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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

813



FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: FEB 15 2011

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:  
[Redacted]

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, initially approved the employment-based nonimmigrant visa petition. On further review, the director determined that the petitioner was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the preference visa petition and her reasons therefore, and subsequently exercised her discretion to revoke the approval of the petition on August 18, 2009. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. On December 7, 2010, the AAO sua sponte reopened its decision. The AAO will again remand the petition for further action and consideration.

The petitioner is a temple. 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 a Buddhism teacher. The director determined that the petitioner had not established that the proffered position qualifies as that of a religious occupation.

Counsel submits a brief in support of the appeal.

The regulation at 8 C.F.R. § 214.2(r)(18) provides that the director may revoke a petition at any time, even after the expiration of the petition, for the following reasons:

1. The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;
2. The statement of facts contained in the petition was not true and correct;
3. The petitioner violated terms and conditions of the approved petition;
4. The petitioner violated requirements of section 101(a)(15)(R) of the Act or paragraph (r) of this section; or
5. The approval of the petition violated paragraph (r) of this section or involved gross error.

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)(II) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(II), pertains to a nonimmigrant who seeks to enter the United States to work for the religious organization in a professional capacity in a religious vocation or occupation.

The regulation at 8 C.F.R. § 214.2(r)(1), as in effect at the time the petitioner filed the petition, reads:

*General.* Under section 101(a)(15)(R) of the Act, an alien who, for at least the two (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, may be admitted temporarily to the United States to carry on the activities of a religious worker for a period not to exceed five (5) years. The alien must be coming to the United States for one of the following purposes: solely to carry on the vocation of a minister of the religious denomination; to work for the religious organization at the request of the organization in a professional capacity; or to work for the organization, or a bona fide organization which is affiliated with the religious denomination, at the request of the organization in a religious vocation or occupation.

The regulation at 8 C.F.R. § 214.2(r)(1), as in effect at the time the petitioner filed the petition, provides:

*Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons involved solely in the solicitation of donations.

The petitioner must therefore establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a “religious occupation” and the regulation in effect at the time the petition was filed stated only that it is an activity relating to a traditional religious function. The regulation does not define the term “traditional religious function” and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Accordingly, USCIS interprets the term “traditional religious function” to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In its December 10, 2005 letter submitted in support of the petition, the petitioner, through its abbot, stated that the beneficiary would serve as a Waiya Watchakorn, a position that has existed

in Buddhist temples for “thousands of years.” The petitioner described the duties of

- **Cooking Food for the Monks.** . . . During the preparation of these foods, the Waiya Watchakorn must repeatedly chant certain prayers that are specific to the meal . . . and to the holiday and day of the week. According to our tradition, a monk should not consume food prepared without the blessings derived from the prayers of the one preparing the food. Also, Thai Buddhist monks should not prepare their own food. So, preparation of food for monks by a Waiya Watchakorn is a traditional, essential religious function . . .

- **Cleaning the Temple.** This involves cleaning the religious artifacts and icons in the temple, the garments of the monks, the altar, and the religious sanctuary. During the cleaning process, the Waiya Watchakorn must repeatedly chant certain prayers that are specific to the religious object or location in the temple . . .

- **Preparing the Temple for Religious Ceremonies.** . . . During the set up, the Waiya Watchakorn must chant certain prayers that are specific to [the] object being set up. Also, the Waiya Watchakorn must know the appropriate way to set up the seating in accordance with our religious tradition . . . Certain additional prayers must be chanted during the set up that are appropriate to the ceremony (wedding, funeral, Buddha’s birthday, regular religious service, etc.) . . .

- **Helping Monks with Secular Tasks.** According to our religious tradition, a monk should not touch money or coinage or drive a car. A monk also should not touch a woman nor receive anything directly from a woman’s hand. The Waiya Watchakorn receives donations from the congregation on behalf of the monks and chants the appropriate prayer upon receipt. The Waiya Watchakorn also drives the monks when to go outside the temple . . . The Waiya Watchakorn needed must repeatedly chant the appropriate prayer before and while driving so that the trip will be blessed . . .

- **Assist in Teaching Buddhism.** The Waiya Watchakorn helps the monks prepare materials such as handouts and posters. She will translate religious writing of the monk into English. Also, the Waiya Watchakorn helps in teaching others, especially children and youth, how to play musical instruments and perform certain dances in religious ceremonies.

The petitioner submitted a December 5, 2005 letter from [REDACTED], assistant abbot of [REDACTED]. The letter confirmed that the beneficiary “was a nun or acolyte monk” from 1985 to 1988, and “trained to perform the activities of a Waiya Watchakorn.” The petitioner also submitted a December 10, 2005 letter from [REDACTED], abbot of [REDACTED] in which he

stated that the “Waiya Watchakorn is a traditional religious function in all Thai Buddhist Temples. The position has existed for thousands of years and is essential to the functioning of a temple, given he monastic vows of Thai Buddhist monks.”

On April 28, 2008, an immigration officer (IO) visited the petitioner’s premises for the purpose of verifying the petitioner’s claims. The IO reported that the beneficiary was identified to him as a “Lady Monk,” but subsequent documentation provided by the attorney indicated that the beneficiary was a “member” of the organization, rather than an employee. The director notified the petitioner of the IO’s findings in her April 2, 2009 NOIR. In response, the petitioner submitted a copy of the beneficiary’s schedule; however, the document simply lists days and times. It does not include any specific duties. The petitioner also submitted a statement in which it reiterated that becoming a Waiya Watchakorn “takes years of tremendous religious discipline, faith, hard work, compassion and sincerity.”

On appeal, the petitioner submits a “Ruling of the Supreme Sangha Council” appointing the beneficiary and providing her with “authority in Article No. 4 at [sic] stated by the ruling of the Supreme Council.” However, the petitioner submitted no information about Article 4.”

Nonetheless, we find that the petitioner has submitted sufficient documentation to establish that the proffered position qualifies as that of a religious worker. Our finding, however, is not inconsistent with the findings of the IO. The onsite investigation revealed that the beneficiary was listed as a member of the petitioning organization but was not identified as an employee. The petitioner must not only establish that the position is a religious occupation but that the beneficiary will work in the religious occupation. In response to the NOIR, counsel stated that abbot misunderstood the question regarding the beneficiary’s status and that she is indeed a member of the petitioning organization as well as a religious worker. However, the evidence of record does not clearly resolve this issue.

Additionally, the petitioner has not established how the beneficiary will be remunerated. The regulation at 8 C.F.R. § 214.2(r)(1), as it read when the petitioner filed the petition, provided in pertinent part, that evidence submitted with the petition shall submit a letter from an authorized official of the organization explaining the arrangements made, if any, for remuneration for services to be rendered, including a description of nonmonetary remuneration such as housing, food, clothing, and other benefits. The petitioner stated on the Form I-129, Petition for an Alien Worker, that the beneficiary would not receive a salary. However, it provided no other information about the remuneration that the beneficiary would receive.

The record is remanded to the director 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.