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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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[REDACTED]

A13

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:

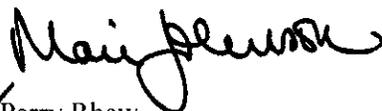
[REDACTED]

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.

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 AAO will dismiss the appeal.

The petitioner is a Sunni Islamic *masjid* (mosque). 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 “muezzin cum caretaker” (the petitioner sometimes uses the alternative spelling “muazzin”). The director determined that the petitioner had not shown that the position qualifies as a religious occupation.

On appeal, the petitioner submits arguments from counsel, background materials, and a revised job description.

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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(1) states 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 sole basis for denial concerns the question of whether the beneficiary's intended position qualifies as a religious occupation. The USCIS regulation at 8 C.F.R. § 214.2(r)(3) defines a 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 25, 2009. On the petition form, the petitioner described the beneficiary's proposed daily duties as: "Islamic religious prayer caller and ritual cleaner of mosque." An accompanying letter, jointly signed by the beneficiary and by [REDACTED] president and secretary of the petitioning entity, provided more details:

1. Muazzin cum caretaker must open the door of [REDACTED] at least 15 [minutes] prior to the prayer schedules. . . . Take necessary preparation as lighting, set heat[ing] and cooling and observe the cleanness of prayer areas.
2. The muezzin cum caretaker [must] call adan for every [prayer] as scheduled and call Ekamat on time or lead the prayer on time in absence of Imam.
3. Muazzin cum Caretaker [must] frequently observe the cleanness of prayer areas, restrooms and Udhu places and make sure tissues, napkins and soaps are enough for the worshipers.
4. The Muazzin cum Caretaker [must] also keep clean in side of boundary and out side of the boundary up to half of the street. . . .
5. In the winter time if snow fall[s] then remove the snow. . . . And spread the salt where necessary.
6. On every Thursday night [m]ake the preparation[s] for the Friday congregation. . . .
7. Muazzin Cum Caretaker [must] also help the Imam in week end and summer children education for management, teaching and student fees collection. . . .
8. Muazzin Cum Caretaker [must] also help the [REDACTED] committee to collect the membership fees, donations and other collections. . . .
9. For safety and security reasons Muazzin Cum Caretaker always must make wise decision or contact committee members in case of any emergency [or] unusual events.
10. The Muazzin Cum Caretaker is authorized to control uses of utilizes [sic] and misusing masjid belongings.
11. On regular basis clean the carpet, window, bl[i]nds, lights, fan, stairs, kitchen and bathrooms as required.
12. The Muazzin cum caretaker [must] do all repair and fixing work for the masjid.

On October 15, 2009, the director requested additional evidence to show that the duties of a “muezzin cum caretaker” primarily relate to a traditional religious function and are recognized as a religious occupation within the denomination. In response, the petitioner resubmitted copies of previously submitted materials, including certificates relating to the beneficiary’s religious training at a madrasa in the early 1990s, and his work as an imam in Bangladesh from 1993 to 1995. These materials do not address the nature of the work of a “muezzin cum caretaker.”

The director denied the petition on December 8, 2009, noting that “performing religious duties that are incidental to the primary functions is insufficient to establish that the duties to be performed qualify as a religious vocation or occupation.” The director also found that the petitioner had not shown that the position requires specialized religious training.

On appeal, counsel argues that the level of training required is irrelevant to the question of whether the duties are religious. Counsel concludes: “Thus, a ‘Muazzin’ is a traditional religious occupation within the petitioner’s religion and denomination.”

Counsel's conclusion does not follow from the premises offered. We agree with counsel that a religious occupation can be defined by its duties, rather than by the level of preparation or training required for the position. Nevertheless, this argument does not force the conclusion that the beneficiary's intended position is, itself, a religious occupation. We must still consider how the position fits the regulatory definition of a religious occupation.

Counsel acknowledges that the regulatory definition of "religious occupation" at 8 C.F.R. § 214.2(r)(3) specifically excludes "janitors [and] maintenance workers." Most of the beneficiary's listed duties, however, appear to be those of a janitor or maintenance worker.

The petitioner submits materials relating to the religious significance of the work of the muezzin, including the call to prayer, which is indisputably religious in character. The petitioner, however, does not seek to employ the beneficiary as a muezzin. The petitioner seeks to employ him as a "muezzin cum caretaker." The petitioner has also claimed that the beneficiary will work full time; the call to prayer, while a religious function, is not a full time occupation or close to it. The record indicates that the petitioner has folded the religious functions of the muezzin into the secular duties of the caretaker (such as locking and unlocking the doors, clearing snow from the sidewalk, and cleaning carpets). While the resulting composite occupation has religious elements, the petitioner has not shown that the work primarily (rather than incidentally) relates to a traditional religious function.

The petitioner, on appeal, submits a new job description, emphasizing the religious aspects of the position while minimizing mention of secular duties. The petitioner has also added the phrase "Assistant Imam" to the job title. We do not find these changes to be persuasive. It appears that the petitioner has simply rephrased the job description, and changed the position's title, in an effort to make the position appear to be more religious. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Commr. 1998).

Because the petitioner has not shown that the beneficiary's intended duties, as originally described, are primarily religious in nature, we agree with the director's finding that the petitioner has not shown that the position qualifies as a religious occupation. The secular functions of a building's caretaker do not assume religious significance simply by assigning additional religious duties to that caretaker.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will dismiss the appeal.

ORDER: The appeal is dismissed.