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U.S. Citizenship
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FILE:

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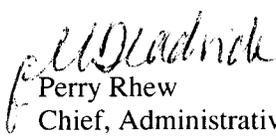
PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1)

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 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 mosque. 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 imam. The director determined that the petitioner had not established that the beneficiary is qualified for the position, that the beneficiary will not be engaged in secular employment, and how the petitioner will remunerate the beneficiary.

On appeal, counsel asserts that the director's decision is incorrect. Counsel submits a letter 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 first issue presented is whether the petitioner has established that beneficiary is qualified for the proffered position.

The regulation at 8 C.F.R. § 214.2(r)(3) defines "religious worker" as "an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation,

whether or not in a professional capacity, or as a minister.” The regulation also defines minister as an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and
- (D) Works solely as a minister in the United States which may include administrative duties incidental to the duties of a minister.

Additionally, the regulation at 8 C.F.R. § 214.2(r)(3) provides:

Evidence relating to the qualifications of a minister. If the alien is a minister, the petitioner must submit the following:

- (i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and
- (ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological education is accredited by the denomination, or
 - (A) The denomination's requirements for ordination to minister;
 - (B) The duties allowed to be performed by virtue of ordination;
 - (C) The denomination's levels of ordination, if any; and
 - (D) The alien's completion of the denomination's requirements for ordination.

In its August 3, 2008 letter submitted in support of the petition, the petitioner stated:

An Islamic Priest is the principal Minister of religion in the Islamic faith. In order to perform the duties of Imam an individual must possess several years of experience studying the Islamic faith. This occupation cannot be performed routinely by members since it required specialized training in the field of education and experience. The duties require advanced training and specialized course work. No one is permitted to occupy the position who is not a Muslim.

The petitioner stated that the beneficiary qualified for the proffered position based on his Bachelor's degree in Islamic Studies and his past employment with [REDACTED] the [REDACTED] and the [REDACTED]. The petitioner submitted several documents accompanied by English translations that purport to be documentation of the beneficiary's education and experience. Although the record contains a certified translation, it is unclear which of these documents, if any, to which the certification pertains. The submission of a single translation certification that does not identify the document it purportedly accompanies does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3), which requires that any document containing foreign language submitted to the U.S. Citizenship and Immigration Services (USCIS) shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The director denied the petition, finding in part, that the petitioner had not established that the beneficiary was qualified to engage in a religious vocation or occupation with the petitioner. The director did not discuss the beneficiary's eligibility as a minister. On appeal, the petitioner submits a copy of the beneficiary's transcript from [REDACTED], accompanied by an English translation, containing a statement that the beneficiary's training qualified him "to instruct and teach Islamic related topics in Mosques and religious institutions." The petitioner also submits a copy of what purports to be an "experience certificate" from the Egyptian [REDACTED] indicating that the beneficiary had graduated with a Bachelor of Arts degree in Arabic language in 1994 and received a Master of Arts degree, also in Arabic language in 1994. The certificate indicates that the beneficiary was employed in March 2000 as a prayer Imam, preacher, and lecturer [REDACTED]. The certificate, however, is not accompanied by a translation that complies with the terms of 8 C.F.R. § 103.2(b)(3), which provides:

Translations. Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

While the document is accompanied by a notary attestation that the translation is what it purports to be, the translation does not identify the translator, is not certified by the translator as accurate and complete or the translator's certification that he or she is competent to translate from Arabic to English. The petitioner also submitted a document from the El-Sharkeia Branch of the Ministry of Religious Affairs, accompanied by a certified English translation, which stated that the beneficiary worked as an imam in [REDACTED] mosque in [REDACTED] from March to August 2003, and worked at [REDACTED] from August 2003 to September 2004 and [REDACTED] mosque from September 2004 to September 2005.

We find that the record sufficiently establishes that the beneficiary is qualified for the proffered position.

The director also determined that the petitioner had failed to establish that the beneficiary will not engage in secular employment and that it has the ability to remunerate the beneficiary. In denying the petition on April 9, 2010, the director erroneously referred to 8 C.F.R. § 214.2(r)(3)(ii), a provision of the regulation that was superseded by new regulations on November 26, 2008. The director further relied upon provisions of the Foreign Affairs Manual (FAM). However, the FAM, which the United States Department of State uses to administer consular visa processing, is not binding on USCIS in the administration of the Act.

The relevant 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. 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 job contract provided by the petitioner indicates that the beneficiary would receive a monthly salary of \$4,000 in addition to a percentage of any fundraising in which he participated. This amount differs from the \$25,000 yearly that the petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker. The petitioner offered no explanation of this discrepancy.

With the petition, the petitioner submitted copies of its monthly checking account statements for the period January 2009 through June 2009. On appeal, the petitioner submits a copy of IRS Form 1099-MISC, Miscellaneous Income, on which it reported that it paid the beneficiary \$20,000 in nonemployee compensation in 2009, and copies of processed checks reflecting that it paid the beneficiary \$4,000 per month from August 2009 to March 2010. The petitioner also submitted copies of its monthly bank statements for October 2009 through March 2010.

The record sufficiently establishes how the petitioner intends to compensate the beneficiary.

However, the petition cannot be approved as the record now stands. 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 does not indicate that an inspection or other compliance review has been conducted to verify the petitioner's claims in the petition. Therefore, the record is remanded to the director to determine if an onsite inspection or other verification of the petitioner's claims is appropriate.

Finally, although not relevant to a determination regarding the petitioner's eligibility for R-1 nonimmigrant status, we note that as it relates to his extension request, the beneficiary appears to have been working for the petitioner in violation of 8 C.F.R. § 214.1(e), which would preclude approval of the extension request.

The matter will be remanded. 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.