

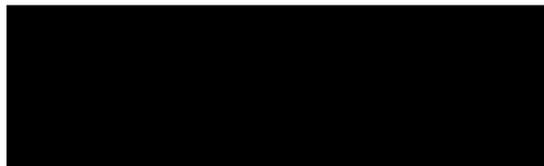
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



813

DATE: **JUN 03 2011** OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

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. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further action and consideration.

The petitioner is a Hindu religious organization, described as "a legitimate sub-sect of Divine Service Home in Nepal." It seeks to classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act, to perform services as a religious instructor/religious counselor. The director determined that the petitioner had not provided enough information about its location, or established that the beneficiary's position qualifies as a religious occupation.

On appeal, the petitioner submits a brief from counsel, witness statements, and other exhibits.

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.

U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. § 214.2(r)(1) state that, to be approved for temporary admission to the United States, or extension and maintenance of status, for the purpose of conducting the activities of a religious worker for a period not to exceed five years, an alien must:

- (i) Be a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least two years immediately preceding the time of application for admission;
- (ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);
- (iii) Be coming solely as a minister or to perform a religious vocation or occupation as defined in paragraph (r)(3) of this section (in either a professional or nonprofessional capacity);
- (iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and
- (v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

The AAO will first consider the issue of the petitioner's location. The USCIS regulation at 8 C.F.R. § 214.2(r)(8)(x) requires the petitioner to attest to the specific location(s) of the proposed employment. Any information provided by the petitioner is subject to verification as described in the regulation at 8 C.F.R. § 214.2(r)(16):

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 petitioner filed the Form I-129 petition on March 10, 2010. In the accompanying employer attestation, asked the "[n]umber of employees working at the same location where the beneficiary will be employed," the petitioner answered "2." Asked to specify the addresses where the beneficiary would work, the petitioner provided the address of its "main location" on [REDACTED] and added: "The R-1 religious Worker also travels to other temples in the US to conduct services and perform religious exercises." A grant deed, notice of supplemental assessment and other documents indicate that the petitioner owns the Whittier Boulevard site of its main location.

On April 25, 2008, in connection with an earlier petition filed by the petitioner, a USCIS officer visited the petitioner and reported: "There are no regular services or place or practice or 'worship.' Every few days the beneficiaries travel to a new location where they may stay a day or a few days and then move to another location where their services are requested." The officer concluded that the petitioner had failed its compliance review.

On June 8, 2010, the director cited the failed compliance review, and instructed the petitioner to submit a schedule showing "the days and times the petitioner is open to the public. Also, include the days and times the beneficiary is working at the address of the petitioner." In response, the petitioner submitted a "Daily Activity Schedule," showing the following activities:

	Monday-Friday	Saturday	Sunday
6:00-7:00 a.m.	Meditation	Meditation	
7:15-8:15 a.m.	Yoga	Yoga	Meditation
8:30-9:00 a.m.	Prayer & Music	Prayer & Music	Prayer & Music
11:00 a.m.-noon		Yoga	Yoga
4:00-6:00 p.m.			Spiritual discourses
6:00-7:00 p.m.	Yoga	Yoga	Yoga
7:00-8:00 p.m.	Meditation	Meditation	Meditation
8:00-8:30 p.m.	Prayer & Music	Prayer & Music	Prayer & Music

[REDACTED] president of the petitioning entity, stated that the beneficiary participates in the meditation and spiritual discourse sessions. An accompanying itinerary of the beneficiary's past activities indicated that the beneficiary conducted services at motels and private homes in Kansas City, Missouri; Topeka, Kansas; Tampa, Florida; and other locations, at various times of day ranging from 11:00 a.m. to 10:00 p.m. This information is consistent with the USCIS officer's report that "[e]very few days the beneficiaries travel to a new location," and with the petitioner's own original claim that the beneficiary "travels to other temples in the US to conduct services and perform religious exercises."

The director denied the petition on August 24, 2010, stating:

The record fails to support the location where the beneficiary will be working. The petitioner submitted a proposed work schedule for the beneficiary. However, the proposed schedule fails to identify the complete work location, address, and contact information/responsibility of the beneficiary in the scheduled activities. In addition, the schedule contradicts the petition information and the rental lease information. For instance, the schedule shows morning worship from 06:00 am to 8:30 pm Monday through Sunday. However, the lease does not show any activities for any early morning worship. Moreover, the schedule shows that the beneficiary will work away from the work location. However, there is no verifiable documentation to demonstrate the locations where the beneficiary will be working.

On appeal, counsel states:

The Beneficiary performs her religious duties mainly at the Center but also goes to outside the premises to conduct the religious rituals when a Devotee requests. . . . This has been reflected in the Beneficiary's daily work schedule that was previously submitted and we are providing affidavits from the Devotees to confirm their requests.

