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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



D13

Date: **APR 20 2012** Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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:

SELF-REPRESENTED

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 and will remand the petition for further action and consideration.

The petitioner is a church. 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 Christian education instructor. The director determined that the petitioner has not established that the beneficiary had been a member of its religious denomination for two full years immediately preceding the filing of the petition.

The petitioner submits a letter 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 issue presented is whether the petitioner has established that the beneficiary has been a member of its religious denomination for two full years immediately preceding the filing of the visa petition.

The U.S. Citizenship and Immigration Services (USCIS) 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.

The regulation at 8 C.F.R. § 214.2(r)(5) provides, in pertinent part:

Denominational membership means membership during at least the two-year period immediately preceding the filing date of the petition, in the same type of religious denomination as the United States religious organization where the alien will work.

Religious denomination means a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes one or more of the following:

- (A) A recognized common creed or statement of faith shared among the denomination's members;
- (B) A common form of worship;
- (C) A common formal code of doctrine and discipline;
- (D) Common religious services and ceremonies;
- (E) Common established places of religious worship or religious congregations; or
- (F) Comparable indicia of a bona fide religious denomination.

The petition was filed on February 8, 2011. Therefore, the petitioner must establish that the beneficiary was a member of its denomination for at least the two years immediately preceding that date.

In question 4 of Section 1 of the Form I-129, Petition for a Nonimmigrant Worker, Supplement R, the petitioner stated:

[The beneficiary] now lives in Barbados where there are no Presbyterian Churches. She is still a member of the St. Andrew's Presbyterian Church in Trinidad and visits and worship when she is there.

[She] now worships at the Church of God . . . and wants to rekindle her Presbyterian worship and commitment here at the [petitioning organization].

In question 5, the petitioner stated that the beneficiary “is a lifelong Presbyterian. She was baptized November 27th, 1966 and confirmed November 1st, 1981.” The petitioner submitted a copy of a December 20, 2010 letter from St. Andrew’s Presbyterian Church in Prince’s Town in the Republic of Trinidad and Tobago, in which its minister and secretary certified that the beneficiary is a member of that church.

In a November 7, 2010 letter, [REDACTED] in St. Michael, Barbados, stated that he met the beneficiary “about three years ago when she joined our congregation.” Pastor Perry further stated:

Over the last three years, my wife and I have had a direct hand in shaping and developing [the beneficiary] and her two children. . . . There has been, to my mind, an appreciable development in her Christianity though the molding is not yet complete. To this end we have placed her under close leadership as she seeks to further develop her ministries and skills which are useful to the body of Christ. Currently she is an assistant Sunday School teacher. She also play[s] her part in our ladies ministry LOVE (Ladies of Valour and Excellence), and other general activities of the church.

[The beneficiary] is blessed with two lovely children . . . both of whom are in the dance, drama and usher ministries here. [Her son] is also part of the Youth Fellowship.

The petitioner submitted a copy of a November 1, 1981 certificate certifying that the beneficiary was admitted as a “communicant member” of the Presbyterian church at the St. Andrew’s Presbyterian Church in Princes Town and a copy of her November 27, 1966 certificate of baptism into the Presbyterian Church.

The director denied the petition, finding that the beneficiary had been a member of the Church of God for three years prior to the filing of the petition. The director quoted the petitioner in its statement that the beneficiary wanted to “rekindle her Presbyterian worship and commitment,” and the letter from Pastor Perry stating that the beneficiary joined his congregation three years ago and that he had taken a special interest in helping her develop her Christianity. The director also noted that the beneficiary’s children were active in the Church of God. The director therefore concluded that the petitioner had failed to establish that the beneficiary had been a member of its religious denomination for two full years immediately preceding the filing of the petition.

