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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: **MAR 25 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,

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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 dismiss the appeal.

The petitioner is a Sunni Islamic center that operates a mosque and a school. 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 submitted sufficient information regarding the offered position and compensation, and that the petitioner had not documented its tax-exempt status.

On appeal, the petitioner submits a brief from counsel and several exhibits. Counsel protests that the director did not issue a request for evidence, even though the record contains no facially disqualifying information. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.2(b)(8)(ii) permits, but does not require, the director to issue a request for evidence. Under that regulation, if all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.

Because the director did not afford the petitioner an opportunity to supplement the record prior to the denial, we will give due consideration to the materials submitted on appeal.

Before we discuss the merits of the petition and the appeal, we note that substantially revised regulations for R-1 religious workers went into effect on November 26, 2008, several months before the petitioner filed the Form I-129 petition on February 12, 2009. By the time the director denied the petition on August 21, 2009, the new regulations had been in effect for the better part of a year, but the denial notice contains numerous citations to the older, obsolete version of the regulations. Nevertheless, some of the specific grounds for denial relate to the new regulations as well as to the old, and therefore the denial will stand.

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 regulation at 8 C.F.R. § 214.2(r)(1) states 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.

IRS STATUS

The first issue we will consider concerns the petitioner's tax-exempt status. In instances such as this where the petitioner claims to be a house of worship (rather than some other type of religious organization), the current USCIS regulation at 8 C.F.R. § 214.2(r)(9) requires the petitioner to submit either (i) a currently valid determination letter from the Internal Revenue Service (IRS) showing that the organization is a tax-exempt organization; or (ii) for a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt.

On the petition form, the petitioner listed its Federal Employee Identification Number (EIN) as [REDACTED]. The petitioner's initial submission included a copy of an IRS determination letter, dated January 8, 1992. The IRS letter shows the name of the petitioning entity, but the letter shows the exempt organization's EIN as [REDACTED]. The letter was addressed to an entity in [REDACTED] the petitioner is [REDACTED].

The director denied the petition on August 21, 2009, in part because the IRS determination letter did not show the petitioner's address or EIN.

On appeal, counsel states that the Form I-129 petition accidentally included the EIN of [REDACTED] which is an affiliated day school of the mosque." (According to Part 7 of Form I-129, counsel prepared that form.) The petitioner submits materials on appeal linking the [REDACTED] shown on the Form I-129, and demonstrating that the petitioner used the [REDACTED] for administrative purposes in the early 1990s.

The available evidence indicates that the IRS recognizes the petitioner as tax-exempt, and classified the petitioner under section 170(b)(1)(A)(i) of the Internal Revenue Code, which pertains to churches. Therefore, we withdraw the director's finding that the petitioner has not shown that the IRS recognizes it as a tax-exempt church or religious organization.

THE PROPOSED POSITION

The next issue concerns the beneficiary's duties and qualifications for his intended position as an imam. The USCIS regulation at 8 C.F.R. § 214.2(r)(5) contains the following relevant definitions:

Minister means 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.

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.

Religious vocation means a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life. The religious denomination must have a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. Examples of vocations include nuns, monks, and religious brothers and sisters.

The petitioner's attestation that accompanied the petition included the following description of the beneficiary's proposed daily duties:

Leads the 5 required daily prayers; provides adult education lectures at least once each week; prepares and conducts Friday sermons; performs religious rituals and rites regarding life cycle events such as birth, marriage, death as well as holidays and cultural events; publish and distribute [redacted] regarding community news, cultural and religious events; personal counseling.

In a separate statement, [redacted] board chair of the petitioning organization, referred to the beneficiary as a "minister and religious advisor" and a "Chaplain."

In a letter dated February 28, 2003, [redacted] of [redacted], stated: "The credentials of [the beneficiary] indicate that, in the judgment of the undersigned, he has achieved the equivalent of a Master's degree in Islamic Theology at an accredited institution in the United States." [redacted] cited the beneficiary's 1997 [redacted] degree from [redacted]. The petitioner submitted a certified translation of a certificate from that university, attesting to the beneficiary's receipt of the degree.

In denying the petition, the director "concluded that the terms of the beneficiary's service . . . do not rise to the level of a religious vocation." The petitioner had not claimed otherwise.

