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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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[REDACTED]

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Date: **JUL 12 2011** Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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.

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
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion to reopen will be granted. The previous decision of the AAO will be withdrawn. The petition will be denied.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

The petitioner is a 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 a religious caretaker (Shamash). As a result of a compliance review onsite visit, the director determined that the petitioner had not established that it operates as claimed in its petition and that the beneficiary will be performing the duties of a religious caretaker.

Counsel for the petitioner did not submit any additional documentary evidence with the Form I-290B, Notice of Appeal or Motion. Counsel stated on the Form I-290B, filed on September 4, 2009, that she would submit a brief and/or additional evidence to the AAO within 30 days; however, the AAO had received no additional documentation at the time it issued its decision on August 27, 2010. The AAO therefore summarily dismissed the petition.

Counsel states that on October 5, 2009, the petitioner submitted additional documentation to the California Service Center to establish its existence. Counsel submits a copy of a Federal Express tracking query, indicating that a package had been delivered to the California Service Center on October 5, 2009. Counsel also submits a copy of the "complete filing" that she submitted in the October 2009 correspondence.

The instructions for the Form I-290B instructs the filer that "You must send any materials you submit after filing the appeal" to the AAO. Counsel mailed the additional evidence submitted in support of the appeal to the California Service Center. The regulation at 8 C.F.R. § 103.2(a)(1) provides:

Every application, petition, appeal, motion, request or other document submitted on any form prescribed by this chapter I, notwithstanding any other regulations to the contrary, must be filed with the location and executed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter I requiring its submission.

Accordingly, the petitioner, through counsel, failed to submit documentary evidence on appeal in accordance with instructions. Nonetheless, the additional documentation was submitted to the California Service Center on October 5, 2009. The AAO did not issue its decision until almost a year later, in September 2010. The time frame reflects that there was sufficient time for the service center to forward the petitioner's documentation to the AAO prior to the time the AAO issued its

decision. Accordingly, the AAO finds that the petitioner submitted its additional documentation in a timely manner and grants the petitioner's motion to reopen.

The petitioner listed its address on the Form I-129, Petition for a Nonimmigrant Worker, as [REDACTED]. It also indicated that the beneficiary would work at [REDACTED]. On September 20, 2007, an immigration officer (IO) visited the petitioner's premises at [REDACTED] and found the address to be that of bank. Information obtained by the IO reflected that the petitioner "also operates under the name [REDACTED] and has an administrative office in the [REDACTED]." The IO reported that other IOs had visited the address at [REDACTED] and found it to be a "Mr. Mailbox" site.

In a February 28, 2009 Notice of Intent to Deny (NOID) the petition, the director notified the petitioner of the IO's findings and that the evidence does not establish that it is a bona fide nonprofit religious organization. In response, the petitioner stated that it maintained a school (recently moved) and an administrative office in the bank building. The petitioner further stated that the [REDACTED] address was "incorrectly listed on the petition as the workplace" and that it is fact "the centralized mail crop for the petitioner." The petitioner stated that it is located at [REDACTED] as part of a residential complex. The petitioner submitted photographs of a building that it stated contained its congregation. One photograph depicted doors with an overhead sign written in Hebrew which was not accompanied by an English translation as required by the regulation at 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.

The director denied the petition, stating:

Based on the evidence provided, the petitioner has not clearly established that the petitioning organization exists as a functioning non-profit religious organization. The petitioner provided photographs, however, they were only pictures of the outside of the building and the writings on the signs could not be understood as they are written in a different language. The petitioner did not provide any evidence of religious activity at any of the addresses listed. The petitioner also did not provide evidence establishing that the beneficiary has been or will be performing the duties of a "Shamash[.]"

On appeal, the petitioner submits a translation of the words above the door of the building that it states houses its congregation. However, the translated document, which indicates that the words are "Nadworno Institutes," does not support the petitioner's claim that it existed as a congregation at the location. The petitioner also submitted photographs of what it states are of the inside of its facilities at [REDACTED] and a copy of a brochure which indicates that the Yeshiva Tiferes Shulem

Nadverna is located at [REDACTED] however, the petitioner submitted no documentation to establish that the congregation is also located at the address. Other than the name and address, the brochure is written in Hebrew and the petitioner failed to submit a translation of the document. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3).

The evidence submitted does not establish that the petitioner exists in the capacity claimed in the petition.

The director also determined that the petitioner had not established that the beneficiary has and will be working as a Shamash.

In its June 7, 2006 letter, the petitioner stated:

One of the most important employees in our congregation is the [REDACTED] Besides being the [REDACTED] is a person responsible for the maintaining of the premises as well as assuring that all activities and behaviors are done with accordance to strict Jewish Religious Law. Therefore, the [REDACTED] himself must be an expert in Jewish Law and its practices. Since most of the members of the congregation are Hebrew speaking members, our Shamash must be fluent in Hebrew as well.

The petitioner stated that the beneficiary had been a paid employee of its organization since December 1, 2005 and that he worked 40 hours per week at an annual salary of \$25,000. In response to a November 8, 2006 request for evidence from the director, the petitioner submitted a copy of the beneficiary's 2004 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, which reflected \$2,083.32 in wages from Tiferes Bnos Payroll Account with an address of [REDACTED]. Documentation in the record indicates that Tiferes Bnos is the petitioner's girls' school.

In denying the petition, the director determined that the petitioner had not only failed to establish that it operated in the capacity it claimed in the petition but that it also failed to establish that the beneficiary will work as a Shamash. In a September 24, 2009 letter, the petitioner further stated:

[T]he Shamash is the Rabbi's "right hand." A Shamash serves as the religious liaison between congregation members and the Rabbi. The Shamash is needed to ensure that the congregation follows Halacha according to the Rabbi's decree, especially the laws governing prayers and synagogue communal worship.

In the role of Shamash with out Congregation [the beneficiary] performed the traditional religious duties of a Shamash.

The petitioner also outlined a schedule of the beneficiary's work on a daily, weekly and monthly basis.

The petitioner is not required to establish that the beneficiary has previous experience in the religious occupation. Accordingly, for purposes of the petition, the AAO will consider only whether the petitioner has established that the beneficiary will work as a Shamash. While the petitioner has outlined the duties of the proffered position within its organization, it has not submitted sufficient documentation to establish that the proffered position is a religious occupation. 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.

Counsel's unsupported statements regarding the role and importance of the shamash are insufficient to establish the petitioner's burden of proof. Without documentary evidence to support the claim, the assertions of counsel will 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 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner has submitted no documentation to establish that the proffered position is recognized as a religious occupation within its denomination, that the duties of the position primarily relate to a traditional religious function, and primarily relate to and clearly involve, inculcating and carrying out the religious creed and beliefs of the denomination.

Accordingly, the petitioner has failed to establish that the beneficiary will work in a religious occupation or vocation as that term is defined by the regulation.

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 decision of the director will be affirmed. The petition is denied.

ORDER: The director's decision of August 4, 2009 is affirmed. The petition is denied.