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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

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[REDACTED]

D13

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: SEP 17 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.

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 withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further action and consideration.

The petitioner is a regional conference of the International Pentecostal Holiness Church (IPHC), a Pentecostal Christian denomination. It seeks to classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act, to perform services as a minister of music. The director determined that the petitioner had not established that the position qualifies as a religious occupation that relates to a traditional religious function in the petitioner's religious denomination.

On appeal, the petitioner submits arguments from counsel, copies of the beneficiary's credentials, and denominational materials relating to the role of a minister of music.

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.

U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. § 214.2(r)(1) state 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 issue before us is whether the beneficiary's intended position qualifies as a religious occupation. The USCIS regulation at 8 C.F.R. § 214.2(r)(3) defines the term "religious occupation" as 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 filed the Form I-129 petition on September 18, 2008, indicating on the petition form that the beneficiary's role as a music minister was to "[d]evelop and promote music worship programs." In a separate statement, [REDACTED], the petitioner's chief executive officer, elaborated on the nature of the position:

The Music Ministry is an essential and integral part of our church and of the Pentecostal movement as a whole.

Qualifications.

The position of Minister of Music requires the services of an individual who is licensed by us as a Local Church minister and who has been a member of our church or of an affiliated denomination for at least two years. . . .

The candidate for this position must have demonstrated spiritual gifts in music. . . . We also require strong leadership skills in order to direct the congregation in praise and worship music for church services and other church events. . . .

Responsibilities.

The Minister of Music is responsible to the Church, supervised by the Senior Pastor, for the development and promotion of the music worship programs of the church and the administrative oversight and supervision of the staff.

The Minister of Music is responsible for directing the planning, coordination, operation, and evaluation of comprehensive music programs based upon church needs and program tasks. This position will assist the Senior Pastor in planning all services of worship and coordinating the Music and Praise ministry.

The petitioner submitted a copy of the beneficiary's Local Church Minister's Certificate and letters attesting to her past experience at other churches.

On January 7, 2009, the director issued a request for evidence.¹ The director advised the petitioner that USCIS had published revised regulations relating to nonimmigrant religious worker petitions, and instructed the petitioner to submit newly required evidence. The director requested "a detailed explanation as to the requirements for the position offered, and how the beneficiary meets those requirements," a description of the duties of the position, 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."

In response to the notice, the petitioner submitted copies of previously submitted letters, indicating that the beneficiary had worked in comparable positions at other churches. In a new letter, Bishop [REDACTED] stated: "The Minister of Music position relates to a traditional religious function within our organization as we consider music to be an essential part of our worship church services. We view this as a time of preparing our hearts and minds for the instruction or teaching of the pastor concerning what he feels is the direction from the Lord."

The petitioner submitted a partial photocopy of the IPHC's 2005-2009 *Manual*. Section VIII, "Granting License and Ordaining Ministers," begins with this passage:

¹ On March 2, 2009, the director erroneously denied the petition for abandonment, based on the petitioner's supposed failure to submit a timely response, but the director subsequently reopened the proceeding, admitting USCIS error.

The International Pentecostal Holiness Church issues the following ministerial credentials:

- Local Church Minister's Certificate
- Minister's License, Minister of Church Education License, Minister of Music License
- Certificate of Ordination
- Certificate of Ordination for Missionaries

The *Manual* listed numerous qualifications and requirements for the issuance of ministerial credentials.

The director denied the petition on August 12, 2009, stating:

The petitioner did not submit By-Laws, letters from authorized officials of the religious organization in the United States, or other documentary evidence indicating that the duties of this position are directly related to the religious creed of the denomination, and that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, salaried occupation within the denomination. . . .

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.

On appeal, counsel argues that "conducting religious worship could not be more directly related to the religious creed of any specific denomination," and that "the position is indeed defined and recognized by the governing body of IPHC."

In the denial notice, the director did not cite or quote the regulations published in 2008, relying instead on older authorities even when they contradict the new regulations (such as in the assertion that the position must be compensated, when the new regulation at 8 C.F.R. § 214.2(r)(11)(ii) provides for uncompensated missionary work). We find that the *Manual* shows denominational recognition of the music minister position.

Upon examination of the evidence of record, we find that the petitioner has sufficiently established that the music minister position qualifies as a religious occupation that relates to a traditional religious function within the IPHC. We will therefore withdraw the director's finding to the contrary. Because that finding was the sole basis for denial, we will also withdraw the denial decision itself.

Notwithstanding the withdrawal of the decision, the record does not establish that we can approve the petition. The AAO can identify additional deficiencies not cited as 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 (9th 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 revised regulations include several new requirements that the petitioner has not yet met. The new regulations apply retroactively to all petitions that were pending on November 26, 2008. USCIS cannot deny such petitions based on the lack of newly required documents, without first allowing petitioners the opportunity to meet the new evidentiary requirements. *See* 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). In this instance, the director's January 2009 request for evidence addressed only a few of the new requirements. Others remain to be addressed.

One significant issue is that the regulations place limits on who may file a petition for an R-1 nonimmigrant religious worker. The regulation at 8 C.F.R. § 214.2(r)(7) states that the petition may only be filed by an employer in the United States seeking to employ a religious worker. Therefore, it is necessary to identify the employer. If an alien is to be employed by a local church, with that church taking administrative and financial responsibility for the alien's employment, then the local church, rather than any umbrella organization or higher authority, is the employer.

Here, the employer is a regional IPHC conference. The petitioner has not claimed that the beneficiary will work at the conference's location. Instead, the petitioner has indicated that the beneficiary is to work at [REDACTED], Richmond, Virginia, which is the location of one of several IPHC churches under the petitioner's jurisdiction.

The petitioner claimed 172 employees. If this figure includes workers at the individual churches, the petitioning regional conference has direct hiring authority over workers at those churches and salaries are paid from conference assets rather than individual, independent church accounts, then the petitioner can be said to be the alien's intending employer. Otherwise, it is not clear that the petition was properly filed by the employer as the regulation requires.

We note that, because the location of the intended employment is not the same as the petitioner's location, both sites are subject to inspection and compliance review at the director's discretion, under the regulation at 8 C.F.R. § 214.2(r)(16).

The regulation at 8 C.F.R. § 214.2(r)(8) requires the petitioner to execute a detailed attestation with information about the petitioner, the beneficiary, and the job offer. The newest version of Form I-129 includes this attestation, but because the petitioner filed the petition prior to November 26, 2008, using an earlier version of the petition form, the record lacks this required attestation, and the petition cannot be approved without it.

Finally, the petitioner has stated that the beneficiary will receive a salary of \$500 per week. The regulation at 8 C.F.R. § 214.2(r)(11) states that the petitioner's initial evidence must state how the petitioner intends to compensate the alien, including specific monetary or in-kind compensation. The petitioner must submit verifiable evidence explaining how the petitioner will compensate the alien. 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.

For the reasons discussed above, the director's decision cannot stand and we hereby withdraw that decision. At the same time, however, the record as it now stands does not permit approval of the petition. Therefore, the AAO will remand this matter to the director. 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 Administrative Appeals Office for review.