the congregational singing and offertory for all regular Worship Services of the Church and special events such as Christmas/Easter Cantatas, Lord Supper, Mission Conference and Church Anniversary.
- Serve as accompanist for special members, choirs.
- Play for special occasion outside church services such as funerals, weddings, etc.

The petitioner did not indicate any specific requirements or training for the proffered position but repeated that the beneficiary had completed the Training Program on Music Education and Teaching Procedures.

The petitioner submitted a copy of its constitution and bylaws, which lists its officers, including the senior pastor, associate or assistant pastor, pastoral assistants and deacons. The position of music director is not listed. The petitioner stated that the beneficiary would be the first individual to fill the proffered position.

In denying the petition, the director also noted that the beneficiary would be the first incumbent in the job and that the petitioner had not shown that the position existed in the denomination prior to the beneficiary assuming the duties. The director determined that the petitioner had failed to provide the requested documentation regarding the requirements, including specific training, for the proffered job and that the petitioner submitted no documentation from its denomination that indicates the position is recognized as a religious occupation within the denomination. The director observed:

Although music is a component of the worship services of many religious denominations there is no inherent requirement that a person involved in the musical portion of a service be a member of the employer's denomination or that he or she participate in the worship service. These duties are not necessarily dependent on any religious background or prescribed theological education.

Counsel asserts on appeal that the director's decision is contrary to several cases that found similar positions were religious occupations: *Perez v. Ascroft*, 236 F.Supp.2d 899 (N.D. Ill. 2002), in which the court found that the position of music director was a religious occupation within the Baptist faith; *In re: X*, reported at 13 Immigration Reporter, in which the AAO found that the position of music director and organist was a religious occupation; and *Love Church v. Chertoff*, 549 F.3d 749 (9th Cir. 2008), asserting that the Ninth Circuit found that the position of choir director was a religious occupation. Counsel also stated that the Ninth Circuit found that the implementing immigration regulations did not require the petitioner to show that it has traditionally employed a choir director in a permanent, full-time and salaried position.

We note first that all of the cases cited by counsel were decided prior to the enactment of new USCIS regulations on November 26, 2008. The new regulation sets forth specific requirements that the petitioner must meet in order to establish that a position qualifies as a religious occupation. While counsel asserts that the courts and the AAO have previously determined that the position of music director and choir director are religious occupations, the title of the position alone is insufficient to establish that it is a religious occupation.¹ For example, merely because a position is that of a "minister" or "missionary," terms commonly associated with religious work, does not mean that the position is automatically a religious occupation as defined by the regulation. In this instance, merely because the position is titled that of music directress does not mean that, without supporting documentation, it qualifies as a religious occupation.

Although the regulation at 8 C.F.R. § 214.2(3) does not require the petitioner to establish that it has previously employed an individual in the proffered position, it must establish that the duties of the position primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination. While counsel alleges that the petitioner is a Baptist church as was the organization in *Perez*, the petitioner has not alleged that it belongs to any particular

¹ Counsel does not cite to any published AAO decisions. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

denomination and provided no documentation to establish that the duties of musical directress primarily relate to a traditional religious function and is recognized as a religious occupation within its denomination as required by the above-cited regulation.

The petitioner has failed to submit sufficient documentation to establish that the position of choir directress 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.