

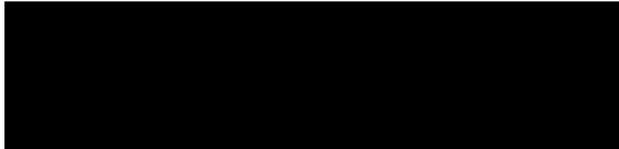
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **SEP 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:

SELF-REPRESENTED

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 Sikh temple. 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 tabla player. The director determined that the petitioner had not established that the beneficiary was a member of the petitioner's denomination for two full years immediately preceding the filing of the petition or that the position qualifies as that of a religious occupation.

The petitioner submits a statement 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 first issue presented is whether the petitioner has established that the beneficiary was a member of its religious denomination for two years prior to the filing of the visa petition.

The regulation at 8 C.F.R. § 214.2(r)(1) provides 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.

The regulation at 8 C.F.R. § 214.2(r)(3) provides that:

Denominational membership means membership during at least the two-year period immediately preceding the filing date of the petition, in the same type of religious denomination as the United States religious organization where the alien will work.

The petition was filed on January 16, 2009. Therefore, the petitioner must establish that the beneficiary was a member of its religious denomination for the two years immediately preceding the filing of the visa petition.

With the petition, the petitioner submitted an October 23, 2008 letter stating that it sought entry permission for the beneficiary as a Sikh missionary to preach Sikh religion. The petitioner also provided a copy of a January 7, 2009 letter certifying that the beneficiary, as part of a religious group, had worked for the [REDACTED] for three years.

In a February 9, 2009 request for evidence (RFE), the director instructed the petitioner to provide evidence that the beneficiary had met the two-year membership requirement in the religious denomination. In response, the petitioner stated that the beneficiary is currently employed by [REDACTED] in Punjab, India. The petitioner further stated that there was no relationship between the two organizations other than that they are both Sikh temples. It stated that temples in the Sikh faith "are mostly independent and believe in the principles of teaching of The Holy Granth Sahib (Holy Book)."

The director denied the petition, in part, because the petitioner failed to provide documentation of the beneficiary's membership in the denomination. The petitioner does not address this issue on appeal, only repeating the information regarding the beneficiary's current work. Nonetheless, we find that the documentation submitted sufficiently establishes that the beneficiary is a member of the Sikh religion and has been a member of the petitioner's denomination for the two years immediately preceding the filing of the petition.

The second 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.

On the Form I-129 supplement submitted in response to the RFE, the petitioner stated that the proffered position was that of tabla and vocalist. In her RFE, the director instructed the petitioner to submit additional documentation about the proffered position:

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.

The petitioner stated in its attestation submitted in response to the RFE:

Religious Hymns from The Holy Granth Sahib are sung daily, during all congregational functions and when ever requested by the members of the congregation. All religious functions have singing of the Religious Hymns. The singing of Holy Hymns is usually conducted by three or more people (Ragi Jatha) who are well versed in the teachings of The Holy Granth Sahib, and are able to play the Harmonium and the Tabla. The use of the harmonium and tabla are an essential part during the singing of the holy hymns.

The petitioner submitted documentation that discusses the Sikh religion, including a booklet that outlines its doctrines and a paper entitled "The Sikh Culture." None of the documents address the position of tabla player. On appeal, the petitioner states that the beneficiary "would have duties

primarily related to a traditional religious function, creed, beliefs, and would be recognized as a religious occupation with the denomination.” The petitioner, however, submitted no documentation to establish that the position of tabla player is recognized as a religious occupation within the Sikh religion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner submitted two documents apparently showing “a ragi jath of three.” However, the documents do 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.

Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The petitioner has not submitted sufficient documentation to establish that the proffered position primarily relates to a traditional religious function, is recognized as a religious occupation within the denomination, that the duties primarily relate to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

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 on the Form I-129 that the beneficiary would receive room and board and \$300 per month "offering by [the] congregation." In its attestation, the petitioner stated that the beneficiary would receive "\$300.00/month and will be provided free boarding and lodging amounting to about \$2000.00/month. In addition there will be donation to him directly from the congregation between \$200-\$300/month."

The petitioner submitted copies of its unaudited profit and loss statements for 2006 and 2007. The unaudited statements are based entirely on the representations of management. The petitioner submitted no further supporting documentation to corroborate the information contained within the unaudited financial statements. The petitioner also submitted copies of letters from its banks dated in March 2009, indicating that it had accounts totaling approximately \$63,500, and a copy of an April 28, 2008 statement from its accountant certifying that the petitioner received \$103,007 in contributions for 2007. The bank statements reflect the petitioner's balances subsequent to the January 20, 2009 filing date of the petition. Therefore, they are not evidence of the petitioner's ability to compensate the beneficiary at the stated amount as of the filing date of the petition. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Additionally, the accountant stated that the 2007 contributions were used for community development and welfare. The petitioner submitted no documentation to establish that it has compensated a similar position in the past, that it has budgeted for the proffered position or any other verifiable documentation of how it intends to compensate the beneficiary. The petitioner submitted copies of IRS Form 1065, U.S. Return of Partnership Income, for [REDACTED]. However, it is unclear how these documents relate to the petitioning organization.

Accordingly, the petitioner has failed to provide sufficient documentation of how it intends to compensate the beneficiary.

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 (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 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.