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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

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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 an assistant music director. 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 the proffered position “has been a permanent, traditional salaried position requiring a religious background.”

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 the petitioner's June 3, 2008 offer of employment, the petitioner stated that the beneficiary "will be expected[] to coordinate with the music minister concerning both the local and international services" and that he is "expected to raise and train a strong youth band[] that will travel on mission trips with the mission department." The petitioner also provided a work schedule for the beneficiary indicating that he would work 40 hours per week.

In a request for evidence (RFE) dated January 6, 2009, the director instructed the petitioner to submit additional documentation to establish that the position is that of a religious worker including:

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.

In its response, the petitioner provided a statement in which it stated that the church "leadership decided to hire a Christian, a member of our denomination and who is well [knowledgeable] in both the African traditional and western contemporary music." The petitioner, however, did not provide any documentation to establish that the proffered position existed in its organization prior to being offered to the beneficiary or information from its denomination indicating that the position is recognized as a religious occupation within the denomination.

On appeal, the petitioner states:

The music [the beneficiary] plays during services, his arranging of music and musical performances are linked to the sermon or the message of the Reverend for that week or occasion. The pieces that [the beneficiary] chooses are not only entertaining but they also carry a religious message. His music helps move[] the congregation along the path of their religious beliefs as does the sermon of the Reverend and the other activities of the church. Under *Matter of Hall*, 18 I&N Dec. 203 (BIA) 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978); *Kleindienst v. Mandel*, 408 U.S. 753, 769-70, 92 S.Ct. 2576, 33 L.Ed. 683 (1972) and *Unification Church v. Attorney Gen.*, 581 F.2d 870, 874 (D.C. Cir.), cert. denied 439 U.S. 828 (1978), the position of assistant musical director qualifies as both the ecclesiastical body and the secular authorities.

We note that all of the cases cited by the petitioner predate the implementation of new regulations on November 26, 2008, which require the petitioner to 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 its denomination. The petitioner stated that it was a member of the Baptist denomination and submitted a letter indicating it is covered under the group tax exemption granted to the Baptist General Association of Virginia. However, the petitioner submitted no documentation from that organization to establish that the position of assistant music director is recognized within the denomination or that the duties relate to a traditional religious function. Furthermore, the petitioner alleges on appeal that the position "has been a permanent, traditional salaried position." Nonetheless, the record reflects that the position did not exist previously in the organization and the petitioner provided no documentation to establish that the position exists within its denomination.

Accordingly, the petitioner has 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 indicated on the Form I-129, Petition for a Nonimmigrant Worker, that the beneficiary would not receive a salary but would receive a \$38,000 yearly stipend for living expenses. The petitioner submitted a 2009 budget; however, there is no provision in the budget to provide a stipend to the beneficiary. Further, the music ministry is budgeted for only \$10,000 for the entire year. The petitioner provided no documentation to establish that it has compensated the beneficiary or a similar position in the past. Accordingly, it 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.