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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: **AUG 01 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 appeal will be sustained.

The petitioner is a church. It seeks to classify the beneficiary as a nonimmigrant religious worker under section 101(a)(15)(R)(1) of the Act, 8 U.S.C. § 1101(a)(15)(R)(1), to perform services as a missionary. The director determined that the petitioner has not established that it is a member of a denomination, that the beneficiary had been a member of its religious denomination for two full years immediately preceding the filing of the petition, or that the position qualifies as that of a religious occupation.

The petitioner states on appeal that it “belongs to a Christian religious denomination known as [REDACTED]” that the beneficiary has been an active member of the petitioning organization since August 2006, and that the position of missionary is a traditional religious occupation in its organization. The petitioner 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 it is a member of a religious denomination.

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:

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 AAO notes that supplementary information published with the regulations promulgated on November 26, 2008, provides:

USCIS is aware that some denominations officially shun [ecclesiastical governmental] structures. The focus of the regulation is, instead, on the commonality of the faith and internal organization of the denomination. Thus, an individual church that shares a common creed with other churches, but which does not share a common organizational structure or governing hierarchy with such other churches, can satisfy the “ecclesiastical government” requirement of the “religious denomination” definition by submitting a description of its own internal governing or organizational structure. 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

In its February 22, 2011 letter submitted in support of the petition, the petitioner stated that it belonged to the religious denomination known as [REDACTED].” The petitioner explained that:

Over 3,000 churches throughout the world are identified as the local churches, and each church bears the name of the city in which it is located. . . .

The local churches are affiliated with each other and with the [REDACTED] (LSM), whose business operations are to minister the truths of the Bible to build up the local churches; publish its ministry; and other religious training and work experience to qualified members of the local churches. . . .

The petitioner submitted information retrieved from the website of [REDACTED], which describes the organizations' beliefs, standing, and mission. The petitioner also provided its contact information contained on the website, and a copy of its 1970 articles of incorporation and bylaws. The website section on standing states: "The local churches stand on the genuine unity of the Body of Christ. We are not sectarian, nor denominational, nor nondenominational, nor interdenominational."

In a May 24, 2011 request for evidence (RFE), the director advised the petitioner:

The article[s] of incorporation and Bylaws of the petitioner show that the petitioning organization is a separate and independent entity. The petitioner stated that [REDACTED] is a Christian religious organization. However, there is no evidence of denominational governance and/or ecclesiastical structure of [REDACTED] submitted to consider [REDACTED] as a denomination.

In its August 14, 2011 response, the petitioner stated that [REDACTED] has been in existence since the 1920s and that:

Today there are approximately 300 churches in the United States and over 3,000 churches abroad that are identified as [REDACTED]. The elders and other members of each local church maintain close relationships with the other local churches, particularly those in close proximity. All the local churches are actually one spiritual entity, Christ's Body, which spans the entire globe.

The petitioner further stated:

[REDACTED] are a religious group of Christian believers that are governed by a group of ecclesiastical principals, who are co-workers from some of our affiliated local churches. Each local church also has its own local administration comprised of a group of elders who oversee the church members and church affairs. They manage the financial affairs of the church and maintain fellowship with the other local churches.

The petitioner stated that, as shown on the website, the members of [REDACTED] share a common creed or statement of faith, a common form of worship, a common doctrine, and similar services and ceremonies. The petitioner further stated: "In addition, the churches comprising the [REDACTED] meet regionally, nationally, and internationally multiple times each year for religious conferences and trainings for the purpose of Bible study, fellowship, and prayer."

In denying the petition, the director stated:

In the response [to the RFE], the petitioner attempted to present the [REDACTED] structure as a Christian denomination. The [REDACTED] is a network of independent Christian churches. The petitioning . . . church was originally incorporated in 1970. The front page of its article of incorporation states,

“WHEREAS THE CHURCH IN HOUSTON, a voluntary, unincorporated, religious association, owing fealty to no higher church or ecclesiastical body, has heretofore conducted public worship and other general activities of a church in the City of Houston

Thus, the petitioning church is not a denominational member. The petitioner provided [an exhibit] showing [a] listing of all affiliated [REDACTED] churches worldwide totaling 605 churches in 39 countries. The RFE requested evidence of an established international missionary program. But, the petitioner did not submit evidence completely as requested.