Furthermore, the President of the [petitioning entity] owns the property [where] the religious organization is located. There is no rental lease for this location and no set hours for the scheduled religious activities that would contradict the daily work schedule submitted. Therefore, the contention of the Service stating in the notice of denial that "the lease does not show any activities for any early morning worship" is inexplicable to us.

The record supports counsel's observation that the petitioner owns the Whittier Boulevard property. The AAO can find no lease in the record, let alone a lease that limits the petitioner's ability to use the property in the early morning hours.

With respect to the beneficiary's activities at homes and other locations, the director did not explain why these travels indicate ineligibility for the classification. In terms of "verifiable documentation to demonstrate the locations where the beneficiary will be working," the record indicates that many of the beneficiary's home visits were for the purposes of funerals and other events which, by their nature, are not planned far in advance.

The director's concerns about the beneficiary's work locations are either unclear or contradicted by the record. The AAO will therefore withdraw the director's finding in this regard.

The second and final stated basis for denial concerns the nature of the beneficiary's intended duties. Under the USCIS regulation at 8 C.F.R. § 214.2(r)(3), a religious occupation must meet 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 the employer attestation accompanying the Form I-129 petition, the petitioner offered the following summary of the beneficiary's responsibilities:

Teach devotees the "Divine Service" which is the religious denomination of the religious organization. Conduct worship by participating in bhajans, satsangs and Aarti. Conduct religious discourses and Hindu scriptures with musical instruments and devotional songs. Conduct Meditation sessions in the areas of Satsang, Bhajan and Dhyana; Organize religious session outside of the Center at the devotees homes and serve as counselor to their needs. Organize and conduct retreats for followers. Conduct comparative study of other religions as they relate to the practice of Hinduism.

Nearly identical lists of the beneficiary's responsibilities appeared in an affidavit from [REDACTED], the petitioner's treasurer, and in a letter from [REDACTED], who added that the petitioner

basically draws inspiration from the Hindu religion and spreads the core values of the religion through spiritual discourses. These values are derived from the three tenets of the religious organization: Knowledge, Meditation and Satsang.

The Knowledge:

The knowledge is the technique of Spiritual Insight (Raj Yog, Meditation). . . . The science of the spirit is a sovereign science, a sovereign secret, supremely holy, most excellent, directly enjoyable, attended with virtue, very easy for practice and imperishable. It is all comprehensive and all inclusive, knowing which nothing remains to be known.

Meditation:

Meditation is the upward voyage of the soul from the physical plane to the spiritual plane. . . . It is an experience purely based on a spiritual act. It is to be conscious of one's own consciousness. . . .

Satsang:

Satsang is the company of Saints. Satsang, discourses on the nature and Knowledge of God, is a Hindi word meaning the Company of truth, or the company of Saints. The first step towards receiving knowledge is to attend satsang, listen to it carefully and ask enquiring questions with a guileless heart. Satsang is the root of all blessings. The company of saints vanishes sorrow and brings us joy. The company of saints

(satsang) leads to salvation, whereas the company of the worldly persons and getting associated with them constantly leads to worldliness. . . .

The religious group is led by the Mahatmas. Mahatmas are religious instructors and religious counselors. They read the Hindu scriptures[,] mainly Bhagawad Geeta, Ramayana and Mahabharat which are the 3 most important of the Hindu religious scriptures. They also read of other religions for comparative purposes. They then disseminate the essence of these scriptures to the people. They achieve this through religious discourses and music. These Mahatmas are chosen by other Mahatmas who have been in the service of God for many years who are knowledgeable of the practice of Hinduism.

stated that the beneficiary “has been invited by [the petitioner] and their Tampa, Florida, Center for teaching yoga and meditation, and for the presentation of religious discourses with musical instruments and devotional songs to devotees in their congregations.”

Promotional fliers from 2009 contain descriptions of the beneficiary’s work. One states: “Her melodious Bhajans are centered on various prayers from Ramayana, Geeta, Vedas, and Upanishads,” while others refer to her “spiritual discourses.”

In the June 2010 notice, the director instructed the petitioner to submit “a **detailed description** of the work to be done, including specific job duties,” and to “explain how the duties of the position relate to a traditional religious function.” In response, the petitioner submitted a new letter in which repeated previous claims.

The petitioner submitted the beneficiary’s “Daily Activities Schedule,” showing “religious discourses based on Hindu scriptures and Holy books,” “religious worship with the use of musical instruments and devotional songs,” “meditation sessions,” “religious sermons,” along with providing counseling and organizing retreats.

