

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

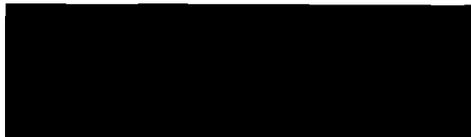
PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

b13



Date: DEC 23 2011

Office: CALIFORNIA SERVICE CENTER

FILE:

IN RE:

Petitioner:

Beneficiary:



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
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The Administrative Appeals Office (AAO) remanded the matter for issuance of a new decision. The director again denied the petition and the matter is again before the AAO on appeal. The appeal will be sustained.

The petitioner is a Jewish synagogue. It seeks to extend the beneficiary's status as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as an assistant teacher. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation.

On appeal, counsel asserts that "the duties of Assistant Teacher relate precisely to teaching the religious creed and inculcation [of] the religious beliefs of Judaism according to the students' developmental age." Counsel submits a brief and 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 an addendum to the Form I-129, Petition for a Nonimmigrant Worker, the petitioner stated that as a “Pre-k” assistant teacher:

[The beneficiary’s] duties . . . entail assisting in teaching children in the early childhood education center about Jewish holidays and proper methods of religious observance, prayers, Jewish customs, traditions and the Hebrew language. She assists in teaching children to understand the religious significance of popular Jewish songs and melodies. An important goal of her teaching is to encourage the children to develop ethical and moral values according to Jewish law and tradition and to foster a love of the culture and history of Israel, the Jewish State. She uses teaching materials, according to the student’s individual ability, that range from books and visual aids that cover relevant Jewish topics, plays that enact aspects of Jewish history, conversation and interplay with synagogue clergy pertaining to Jewish festivals and practice, reading stories that carry out these themes and assigning tasks to children that delve into aspects of Jewish religion, culture and history. She also assists in leading the children in weekly Sabbath observances on Friday mornings, as well as ritual observances that are age appropriate for each of the Jewish festivals.

In response to a request for evidence (RFE) dated November 9, 2010, the petitioner, through [REDACTED], provided a detailed daily schedule for a “Jewish educator” at its [REDACTED]. [REDACTED] stated that the organization’s “mission is to teach the religious creed of Judaism to all who study and pray with us. We begin with the very young students in our Early Childhood Center and continue to educate our congregants for their entire lives.” The duties of the educator include “circle time” which is “focused mainly on

presenting Jewish topics in age appropriate formats such as biblical stories, prayers when we eat or drink, Israeli style dance and food, basic conversational Hebrew and the Jewish Sabbath and holidays; arts and crafts classes that relate to Jewish holidays; centers that teach Jewish ritual or culture; and the Jewish religious ritual of washing hands.

The director denied the petition, determining that the petitioner had failed to provide sufficient documentation to establish that the duties of the proffered position primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination. On appeal, counsel asserts:

The goal of a Jewish education is to rear children within the boundaries of Jewish rules, morals, and laws and to be practicing Jews. The duties of [the] position of Assistant Teacher . . . are all related to the inculcation of the set of beliefs, morals, and laws of the Jewish religion.

In a March 18, 2011 letter, [REDACTED] states:

[The beneficiary] has been assigned the difficult task of transmitting in a pedagogic and formal manner the values of Judaism to children in our Pre-K class (4 and 5 years old). [She] assists in teaching and presenting activities that are designed to promote religious, intellectual, and social growth, including teaching Jewish religion and practice; prayers; culture, and the meaning of Jewish festivities. The educational goals at this stage are for the children to learn to identify the basic symbols of Jewish life, recite the "*Shema*" (Declaration of the Jewish Faith), "*Ha Motzi*" (Blessing of the Bread), "*Kiddush*" (Blessing of the Wine) and "*Shabbat B'rachot*" (the Sabbath Candle blessing), to start identifying Hebrew alphabet and learn basic Hebrew vocabulary, as well as explore the holiday rituals . . . and demonstrate a positive attitude towards Judaism. Another very important goal at this stage in the children's development is to develop ethical and moral values according to the Jewish faith.

The petitioner also submits examples of the educational materials used by the beneficiary in her classes.

The petitioner has submitted sufficient documentation to establish that the duties of the proffered position primarily relate to a traditional religious function and that the duties primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination. Accordingly, we withdraw the director's determination.

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 met that burden.

ORDER: The appeal is sustained.