It is not clear how evidence of an established international missionary program is relevant in establishing that the petitioning organization is a member of a denomination. On appeal, the petitioner again stated that it is affiliated with other churches and with the [REDACTED] “whose business operations are to minister the truths of the Bible to build up the local churches; publish its ministry; and offer religious training and work experience to qualified members of the local churches.” The petitioner again outlines the regulatory factors that it states indicate that it is a member of a denomination.

The director based her decision on the language contained in the petitioner’s articles of incorporation which states that the petitioner owes no fealty to a “higher church or ecclesiastical body.” This language is not necessarily inconsistent with the petitioner’s claim that it is a member of a denomination. The webpage of [REDACTED] states that the affiliated churches do not consider themselves denominational yet they also do not consider themselves nondenominational. Rather, they consider themselves one unit. The [REDACTED] website outlines the shared beliefs, standing and mission of the affiliated members. The AAO withdraws the director’s determination that the petitioner is not a member of a denomination. The petitioner has submitted sufficient documentation to establish that The [REDACTED] qualify as a denomination as that term is defined by the regulation.

The director also determined that the petitioner had not established that the beneficiary had been a member of its religious denomination for two full years immediately preceding the filing of the visa petition. The petition was filed on February 24, 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.

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.

In its February 22, 2011 letter, the petitioner stated that the beneficiary “has been a member of [REDACTED] since 1987. She became a member of the Church in Taipei in 1987 and became a member of the [petitioning organization] in August 2006, upon moving to Houston in order to attend school.” The petitioner submitted a copy of its October 2008 and December 2010 telephone directories that included the name [REDACTED].” The petitioner submitted an undated “verification of employment” letter from [REDACTED], which confirmed the employment of [REDACTED].”

In her RFE, the director instructed the petitioner:

- **Name Difference:** The names shown on the petition and submitted documentation are different. Submit documentary evidence to show that [REDACTED] and [REDACTED] are the same person.

Such evidence may include, but is not limited to: a court order showing legal name change, identification with photo and names, certificate with certified name correction, government issued certification regarding a same entity, recorded fictitious name filing with civil authority, and/or other acceptable records

- **Beneficiary’s Membership:** There was no evidence submitted in order to support the beneficiary’s membership in the [petitioning organization] since August 2006 or to establish that the petitioner and the Church in Taipei which the beneficiary is a member both are member churches of the same denomination.

Provide evidence that the beneficiary has completed a two-year membership in the petitioner’s church. Evidence may include board meeting records, evidence of confirmation, certificates of participation, awards given, titles conferred, attendance records, contribution records, member voting record, etc. . . .

In its August 14, 2011 response, the petitioner stated that [REDACTED] is the beneficiary’s “English nickname and the name by which she is known in the Church; for that reason she is identified as [REDACTED] in most church documents and records.” In addition to resubmitting the letter from [REDACTED], the petitioner submitted a copy of a March 12, 2006 church “Application for Serving Ones, Local Children’s Meetings” that the beneficiary submitted to volunteer in the church on which she identified herself as [REDACTED]. The petitioner also identified a copy of an August 12, 2011 church e-mail that included [REDACTED] as one of the addressees, and several checks written to the petitioner by [REDACTED] indicating that that they were payments of rent for [REDACTED]. The petitioner stated that the beneficiary rented an apartment from the church while she attended school. The petitioner also submitted a 2007 church phone directory that included the name of [REDACTED] and a webpage from [REDACTED] for the Church in Taipei.

In denying the petition, the director found that the response to the RFE “failed to provide evidence of the beneficiary’s two year membership in the” petitioning organization. The director stated:

[T]he verification of employment letter from [REDACTED] was undated and did not describe specific duties of the beneficiary and did not indicate

when the employment has ended. The application form "Application for Serving Ones, Local Children's meeting" dated March 12, 2006, does not establish the beneficiary's membership in the [petitioning organization]. The membership of the [petitioner] is established by the approval of the Board of Trustees of the Church. . .