On appeal, the petitioner again states that the beneficiary was unable to attend a Presbyterian Church in Barbados because the denomination does not exist there and that, “Throughout her time in Barbados [the beneficiary] has continued to maintain her active membership in the Presbyterian Church while practicing her faith with her local Bajan congregation.” The petitioner also states:

The Presbyterian Church recognizes the Church of God as an “in correspondence” church – meaning that the two churches are “in correspondence” with the highest governing body in each denomination. Recognition and transfer of ordination of Church of God ministers into the Presbyterian Church is one example of how “in correspondence” status is put into practical use. As well, immigrant clergy “in correspondence” churches, like the Church of God, also are granted special recognition and acceptance into the Presbyterian Church under rules governed by the Presbyterian Church’s General Assembly as stated in the Book of Order (2008-2010).

The petitioner provides a copy of a page from the Barbados.org website, which lists various religious groups but does not include Presbyterian. It also provides documentation about the working relationship of the Church of God in Anderson, Indiana and the Presbyterian Church. The petitioner did not submit documentation from the Book of Order for the Presbyterian Church General Assembly confirming the special recognition of the Church of God.

Nonetheless, the record sufficiently establishes that the beneficiary has been a member of the petitioner’s denomination for two full years immediately preceding the filing of the petition. Although Pastor Perry stated that the beneficiary joined his congregation in the three years prior to the filing of the petition, he did not state that she formally joined the church or gave up her membership in the Presbyterian denomination. An individual may attend the church of another denomination, i.e., become a member of the congregation, without becoming a member of the denomination. The documentation in the record indicates that the beneficiary has been a lifelong Presbyterian, and the fact that she attended another church and received religious instruction does not militate against that continuing membership. The director sought no additional clarification of the beneficiary’s membership in the petitioner’s denomination and, other than her attendance at the Church of God for practical reasons, there is nothing in the record to reflect that she became a member of that denomination.

The director’s decision is withdrawn. However, the petition cannot be approved as the record now stands. Therefore, the petition will be remanded to the director for further action and consideration as discussed below.

The petitioner has submitted insufficient documentation to establish that it is a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 214.2(r)(3) defines a tax-exempt organization as “an organization that has received a determination letter from the IRS [Internal Revenue Service] establishing that it, or a group it belongs to, is exempt from taxation in accordance with section[] 501(c)(3) of the Internal Revenue Code” (IRC). The regulation at 8 C.F.R. § 214.2(r)(9) provides:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the 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; or
- (iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3), or subsequent amendment or equivalent sections of prior enactments, of the [IRC], as something other than a religious organization:
 - (A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;
 - (B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;
 - (C) Organizational literature, such as books, articles, brochures, calendars, flyers, and other literature describing the religious purpose and nature of the activities of the organization; and
 - (D) A religious denomination certification. The religious organization must complete, sign and date a statement certifying that the petitioning organization is affiliated with the religious denomination. The statement must be submitted by the petitioner along with the petition.

The petitioner submitted a January 31, 1964 letter from the IRS to the United Presbyterian Church in the United States granting the organization and its subordinate units tax-exempt status under section 501(c)(3) of the IRC. The petitioner submitted no documentation to establish that it was covered under the group exemption granted to the United Presbyterian Church in the United States.

While referring to itself as a church, the petitioner indicated on the Form I-129 that it is a religious school and day care center. It also stated that the duties of the position are to provide "Christian education to the children at the Presbyterian Child Center from ages 2-12" and that the beneficiary's duties "would be not only to oversee and care for children in our Presbyterian Center but also to provide leadership in our regular Christian Education program." The petitioner, however, provided no additional documentation about its Christian education program

or any specifics about how the beneficiary will be engaged in her duties. 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's evidence does not sufficiently establish that the proffered position is a religious occupation within the meaning of the regulation.

Finally, the petitioner has not established how it intends to compensate the beneficiary.

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.

The petitioner submitted a copy of its unaudited financial statements for 2010 which indicated that it had a net income of \$24,839.20 for the year. The petitioner submitted no bank statements or other similar documentation to verify any of the information contained within its financial statements.

The matter will be remanded for the director to address all of 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 petition 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.