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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]

Date: **AUG 23 2012** 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, 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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

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 dismissed.

The petitioner is a church. It seeks classification of 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 a lay ecclesial minister. The director determined that the petitioner had not established how it intends to compensate the beneficiary or that the beneficiary "is qualified to be employed in a religious occupation."

The petitioner states on appeal that it has submitted the necessary documentation to establish that the beneficiary is qualified for the proffered position and will be self-supporting. The petitioner submits 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 how it intends to compensate the beneficiary.

The U.S. Citizenship and Immigration Services (USCIS) 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. Compensation may include:

(i) *Salaried or non-salaried compensation.* 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 [Internal Revenue Service] documentation, such as IRS Form W-2 [Wage and Tax Statement] 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.

(ii) *Self support.*

(A) If the alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.

(B) An established program for temporary, uncompensated work is defined to be a missionary program in which:

- (1) Foreign workers, whether compensated or uncompensated, have previously participated in R-1 status;
- (2) Missionary workers are traditionally uncompensated;
- (3) The organization provides formal training for missionaries; and
- (4) Participation in such missionary work is an established element of religious development in that denomination.

(C) The petitioner must submit evidence demonstrating:

- (1) That the organization has an established program for temporary, uncompensated missionary work;
- (2) That the denomination maintains missionary programs both in the United States and abroad;

- (3) The religious worker's acceptance into the missionary program;
- (4) The religious duties and responsibilities associated with the traditionally uncompensated missionary work; and
- (5) Copies of the alien's bank records, budgets documenting the sources of self-support (including personal or family savings, room and board with host families in the United States, donations from the denomination's churches), or other verifiable evidence acceptable to USCIS.

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner stated that the beneficiary would work in a voluntary capacity and that she "will be self-supporting as are the other lay ecclesial ministers." The petitioner described the position as "a religious vocation but uncompensated" in Section I question 9 of the Form I-129 Supplement R. The petitioner submitted no documentation with the petition to establish that the position is part of an established program for temporary, uncompensated missionary work which is part of a broader international program of missionary work sponsored by the denomination.

In an October 13, 2011 request for evidence (RFE), the director instructed the petitioner to submit, *inter alia*, documentation in accordance with the above-cited regulation to establish how it intends to compensate the beneficiary or to establish how the beneficiary will be self-supporting. In response, the petitioner submitted a December 2, 2011 Form I-134, Affidavit of Support, from [REDACTED] who stated that he would provide the beneficiary with room and board while she was in the United States "performing religious duties." The petitioner submitted none of the documentation required by the regulation at 8 C.F.R. § 214.2(r)(11)(ii). In denying the petition, the director stated that the petitioner had not submitted any documentation to support the claims in the Form I-134 or to establish that the proffered position was part of an established program for temporary, uncompensated work, as required by the regulation.

The petitioner alleges on appeal:

We are part of the United States Conference of Catholic Bishops which has an established missionary program for laity (lay ecclesial minister/extra-ordinary ministers of the Eucharist) as uncompensated missionary work in accordance with Vatican Council II both locally and internationally. We submitted document to this effect of the duties being part of an established program in our parish.

Despite the petitioner's assertion, however, it submitted no documentation in accordance with the regulation to confirm the existence of an established missionary program. The petitioner submits none of the required documentation on appeal; accordingly, it has failed to establish how the beneficiary will be compensated.

The second issue is whether the beneficiary is “qualified to be employed in a religious occupation.”

In denying the petition, the director quoted the regulation that defines religious occupation and asked for information regarding the requirements for the position, information to establish that the proffered position relates to a traditional religious function, and asked for a detailed description of the work to be performed in the position. The director found that:

[T]he petitioner has not provided a detailed description of the work to be done, specific job duties, and the number of hours per week to be spent performing each duty. In addition, the petitioner did not provide a daily and weekly schedule for the proposed duties. Also, the petitioner has not provided the minimum education, training, and experience necessary to perform the proffered position.

Thus, it appears that the director is not necessarily questioning the beneficiary’s qualification for “a religious occupation” but rather whether the position qualifies as that of a religious occupation. 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 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 stated on the Form I-129 that the duties of the proffered position would include “web page maintenance, distribute Holy Communion to the faithful and participate at choir rehearsals and singing at masses.” The petitioner stated that the beneficiary’s qualifications for the position included a child abuse prevention training class and “child abuse clearance.” The petitioner further stated that the “church trains its own people for all ministries including choir and Eucharistic ministers.” In a May 10, 2011 letter, Father [REDACTED] the petitioner’s pastor stated:

[The beneficiary] can be described as a Lay Ecclesial Minister. Most recently she has completed the forms to obtain child sexual abuse clearance which is a requisite for any Lay Ecclesial minister to be involved in the church. Then last month, in April, she devoted many, many hours in setting up a web site for our church. . . . Her other regular duties here at church, which she has been actively involved in for several years now, include being a full time member of our church choir and a Eucharistic Minister. Being a choir member involves an evening of choir practice weekly and then singing at a Sunday mass. Being a Eucharistic Minister, she helps the priest offer Holy Communion at mass, and this often involves a mass different from the mass when the choir sings. She is also interested in participating this September in two other programs, the Rite of Christian Initiation of Adults (RCIA) and the Confraternity of Christian Doctrine (CCD). She is also expressing interest in being a candidate for the Parish Pastoral Council. And even at this present time, not counting future involvement, she is giving over 20 hours a week to our church.