However, filling out an application form does not establish the membership. If it does, any one can fill out the form to vote on matter(s) of the Church Similarly, paying rents for a church's residential property and being listed on phone contact lists do not establish the membership in the Church. The membership must be approved by the Board of Trustees according to the Bylaws. . . .

However, the response did not provide board meeting records, attendance records, contribution records, or member voting record confirming the beneficiary's membership. Although the beneficiary's church in Taipei provided the beneficiary with Bible truth and church service training certificate, the petition is an independent and separate entity. Thus, the beneficiary's membership with the church in Taipei is not the membership in the petitioner church.

On appeal, the petitioner states:

[T]he [director] incorrectly required that the Petitioner provide "board meeting records, attendance records, contribution records, or member voting record[s] confirming the beneficiary's membership." The [director] appeared to draw this conclusion from language in the Petitioner's bylaws; however, the bylaws do not require use of board, attendance, or voting records as evidence of membership. The bylaws simply state that members are entitled to vote, that meetings are held each year on the First Sunday of the month of March, and that the Secretary is required to attend and record minutes of meetings of members and the Board of Trustees The petitioner's bylaws clearly state that "the Board of Trustees may provide whatever evidence of membership in the Corporation it may deem desirable" (emphasis added). At this time, the Petitioner has chosen to use copies of its directory as evidence of membership. The copies of the directories provided clearly show that the Beneficiary was a member of the [petitioning organization] as early as 2007. She is also an active member, as evidenced by her service in children's meetings and residence in the church's student housing. . . .

In denying the petition, the director appears to have selectively applied portions of the petitioner's bylaws without considering all of the evidence of record. The petitioner stated that the beneficiary had been a member of its congregation since she began school in 2006, and provided a copy of her 2006 application for volunteer work in the church. The petitioner's church directories that include telephone numbers of its members contain the beneficiary's name as early as 2007. The director's decision is also based on the fact that the petitioner has not established that it is a member of the same denomination as the beneficiary's church in Taipei. As discussed above, the petitioner has submitted sufficient documentation to establish that it is a member of the denomination of [redacted] of which the [redacted] is also a member. Furthermore, the director clearly

accepted the petitioner's statement that the beneficiary had been a member of the [REDACTED] with no other supporting documentation. However, the director failed to consider any of the evidence that the petitioner submitted to establish that the beneficiary is a member of the petitioning organization. The AAO finds that the petitioner has submitted sufficient documentation to establish that the beneficiary has been a member of the petitioning organization for two years immediately preceding the filing of the petition, and the director's decision to the contrary is withdrawn.

Finally, the director determined that the petitioner had failed to establish 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.

In its February 2011 letter, the petitioner stated:

The Church would like to employ [the beneficiary] in the non-ministerial and non-professional capacity of Missionary. In this position, her duties will include the following:

- Preaching the gospel of Christ to unbelievers in order to bring them to salvation including making daily visitations;
- Nourishing and shepherding new believers by establishing meetings in the new believers' homes;
- Teaching and perfecting the new believers;
- Building up the church by speaking for the Lord in the church meetings;
- Attending all large church meetings (5 per week);

- Gaining a comprehensive knowledge of the Bible and key spiritual books so that the Missionary can administer the truth to others;
- Attending all coordination meetings of the full-time religious workers (6 per week); and
- Exercising in prayer, in knowing the Lord Jesus Christ, and in fellowship.

In particular, [the beneficiary] is expected to focus her labor on college students in the Houston area.

The petitioner stated that the beneficiary would be compensated at the rate of \$18,000 per year. The petitioner also stated that it “currently compensates 17 individuals” and that five of them “are providing services in locations other than Houston throughout the U.S. and overseas” and that the “individuals in Houston are performing missionary work, which includes preaching the gospel of Jesus Christ, leading people to Christ, teaching new believers the Bible, establishing believers in the Christian faith, and building them up in the church.”

In her RFE, the director instructed the petitioner to provide “evidence of an established missionary program” and “evidence to establish that the proffered missionary position is recognized as an occupation related to religious traditional function(s) in the petitioning organization.”