The director, in denying the petition, concluded: “The beneficiary’s duties do not relate to a traditional religious function. A review of the petition reveals that the beneficiary will be primarily involved in secular and not religious activities. The petitioner has not shown that the beneficiary’s essential job functions are inherently or predominantly religious.”

On appeal, counsel cites *Love Korean Church v. Michael Chertoff*, No. 07-55093, CV-05-09021-RJK (9th Cir. 2008), stating: “the court ruled that the AAO’s position where all the duties of a proposed position must be ‘not primarily secular in nature’ and must be ‘related’ to religious activities **is inconsistent with the definition of ‘religious occupation’ set forth in the above regulations**” (counsel’s emphasis). The court’s ruling in *Love Korean Church* relates to obsolete regulations that USCIS replaced with revised regulations on November 26, 2008, before the court issued its decision on December 3, 2008. *See* 73 Fed. Reg. 72276 (Nov. 26, 2008). The new

regulations, quoted in full earlier in this decision, specifically require that the beneficiary's "duties must primarily relate to a traditional religious function and . . . must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination." The new regulations superseded the former regulations, and therefore counsel cannot rely on the older regulations or any court decision relating to the interpretation of those now-defunct regulations.

That being said, the director did not explain the conclusion that "the beneficiary will be primarily involved in secular and not religious activities." The director did not explain, for instance, the supposed secular purpose of "melodious Bhajans . . . centered on various prayers from Ramayana, Geeta, Vedas, and Upanishads." The record, on its face, indicates that the beneficiary participates in "spiritual discourses" and religious rituals such as funerals. The director identified no flaws in the petitioner's claims or evidence, and cited no finding that the petitioner had misrepresented the nature of the beneficiary's duties. The director simply pronounced the beneficiary's duties to be secular and lacking religious significance. When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i). Accordingly, the AAO withdraws the director's finding in this matter.

The AAO will withdraw both of the director's stated grounds for denial, and therefore the denial decision itself. Nevertheless, another potentially disqualifying issue exists, which the petitioner must address before USCIS can properly approve the petition. The AAO may identify additional grounds for denial beyond what the Service Center identified 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 USCIS regulation at 8 C.F.R. § 214.2(r)(11)(i) requires the petitioner to submit verifiable evidence explaining how the petitioner will compensate the alien:

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.

On Form I-129, the petitioner stated that the beneficiary would receive an annual salary of \$12,000 plus "Room, board, lodging, utilities (\$18,000.00) Approx. value." The petitioner claimed gross annual income of \$121,025, and "projected" net annual income of \$150,000. The petitioner did not explain why it anticipated a net annual income nearly \$30,000 in excess of its gross annual income.

Financial statements submitted with the petition included the following figures:

Calendar year	2007	2008	2009
Cash at beginning of period	\$25,692	\$75,289	27,859 ¹
Total income	65,293	171,135	121,025
Net other income (loss)	(5,717)	230	4
Total expenses	72,341	142,604	270,892
Including:			
Legal Fees	8,159	65,269	188,161
Salaries	10,000	24,000	24,000
Net income (loss)	(12,764) ²	28,760	(149,863)
Net cash from financing	63,242	(80,696)	40,970
Cash at end of period	75,289	23,353	10,047

The petitioner submitted copies of IRS Form W-2 Wage and Tax Statements, showing that the petitioner paid the beneficiary \$24,000 in 2008 and \$22,000 in 2009. These amounts exceed the beneficiary's stated annual salary, but do not appear to reflect the petitioner's provision of housing, food, or other material support. The petitioner did not explain the nature of the beneficiary's housing arrangements, and the itemized financial statements did not include line items clearly identifiable as relating to the beneficiary's expenses.

Materials in the record indicate that the petitioner was involved in costly litigation in 2008 and 2009, resulting in legal fees being the petitioner's biggest expense in each of those two years. Furthermore, the record shows that the beneficiary frequently travels to other parts of the country. The record does not reveal what arrangements the petitioner makes for the beneficiary's housing and other support during these periods of travel. The record, as it now stands, does not sufficiently show that the petitioner has been supporting the beneficiary at the promised rate, or that it will be able to do so in the future. The petitioner must address and overcome this issue before USCIS can properly approve the petition.

For the reasons discussed above, the director's decision cannot stand and the AAO hereby withdraws that decision. At the same time, however, the record as it now stands does not permit approval of the petition. Therefore, the AAO will remand this matter to the director. 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 Administrative Appeals Office for review.

¹ It is not clear why the cash at the beginning of 2009 does not match the end-of-year figure for 2008.

² The figures provided yield a total loss of \$12,765. The \$1 difference may result from rounding.