

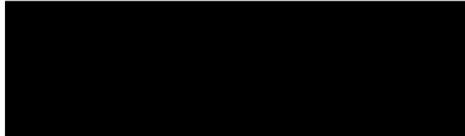
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**U.S. Department of Homeland Security**  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



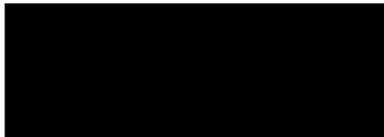
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 18 2011

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:



**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 \$630. 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 non-denominational Christian Missions Organization." 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 its missions coordinator. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation or that the petitioner has the ability to pay the beneficiary a wage.

On appeal, counsel asserts that director "erred by giving improper weight to the administrative aspects of the Beneficiary's job" and "in its interpretation of the Petitioner's 'ability to pay' a certain wage." 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 first 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.

The petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that the beneficiary would be responsible for organizing and overseeing mission trips. On the Form I-129 Supplement, the petitioner described the duties of the position:

He will recruit personnel to travel to countries around the world on behalf of [the petitioner], organize and prepare missions teams to travel abroad, work with travel agencies to obtain airline tickets, coordinate with team leaders to schedule each trip's activities.

The petitioner's attestation, part (vii) mirrors the duties listed in the supplement.

In a request for evidence (RFE) dated May 14, 2010, the director restated the requirements of the regulation cited above and instructed the petitioner to, among other things:

Provide the following evidence 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.

In response, the petitioner stated that the missions coordinator "must be able to make cross-cultural contacts in the developing world and maintain these relationships. He must be able to design short-term missions trips that fit the abilities of groups who want to participate." In a

December 22, 2008 letter, the petitioner's president, ██████████, reiterated that the beneficiary's duties would be to enlist potential mission personnel to travel to different countries on behalf of the petitioner, organize and prepare mission teams to travel abroad, work with travel agencies and coordinate with team leaders to schedule activities for each trip. ██████████ stated that the beneficiary's "ability to communicate with professionals from other countries will be invaluable for our networking opportunities abroad."

In denying the petition, the director stated that the job description provided by the petitioner indicates that many of the duties are administrative in nature and that the duties of the position "do not have religious significance and embody the tenets of that particular religious denomination." On appeal, counsel asserts:

The tasks that the Beneficiary performs in his work with the Petitioner are all in furtherance of the organization's religious creed and beliefs. In his capacity as a religious worker for the Petitioner, the Beneficiary spends most of his time training mission teams, speaking and preparing to speak in churches, and leading mission trips. Clearly, these are much more than administrative functions. USCIS improperly focused attention on those aspects of the job which seemed administrative. USCIS should have realized that those functions were merely incidental to religious activity instead of amplifying it while entirely disregarding the suppressing importance of the non-administrative functions that the Beneficiary would perform.

USCIS erred by giving improper weight to the administrative aspects of the Beneficiary's job. Although "religious occupation" does not include primarily administrative or support services, the Beneficiary would not primarily perform those functions. The job description provided included certain descriptive words that could be construed as administrative, but USCIS gave undue weight to those aspects of the job. In reality, the job is religious in nature, not administrative. In addition to being the Missions Coordinator, the Beneficiary is also a missionary, and is listed as such on the Petitioner's website. He preaches in domestic and foreign churches, and he speaks on behalf of the organization. He also participates in mission trips with the Petitioner. The depth of the level of his involvement clearly shows that the Beneficiary is not merely an administrative worker, but a worker engaged in a religious occupation.