In its response, the petitioner questioned the need to provide evidence of an established missionary program as it intended to compensate the beneficiary. The petitioner noted that the regulatory requirement of an established missionary program was relevant only if the beneficiary was to be self-supporting. The petitioner provided a list of its “current Missionaries and trainees” and their compensation. The trainees are those “who are enrolled in the Full-Time Training in Anaheim, an international training program based in Anaheim, California for church members who may become full-time missionaries.” The petitioner stated:

The duties of the Missionaries assigned to the college campuses primarily comprise: preaching the gospel on the college campuses; conducting large and small Bible studies with students; shepherding and edifying students in their personal and corporate Christian growth; participating in Bible studies and Christian meetings in the homes of church members throughout Houston; and participating in all church worship services. The college-based Missionaries also coordinate and bring student to regional college conferences that occur once per semester, and organize retreats and trips with the college students and church members, including attendance at national and international conferences of the Local Churches. . . .

Regarding the beneficiary, the petitioner stated:

[The beneficiary] is intended to work with the Missionaries working on Houston-area college campuses. Her work would therefore take place at various locations throughout Houston, including the [redacted] the meeting hall of the [petitioner] [redacted] and homes of various church members. The Missionaries working on the college campuses meet at 8:00am Monday through Friday to pray and coordinate their activities. This coordination

takes place in a residence owned by the [petitioner], located at [redacted]s [redacted] . . . This will be [the beneficiary's] departure location before most visits, and is the main location where she will report to work on weekdays. The Missionaries also occasionally meet for coordination at the meeting hall of the [petitioner] The meeting hall is also the location of the [petitioner's] weekly worship services and various other meetings throughout the week, in which [the beneficiary] will be required to participate. She will obtain materials and supplies, including gospel tracts, Bibles, and ministry publications, from both [redacted]iversity [redacted] and [redacted] for her instruction and work. [She] will report to [redacted]

In denying the petition, the director stated:

The RFE requested evidence supporting established missionary program and training; however, the petitioner did not submit. The petitioner stated that such requested evidence was for self-support worker and would not apply for the beneficiary because she would be supported by compensation paid by the petitioner. However, submitted evidence was not sufficient to show that the petitioner has had a program with established training and qualifications for missionaries.

The director stated that the petitioner's list of missionaries indicated that they were all a "missionary/minister of the gospel" and it had not submitted documentation to establish that its "missionaries were also ministers of the church." Referring to the petitioner's list of missionaries which shows the hire date of each of its employees, the director also stated that the petitioner had not provided "evidence of a missionary program that has supported and paid missionaries for as long as 19 years." The director also questioned why the beneficiary would report to another missionary.

The director stated that the announcement in the petitioner's newsletter regarding the training program in Anaheim did not "describe the religious objectives for activities that the full-time training .. was set up for trainees to accomplish." The director further found that beneficiary's duties in "[o]btaining supplies, Bibles, ministry publications and delivering them on visits or meetings did not establish that a position is a religious occupation."

On appeal, the petitioner states that the director ignored its statements regarding the duties of the proffered position and concentrated only on the administrative tasks of obtaining supplies and materials for her work and the training through the Full-Time Training in Anaheim that it offers to those who want to become missionaries. The petitioner submits a copy of the curriculum from the Anaheim training program

The regulation does not require the petitioner to establish that its missionaries are part of an established program of missionary work. The petitioner must merely establish that the proffered position is a religious occupation as defined by the regulation at 8 C.F.R. § 214.2(r)(3). The petitioner has submitted sufficient documentation to establish that the duties of the proffered position primarily relate to a traditional religious function and is recognized as a religious occupation within the petitioner's denomination. The petitioner has employed individuals in the

position of missionary since the early 1990's. Additionally, it offers training to those who are interested in becoming missionaries. The duties of the position as outlined by the petitioner indicate that they are primarily related to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the petitioner. The director's determination that the petitioner has failed to establish that it has an established program for missionary work and that the proffered position is a religious occupation is withdrawn.

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 met that burden.

ORDER: The appeal is sustained.