The director stated: "Because . . . counsel has asserted that the beneficiary's professional knowledge and career qualify the beneficiary for this religious position in a professional capacity, USCIS must look to the regulatory requirement for religious professions." The director did not specify what that "regulatory requirement" is. In any event, while the obsolete regulations contained provisions specifically with regard to professional occupations, the current regulations in effect since 2008 contain no such provisions. While the underlying statute contains the word "professional," the statute does not distinguish between professional and non-professional religious workers in terms of benefits available to those workers. Therefore, any regulatory distinction between professional and non-professional religious workers would serve no practical purpose.

The director found that the petitioner did not submit a transcript or other evidence to confirm the claim that the beneficiary holds a master's degree in Islamic Theology, or to show that "such [a] degree qualifies the beneficiary to perform the duties of a religious vocation or occupation." With respect to the absence of a transcript, nothing in the regulations requires the petitioner to submit such a transcript, and the director did not previously instruct the petitioner to submit a transcript. Therefore, the petitioner's failure to submit the transcript is not a valid basis for denial of the petition.

The director also concluded that the petitioner "has not established that the beneficiary's activities for the petitioner would require any religious training or qualification," or "that the beneficiary is performing duties above and beyond those of a caring member of the denomination." In reaching these conclusions, the director did not explain why the beneficiary's duties did not constitute qualifying religious work; the director simply declared the beneficiary's work to be non-qualifying.

We note that, if a given position has certain minimum training and/or educational requirements, then the petitioner must show that the beneficiary meets those requirements. (We will address this issue below.) This does not mean, however, that a position that does not "require any religious training or qualification" cannot qualify an alien for R-1 classification. The statute and regulations do not establish any minimum threshold of training or education that a position must meet in order to qualify as a religious occupation or vocation.

The petitioner, on appeal, submits documentation showing that an imam is considered to be a member of the clergy, and therefore, for our purposes, a minister. This is consistent with the petitioner's description of the beneficiary's duties. The current regulation at 8 C.F.R. § 214.2(r)(10) states:

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

(iii) For denominations that do not require a prescribed theological education, evidence of:

- (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.

Instructed to list the beneficiary's "qualifications for the position offered" in the attestation that accompanied the initial filing of the petition, the petitioner listed the beneficiary's three academic degrees from [REDACTED] and stated that the beneficiary was "[o]rdained as [REDACTED] simultaneously with award of Bachelor's degree."

In denying the petition, the director stated that the petitioner "has not provided any documentary evidence concerning the requirements one must [meet] in order to work as an Imam in its denomination." On appeal, counsel states:

Nowhere in the Decision was there an evaluation of the qualifications [REDACTED] the Center Director, and why the beneficiary of this petition fails to fit those qualifications. The Decision is confusing as, without recognizing the duties and responsibilities of a Muslim Imam, how could the Center Director definitively determine that the beneficiary lacks these qualifications?

With respect to the qualifications for the beneficiary's position, counsel asserts: "Different Islamic subgroups vary as to qualifications and requirements for their spiritual leaders." Counsel does not, however, address the specific requirements of the petitioner's particular "Islamic subgroup." Instead, counsel relies on the listing for "Clergy" in the *Occupational Outlook Handbook* published by the U.S. Department of Labor. That listing indicates: "A bachelor's degree is the minimum formal education required for these occupations." Counsel's reliance on this generalized listing, which applies across several religions (referring to "sacred texts such as the Bible, Torah, or Koran"), contradicts counsel's assertion, in the same brief, that requirements vary even among "[d]ifferent Islamic subgroups."

The petitioner submits additional information about Al-Azhar University, but this information does not refer to the training of imams at all, much less confirm that a degree from Al-Azhar University is functionally equivalent to ordination as a minister.

Upon consideration, we find that the petitioner has not submitted sufficient documentary evidence to meet the regulatory requirements of 8 C.F.R. § 214.2(r)(10). We therefore affirm the director's finding that the petitioner "has not provided any documentary evidence concerning the requirements one must [meet] in order to work as an Imam in its denomination."

COMPENSATION

The remaining grounds for denial concern the beneficiary's offered compensation. The director divided this issue into two grounds, concerning the petitioner's intent to pay the beneficiary and, separately, its ability to do so. Under the current regulatory structure, these related issues fall under a single heading.

Under the regulation at 8 C.F.R. § 214.2(r)(11)(i), the petitioner's initial evidence must state how the petitioner intends to compensate the alien, including specific monetary or in-kind compensation. The petitioner must 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.

