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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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[REDACTED]

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:

[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,

Jerry 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 and will remand the petition for further action and consideration.

The petitioner is a church. 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 an associate pastor. The director, based on the results of a compliance review onsite inspection of the petitioner's premises, determined that the petitioner had not established that the proffered position qualifies as that of a religious occupation.

On appeal, counsel asserts that "the Service confused the current occupation of the intended beneficiary with the proposed position as a Religious Worker." Counsel submits a brief and copies of previously submitted 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 issue presented is whether the petitioner has established that the proffered position qualifies as that of a religious occupation.

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

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:

(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).

The regulation at 8 C.F.R. § 214.2(r)(3) defines minister as an individual who:

(A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;

(B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;

(C) Performs activities with a rational relationship to the religious calling of the minister; and

(D) Works solely as a minister in the United States which may include administrative duties incidental to the duties of a minister.

In its January 14, 2009 offer to of employment to the beneficiary, the petitioner outlined the duties of the proffered position as:

1. Conduct religious services in the Tyler, Dallas and Austin churches;
2. Based on a pre-arranged assignment schedule, visit and speak at the Church's nine (9) congregations in the United States and Canada;
3. Assist the pastor in periodic bible studies;
4. Instruct and encourage the members in the teachings of the Bible;
5. Conduct and assist in counseling sessions with the members to assist them in applying these Biblical teachings in a practical way in their daily Christian lives;
6. Set up appointments to visit the members at their homes; the elderly and the shut-ins; and anoint the sick;
7. Respond to correspondence and communications received from the general public, who show an interest in the doctrines and teachings of the Church;
8. Baptize [] individuals . . .;
9. Perform and officiate at weddings and funerals . . .;
10. Oversee and supervise official Church social activities and functions;

11. Give sermons during the weekly Sabbath as well as the annual holy days; and,
12. Write articles and booklets on doctrine, prophecy and Christian living for posting on the Church's official web site and distribution to those who request them.

The offer stated that the position requires that the individual must be an ordained minister with a college degree, "a solid foundation in biblical doctrines, a demonstrated understanding of the Church's doctrines and the ability to teach and instruct and counsel." The offer also stated the beneficiary would be expected to work a minimum of 40 hours per week and would receive an annual salary of \$36,670.08.

In a January 14, 2009 letter, [REDACTED] president of the petitioning organization, stated that in May 2007, the beneficiary accepted a contractual position as management consultant with the petitioner and moved to the United States in July of 2007. He further stated that the beneficiary was ordained as a minister in September 2007, is currently "preaching sermons and sermonettes at various congregations, serving the brethren with anointing, communicating with those in far-flung areas and inquiring about their welfare and writing for the Church's web site." The petitioner provided a copy of the beneficiary's form I-94-A, Departure Record, reflecting that he entered the United States on July 28, 2008 in a trade NAFTA (TN) status.

On April 22, 2009, an immigration officer (IO) visited the petitioner's premises for the purpose of conducting an onsite inspection. The IO observed that there were no obvious signs of a church. The IO reported that the office contained compact disk duplicating equipment and that "the beneficiary stated that they copy the petitioner's sermons and mail them out to individuals that have requested them." The IO concluded that the beneficiary was not working as an associate pastor but "appeared to be part of [the petitioner's] office staff that mails out CDs of the petitioner's taped sermons."

In her Notice of Intent to Deny (NOID) the petition dated July 21, 2009, the director advised the petitioner of the results of the onsite inspection and concluded that the beneficiary "was not actively functioning in the capacity of Associate pastor contrary to claims made in the petition." In his August 18, 2009 letter accompanying the petitioner's response, counsel argued that "[t]he fact that the beneficiary was not actively functioning in the capacity of Associate Pastor at the time of filing of the petition is not controlling." In its August 11, 2009 response, the petitioner stated:

[The beneficiary] is currently holding a TN professional visa. He has been retained by the Church as an independent consultant to initiate, develop and oversee its media operations. It would be a violation of the terms of his TN visa to function actively in an Associate Pastor capacity.

In denying the petition, the director stated:

In the instant petition, [the petitioner] unequivocally states in regard to the beneficiary: "Presently, he is a retained, independent contractor serving as a contractor, overseeing media operations in the Church [.]". The record is clear: The petitioner has not established that the duties of the beneficiary's prospective occupation relate to a traditional religious function.

We withdraw the director's decision. The IO concluded that the beneficiary was not engaged in ministerial work as outlined in the petition. However, nothing in the statute or the regulation requires the petitioner to establish that the beneficiary was performing the duties of the proffered position. The petitioner submitted documentation to establish that the beneficiary entered the United States for the purpose of working for the petitioner in a capacity other than that of a religious worker. While we note that the petitioner stated that the beneficiary engaged in some religious work, the record does not establish that it was his primary job.¹ Accordingly, the director's decision cannot stand. The record sufficiently establishes that the proffered job is a religious occupation within the meaning of the regulation.

Nonetheless, the petition cannot be approved as the record now stands. Therefore, the petition will be remanded to the director for further action and consideration as discussed below.

First, the petitioner has not submitted sufficient documentation to establish that the beneficiary will be engaged in qualified employment for at least 20 hours per week. In his August 11, 2009 letter, [REDACTED] stated that the petitioner was a new church "with about 150 members attending 13 congregations throughout the United States, Canada, Ireland, and South Africa. We employ 3 full-time ministers and an office staff at our Tyler headquarters." The evidence indicates that the location at which the beneficiary will work has a congregation of 9 members. On remand, the director shall address whether the petitioner has established that the beneficiary will work at least 20 hours per week.

Second, the petitioner has not established 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.

The petitioner stated that the beneficiary will receive a \$36,670.08 annual salary. The petitioner submitted copies of IRS Form W-2, Wage and Tax Statement, that it issued to the beneficiary in 2007 and a copy of an IRS Form 1099-MISC, Miscellaneous Income that it issued to the beneficiary in 2008, reflecting that it paid the beneficiary approximately \$12,201 in 2007 and

¹ Whether or not the beneficiary worked in violation of his TN status is not an issue in this decision.

\$18,422 in 2008. The petitioner submitted insufficient documentation to establish how it intends to pay the beneficiary the proffered salary. The director shall address this issue on remand.

The matter will be remanded. 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 AAO for review.