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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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A13



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **SEP 24 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:



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*  
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 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 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 its education pastor. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation.

On appeal, counsel states that the job duties outlined for the proffered position "can only be performed by an ordained minister." The petitioner submits 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 or vocation.

The regulation at 8 C.F.R. § 214.2(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.

In an October 18, 2007 letter, the petitioner stated that the duties of the proffered position included:

*Ministerial Duties Relevant to Education:*

- Develop and oversee religious education program
- Coordinate activities of each age group in accordance to the direction and goals of church education set by the church session
- Conduct worship service for children and youth
- Prepare and deliver sermons and other talks for worship service for children and youth
- Plan, prepare and select teaching materials for Bible classes
- Plan, prepare and direct the special education program such as the vacation Bible school, retreats, short-term mission trips, revival meetings
- Recruit volunteer teachers and lay leaders and train them in Bible
- Teach confirmation and baptism classes
- Plan, prepare and direct parent teacher association meetings

Ministerial Duties Relevant to Assisting the Senior Pastor:

- Conduct religious worship, provide spiritual and moral guidance and assistance to members
- Preach and lead worship services when the senior pastor is away
- Plan, prepare home fellowship Bible study materials, and conduct home fellowship meetings; Train home fellowship leaders and plan, prepare Bible study materials for leaders
- Interpret doctrine of religion
- Instruct people who seek conversion to faith
- Plan, organize and direct community outreach and evangelistic programs
- Assist the senior pastor with administering religious rites or ordinances such as communion and baptism, and with celebrating ceremonies such as wedding and funeral as necessary
- Visit the sick and shut-in, and help the poor
- Counsel those in spiritual need and comfort the bereaved
- Assist the Senior Pastor with budget planning, record keeping as needed

The petitioner stated that the beneficiary would be expected to work at least 40 hours per week and would be compensated at the rate of \$26,000 per year. The petitioner stated that the requirements of the position included a “degree in theology or related field from an accredited seminary” and ordainment as a minister in the Presbyterian faith.

The director sought no additional documentation regarding the proffered position either in her request for evidence (RFE) of January 11, 2008 or in her March 28, 2009 Notice of Intent to Deny (NOID) the petition. However, in denying the petition, the director determined that the petitioner had submitted insufficient documentation regarding the minimum requirements for the position. The director further stated:

The beneficiary’s duties do not relate to a traditional religious function. A review of the petition reveals that the beneficiary will be primarily involved in secular and not religious activities. The petitioner has not shown that the beneficiary’s essential job functions are inherently or predominantly religious. Rather, the beneficiary plays a supporting role, providing the means for presentation of religious content created by others. The beneficiary’s own familiarity with the

religious subject matter is clearly an [asset] in his performance of his job, but it does not follow that a secular worker could not perform the same core functions, or that the position of the "Education Pastor" relates in any straightforward traditional religious function.

On appeal, counsel states that the duties of the proffered position "are hardly for a secular person without any formal religious education and training," and that lay persons are not allowed "to teach confirmation and baptism classes, conduct religious worship, prepare and deliver sermons, preach and lead worship, interpret doctrine of religion and conduct religious rites." No documentation in the record supports counsel's assertions and without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). There is nothing in the record to establish that the Presbyterian denomination does not allow lay persons to teach, conduct religious worship or interpret religious doctrine. While lay persons do not typically perform sacerdotal duties normally reserved for licensed members of the clergy, the duties enumerated by the petitioner indicate that the education pastor would assist the senior pastor in performing those duties.

Nonetheless, we cannot agree with the director that the petitioner has failed to submit sufficient documentation regarding the minimum requirements. The petitioner stated that the position required a theology or related degree at an accredited seminary and ordination. The duties described by the petitioner sufficiently establish that they relate to a traditional religious function and primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

The petitioner has sufficiently established that the proffered position is a religious occupation within the meaning of the regulation.

Nonetheless, the petition cannot be approved as the record now stands.

The petitioner has failed to submit the attestation required by the regulation at 8 C.F.R. § 214.2(r)(8), which requires requires the petitioner to submit a detailed attestation regarding the petitioner, the beneficiary, the job offer, and other aspects of the petition. The record contains no such attestation.

Additionally, the regulation at 8 C.F.R. § 214.2(r)(16) provides:

*Inspections, evaluations, verifications, and compliance reviews.* The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other

records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The record reflects that an immigration officer (IO) visited the petitioner's address of record on June 24, 2008 for the purpose of conducting a compliance review verification. The director notified the petitioner of the IO's findings in her March 28, 2009 NOID. The record does not establish that the petitioner successfully completed the inspection as required by the above-cited regulation. We do not find that the affidavit submitted by the petitioner in response to the NOID to be sufficient documentary evidence to explain the discrepancies noted in the IO's report.

The matter will be remanded to address the above issues. 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.