Isljam Capric stated that the beneficiary will receive "a salary of \$40,000.00 per year plus room and board contributed by one of our members." The attestation accompanying the Form I-129 indicated that the beneficiary would live "in nearby apartment premises contributed by a member of the center."

The petitioner submitted a copy of an audited financial report showing that its revenue during calendar year 2005 exceeded its expenses by \$150,711; after income adjustments, the petitioner had \$62,189 in available cash as of December 31, 2005. An itemized list of the petitioner's 2005 expenses did not include any salaries, and the only expense item equal to or greater than \$40,000 was \$57,297 for "Utilities."

In denying the petition, the director stated:

In Part 5 of the Form I-129, the petitioner lists that the beneficiary will be compensated \$40,000.00 per year, however, a review of the record does not indicate[] the petitioner has sufficient fund[s] or the capacity to compensate the beneficiary[] for his service. . . . It appears that the alien would be required to make a living in the United States by obtaining other, secular employment. . . .

[T]he evidence contained in the record does not provide a complete picture of the petitioner's financial status. The [petitioner] did not provide any information regarding the number of its members. . . . the petitioner failed to submit recent audits. . . . The record does not establish that the petitioner had the ability [to] remunerate any wage to the beneficiary at the time of the filing of the petition or thereafter.

The assertion that the petitioner "did not provide any information regarding the number of its members" is incorrect. On the attestation accompanying Form I-129, the petitioner stated that it has "Apprx. 2000" members.

Materials submitted on appeal refer to "the apartment provided to [the beneficiary] by the petitioner." The petitioner submits copies of telephone bills to show that the beneficiary lives at the address claimed on the Form I-129 petition, as well as an appraisal of the apartment as being worth "between \$1,000 to \$1,200 per month." These materials do not show that the apartment is "provided . . . by the petitioner," or give any information about who rents the apartment or what conditions attach to the beneficiary's continued use of the premises.

The petitioner has submitted no information about the unidentified "member of the center" said to provide the apartment. The petitioner does not claim to exercise any control or ownership over the apartment. The petitioner has not shown that the apartment would remain available to the beneficiary if the unnamed member were to leave the congregation, or explained what contingency plans, if any, exist in the event that the apartment becomes unavailable. Furthermore, while the petitioner has documented the location and rental value of the apartment, the record contains no evidence regarding the source of the beneficiary's food (the "board" portion of the promised "room and board")

The regulation at 8 C.F.R. § 214.2(r)(11) requires the petitioner to show "how the petitioner will compensate the alien"; it contains no provision for the substitution of voluntary gifts from a third party. The beneficiary may well live in an apartment provided by a member of the center, but we cannot reasonably conclude that this apartment, unconnected with the petitioner's assets and which the petitioner neither owns nor controls, constitutes compensation "provided . . . by the petitioner." The petitioner has asserted that the beneficiary would rely, to a very significant extent, on material support provided from a source outside the petitioner.

The petitioner's offer of a \$40,000 annual salary remains to be discussed. The petitioner submits audited financial statements for 2005 through 2008 on appeal, showing that, each year, the petitioner's revenues exceeded expenses by more than \$120,000 each year. In calendar year 2008, the petitioner's net income was \$423,052, with a net excess of \$150,224 after expenses, and \$42,983 in cash (after adjustments to income) at the end of the year.

While the petitioner has submitted credible financial documentation, the petitioner has not submitted IRS documentation or an explanation for the absence thereof. (The petitioner's submission of audited financial statements does not, in and of itself, explain the absence of required IRS documentation.) As

we have already noted, the regulation requiring IRS documentation, or an explanation for its absence, was already in effect when the petitioner filed the petition, and the instructions to the Form I-129 reflected that requirement. To this extent, the petitioner has not complied with the regulatory requirements at 8 C.F.R. § 214.2(r)(11)(i). We agree with the director's finding that the petitioner has not submitted required documentation relating to the beneficiary's intended compensation.

As the above discussion shows, the director's decision is not without flaws, first and foremost its citation to obsolete regulations. At the same time, however, the petitioner has not submitted required information and documentation, and therefore the petitioner has not met the requirements set forth in the regulations now in effect. As discussed, some of the specific grounds for denial relate to the new regulations as well as to the old, therefore the director's denial of the petition was proper.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will dismiss the appeal.

ORDER: The appeal is dismissed.