Counsel's argument is without merit. In each instance that the petitioner described the duties of the proffered position, it outlined the administrative responsibilities of the job. The petitioner did not allege, as counsel asserts, that the beneficiary would serve as a missionary, that he preached in any forum, or that he participated in mission trips. Without documentary evidence to support the claim, the assertions of counsel do not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The documentation in the record clearly reflects

that the beneficiary's value to the petitioner is in an administrative function, recruiting for trips, using his contacts to facilitate the success of the trips and handling the logistics for those traveling. In an undated statement submitted with the petitioner's response to the RFE, the beneficiary stated that people contact the organization because they want to help the poor and those in need and that they look to the petitioner to organize their mission trips. The record does not establish that the duties of the proffered position relate to a traditional religious function and is recognized as a religious occupation within the denomination or that the duties primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

On appeal, the petitioner submits an undated letter from [REDACTED], its executive director, to the beneficiary, in which he states:

The petitioner is prepared to offer you a salary of \$30,000 per year, as a missionary to direct the international mission aspect of our ministry. The primary goal is to share the gospel of Jesus Christ through various avenues. Your role would include speaking in churches and other public forums. Additional duties include, but are not limited to interviewing prospective clients, advertising international trips to other ministry organizations, overseeing and directing the mission teams and their work in a foreign country and being the liaison between host ministries and [the petitioner].

The letter from [REDACTED] indicates that the petitioner is attempting to change the terms and conditions of its offer to the beneficiary. The letter states that the beneficiary's duties will include duties as a missionary and speaking in churches. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The petitioner has failed to provide sufficient documentation to establish that the proffered position is a religious occupation as defined by the regulation.

Citing the regulation at 8 C.F.R. § 204.5(g)(2), the director determined that the petitioner had failed to establish that it had the ability to pay the beneficiary. The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains

lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner stated on the Form I-129 Supplement:

As with all employees of [the petitioner, the beneficiary] will not receive a salary from the organization; rather, his income will be derived from donations provided by supporters who have committed to him on a regular basis. In light of this, his annual income may vary, but usually \$20, 000 or more is expected.

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. IRS 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.

(ii) *Self support.*

(A) If the alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.

(B) An established program for temporary, uncompensated work is defined to be a missionary program in which:

- (1) Foreign workers, whether compensated or uncompensated, have previously participated in R-1 status;
- (2) Missionary workers are traditionally uncompensated;
- (3) The organization provides formal training for missionaries; and

(4) Participation in such missionary work is an established element of religious development in that denomination.

(C) The petitioner must submit evidence demonstrating:

- (1) That the organization has an established program for temporary, uncompensated missionary work;
- (2) That the denomination maintains missionary programs both in the United States and abroad;
- (3) The religious worker's acceptance into the missionary program;
- (4) The religious duties and responsibilities associated with the traditionally uncompensated missionary work; and
- (5) Copies of the alien's bank records, budgets documenting the sources of self-support (including personal or family savings, room and board with host families in the United States, donations from the denomination's churches), or other verifiable evidence acceptable to USCIS.

In her RFE, the director advised the petitioner to submit evidence of compensation as outlined by the above-cited regulation. In response, the petitioner submitted an undated and uncertified copy of IRS Form 990, Return of Organization Exempt from Income Tax, for 2008, on which it reported net revenue of \$41,852. The petitioner reiterated, however, that the beneficiary's compensation would be from donations. The petitioner stated that the beneficiary "subsists on these gift donations."

On appeal, counsel asserts that the director "erred because use of an organization's good name is a form of compensation that should have been considered" and that "[d]onors who recognize the Petitioner's name and are familiar with its work are more apt to give to its missionaries than they would be to other missionaries." Counsel's argument is without merit. Counsel has submitted no documentation to persuade the AAO that the use of the petitioner's name in order to solicit funds is a form of compensation. Further, the petitioner submitted no documentation to establish that the petitioner's name is of substantial value as claimed by counsel or that the beneficiary is able to capitalize on his association with the petitioner.

Further, as discussed previously, the petitioner now states on appeal that it would pay the beneficiary \$30,000. Also as previously discussed, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. at 176.

The petitioner's original claim indicated that the beneficiary would be responsible for securing his own income by seeking gift donations. Such an arrangement contravenes the regulation which requires that the petitioner compensate the beneficiary. It does not allow for a third party

to provide compensation. Accordingly, the petitioner has failed to provide verifiable documentation of how it intends to compensate the beneficiary as required by the regulation.

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.