

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



D13

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **SEP 29 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 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 a music minister. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation.

On appeal, the petitioner states that a music ministry “is essential to and for [the] religious practice” in Pentecostal churches. The petitioner submits 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 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(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.

In its May 15, 2009 letter submitted in support of the petition, the petitioner stated that the beneficiary had served as a music minister with one of its affiliated churches in Jamaica. The petitioner stated that it was offering the beneficiary a full-time position that would be compensated with a \$36,000 annual salary and a \$600 monthly housing allowance.

In a request for evidence (RFE) dated August 22, 2009, the director instructed the petitioner to submit additional documentation to establish that the position qualifies as that of a religious worker, including:

- **Requirements for the Position**: Provide a detailed explanation as to the requirements for the position offered, and how the beneficiary meets those requirements. Submit the religious denomination's or organization's by-laws, manuals, brochures, or guidebooks establishing the requirements for the position.
- Provide detailed evidence that the beneficiary meets the denomination['s] [or] organization's requirements including the beneficiary's academic degree, transcripts, certificates, etc.
- **Traditional Religious Function**: 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. Clearly indicate who has [been] performing this function in the past.

- **Traditional Religious Function:** 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. Clearly indicate who has perform[ed] this function in the past.
- **Proffered Position:** Provide a detailed description of the work to be done, specific job duties, level of responsibility, number of hours per week performing the work duties. Further, explain how the duties of the position relate to a traditional religious function.

In response, the petitioner submitted a copy of the manual of the United Pentecostal Church International (UCPI) and referenced provisions relating to the licensing of Christian workers. These provisions do not, however, specifically reference a music minister and provide no evidence that the position is recognized within the Pentecostal denomination. The petitioner also submitted a compact disc that it stated contained a copy of its bylaws. It did not, however, provide a printed copy of this document.¹ The petitioner also submitted a document entitled "Pentecostal Worship" that discusses the role of the worship leader and worship team in the church; however, the document is not signed and does not indicate the source of the information contained within the document. The petitioner stated that its former worship leader was now a Nashville recording artist but provided no documentation of her association with the petitioning organization.

The director denied the petition, finding, *inter alia*, that the petitioner had failed to provide documentation from its denomination that the proffered position is recognized as a religious occupation within the denomination, that the position is not a full-time occupation, and that "the duties of the position are not considered to constitute the duties of a qualifying religious occupation" because "[d]uties such as oversight of church musicians, choir and weekly worship services are considered wholly secular."

On appeal, the petitioner asserts that its "music ministry is essential to and for our religious practice" and that it "has had a full-time music minister for the past 11 years." The petitioner submitted information from the website of the UCPI that states that the Church's dream is "[t]o instill a love for truth, righteousness, anointing excellence" in every Church "musician, singer, and music minister." The petitioner also submitted a February 22, 2010 signed by [REDACTED] in which he states music ministers are recognized as Christian workers within the UCPI and qualify for full time employment with the local churches. He further states that many churches employ full time music ministers and that

¹ Because of viruses and other computer malware, petitioners are discouraged from sending documents on compact discs unless specifically requested to do so.

UCPI bible schools offer bachelor degrees in music. He also provided a list of UCPI music ministers and their websites.

We note first that the petitioner failed to submit the information from UCPI when instructed to do so in the RFE. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's RFE. *Id.* Therefore, the AAO will not consider this evidence for any purpose. *See id.* The appeal will be adjudicated based on the record of proceeding before the director.

Although the director determined that the petitioner had not established that the position is a traditional, full-time, paid occupation with the denomination, the regulations promulgated by USCIS in November 2008 do not establish these requirements. Further, the petitioner need only establish that the beneficiary seeks to enter the United States to work on a part-time basis. Additionally, the AAO cannot agree that the duties of the petition are necessarily "wholly secular." The petitioner does not state that the beneficiary will only attend services; rather, it states that the beneficiary will be participating in the service as well as training others to do so.

Nonetheless, the record before the director did not sufficiently establish that the duties of the proffered position primarily relate to a traditional religious function and that the position is recognized as a religious occupation within the denomination. Although the petitioner stated that one other person had held the position prior to the offer to the beneficiary, it provided insufficient documentation to establish that the position had been previously held by someone else. The petitioner also failed to provide documentation from the denomination to establish that the position was recognized as a religious occupation within the denomination.

Accordingly, the petitioner failed to establish that the proffered position is a religious occupation within the meaning of the regulation.

Beyond the decision of the director, the petitioner had 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. 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 [U.S. Citizenship and Immigration Services]. IRS [Internal Revenue Service] 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 that the beneficiary would be compensated at the rate of \$36,000 annually with a \$600 monthly housing allowance, for a total of \$43,200. The petitioner submitted unaudited copies of its "prior year history reports" for 2006 through 2008. The documents reflect income but do not show any financial obligations. The petitioner provided no documentation to establish that it has paid the beneficiary or a similar position in the past, no documentation that is has budgeted for the position, or any other documentation to establish how it will compensate the beneficiary. Accordingly, the petitioner has failed to establish 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.