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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

D13

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **SEP 23 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:

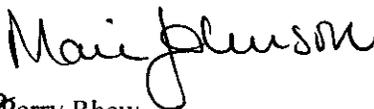
[REDACTED]

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 an Assemblies of God church. 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 relating to music. The director determined that the petitioner had not shown that the beneficiary's intended position qualifies as a religious occupation.

On appeal, the petitioner submits a letter from an official and a copy of the denomination's bylaws.

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 USCIS regulation at 8 C.F.R. § 214.2(r)(5) states that a religious occupation must meet 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 July 9, 2008. On Form I-129, under "Job Title," the petitioner stated simply "Music." In a cover letter accompanying the initial filing, counsel stated that the petitioner seeks to employ the beneficiary "as the Musical Leader."

Also on Form I-129, asked to describe the beneficiary's proposed duties, the petitioner referred to the "attached Petition Letter." Counsel's accompanying letter, however, does not describe the beneficiary's proposed duties. Instead, counsel only listed the beneficiary's qualifications:

The Beneficiary is qualified in the Christian Music field and in the Theological area. His experience and background includes a full knowledge of church music and worship leading, as well as, playing and teaching drum.

His experience includes more than 5 years performing as a drum player in the worship team, and also, he was a youth musical leader in his church in Colombia. The beneficiary's Christian Leadership experience [during] these years gave him the opportunity to act in many Christian areas, especially those related to music.

The petitioner submitted a copy of the Bylaws of the General Council of the Assemblies of God. Article VII, Section 3d(2) refers to "a specialized ministry such as Christian education, music, church-related ministry by a minister's spouse, or other full-time ministries." Article VII, Section 6b(3) likewise includes "ministers of music" in the category of "full-time ministry."

On January 30, 2009, the director issued a request for evidence (RFE), instructing the petitioner to submit, among other things, a detailed job description for the beneficiary's intended position and "evidence that the proffered position is recognized as a religious occupation related to a traditional function in [the petitioner's] religious denomination." The director specified that this evidence should include "a letter from the General Council, or Principal of the religious denomination."

The petitioner's response included a cover letter from counsel, who stated that "Exhibit 6" showed that the beneficiary's position qualifies as a religious occupation. The petitioner's response to the RFE, however, included only five numbered exhibits. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. 8 C.F.R. § 103.2(b)(14).

The director denied the petition on October 9, 2009, stating that the petitioner submitted no evidence "to demonstrate that the role of music/choir director has been a traditional, full-time, salaried position in the past," and that the petitioner's "by-laws do not indicate a music/choir director position." The director also noted the absence of "Exhibit 6" from the petitioner's response to the RFE.

On appeal, the petitioner makes no attempt to account for the previous omission of "Exhibit 6." Rev. [REDACTED] of the petitioning entity, observes that the denomination's bylaws, submitted previously and resubmitted on appeal, do in fact refer to full-time music ministry. The petitioner, however, had never specified that the beneficiary was to be a "music minister." Indeed, the petitioner (as opposed to counsel) has never stated the beneficiary's job title apart from the single word "music." Where the bylaws refer to music ministry, they do so in the specific context of a "Licensed minister."

The petitioner has submitted no evidence that the beneficiary is a "licensed minister," and nothing in the bylaws indicates that every participant in the church's musical program is a licensed minister or a music minister. Therefore, while the bylaws establish that the Assemblies of God denomination recognizes the music minister as a religious occupation, the petitioner has not established that the Assemblies of God has issued the necessary credentials to the beneficiary, or otherwise considers the beneficiary to be a music minister.

The petitioner has never specified the nature of the beneficiary's duties or even his title, and has not shown that he meets the specific requirements spelled out in the denomination's bylaws. Therefore, the petitioner has not shown that it intends to employ the beneficiary in a religious occupation recognized by the denomination and relating to a traditional religious function. We therefore agree with the director's finding to that effect.

Review of the record shows another deficiency in the petitioner's evidence. 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 regulation at 8 C.F.R. § 214.2(r)(8) requires the petitioner to submit a detailed attestation regarding the petitioner, the beneficiary, and the job offer. When the petitioner filed the petition in July 2008, this regulation was not in effect. Supplementary information published with revised regulations specified: "All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). Therefore, the attestation requirement applies to this petition. We acknowledge that the director did not request this attestation in the RFE, but it remains that the petition cannot properly be approved without the attestation. The absence of such an attestation from the record is, therefore, an additional basis for denial of the petition.

The AAO will dismiss the appeal 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. The petitioner has not met that burden.

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.