In a May 10, 2011 letter to the beneficiary. Father [REDACTED] stated:

I am happy to appoint you as an uncompensated Lay Ecclesial Minister here . . . , a role you have been fulfilling for over two years now. Your immediate responsibilities will be the establishment and maintenance of a parish web page, active participation in our church choir, and distributing the Eucharist as a Eucharistic Minister. Your role also allows for future involvement in other ministries here at our church.

In her RFE, the director instructed the petitioner as follows:

- **Requirements for the Position**: Provide a detailed explanation as to the requirements for the position offered, and how the beneficiary meets those requirements. Submit the religious denominations [sic] or organization’s by-laws, manuals, brochures, or guidebooks establishing the requirements for the position. Provide detailed evidence that the beneficiary meets the denominations [sic] organization’s requirements including the beneficiary’s academic degree, transcripts, certificates, etc.
- **Traditional Religious Function**: Provide the following evidence to establish that the proffered position is recognized as a religious occupation related to a traditional function

in this religious denomination or organization: constitution: by-laws; and a letter from a Superior or Principal of the religious denomination or organization in the United States explaining how the position offered qualifies as a traditional religious function. Clearly indicate who has performing [sic] this function in the past.

- **Proffered Position**: Provide a **detailed description** of the work to be done, including **specific job duties, level of responsibility/supervision, and the number of hours per week to be spent performing each duty. Include a daily and weekly schedule for the proffered position.** List the minimum education, training, and experience necessary to do the job and submit documentary evidence to show that the beneficiary has met such requirements. Further, explain how the duties of the position relate to a traditional religious function.

[Bold emphasis in the original.]

In response, the petitioner resubmitted the May 10, 2011 letters and a November 30, 2011 letter in which Father [REDACTED] reiterated the information contained in those letters. The petitioner provided a copy of the beneficiary's March 25, 2011 Pennsylvania Child Abuse History Clearance application and a copy of her criminal record check. Although the petitioner states that these are requirements for the position, it does not explain how they factor into the beneficiary's duties. The petitioner also provided a copy of the church's "code of pastoral conduct" of which the beneficiary acknowledged receipt on July 20, 2010 for her position as an extraordinary minister of Holy Communion.

The petitioner also provided a brochure that serves as "A guide to Parish Information and Service Organizations!" In addition to the "extra-ordinary ministers," the guide lists altar servers, bible study, children's liturgy, choir, Christian mothers, finance committee, lectors, greeters, worship committee and youth group, among others. The guide indicates that the purpose of the extra-ordinary ministers is "[t]o assist the Priest in the distribution of the Lord's Body and Blood at Mass and to the sick." The "parish segment" indicates that these positions are open to: "All parish members high school age and older" and that the responsibilities include visiting the sick. The time commitment is indicated as: "Approximately 1 to 2 Masses per Month or when needed." The guide indicates that the purpose of the choir is: "To sing the liturgy and set the tone for the liturgy" and indicates that the choir is open to: "All parishioners 16 years and older who love to sing and can carry a tune. No audition necessary." The time commitment is indicated to be 14 to 16 hours practice per month.

The petitioner states on appeal:

We submitted a detailed description of the duties of an extra-ordinary minister of the Holy Communion in our RFE package. We also included a copy of our parish guide . . . where required basic qualifications were described in addition to the specific training we provide in addition to the lay minister having undergone religious training under the RCIA program, having undergone confirmation and

baptism as requirements for this position which are well established. . . . In addition the candidate for the R1 visa is also responsible for the broadcast/web ministry and is also actively involved in the music ministry (choir) which are all religious vocations. We have included a time table showing the [schedule] of the candidate to make the hours clear at a glance.

On appeal, the petitioner provides a list of job responsibilities for the beneficiary, indicating that she is a lay ecclesial minister, music minister, and involved in the broadcasting ministry, which it describes as follows:

Supervised by Catholic pastor, initiated the broadcast ministry and is responsible for spreading the gospel and updating the parish of events. Responsible for the digital production of the music ministry Christmas CD on iTunes, Amazon, Real Player and multiple digital world wide markets and also responsible for tracking sales and reporting sales to the church and ensuring payment is received by the church from digital distribution proceeds. Responsible for the registration of the church website on the world wide web and for the design of the church web site and maintenance and update of the church web site as needed. Volunteers to EWTN to spread the word in the parish

In the weekly work schedule provided on appeal, the petitioner states that the beneficiary's responsibilities in the broadcasting ministry are "[to] spread the Gospel and Faith to Parishioners through Weekly Updates of Mass Schedules, Holy Days and Special Events. Responsible for the purchase and acquisition of the Domain for the Parish Web Site. Responsible for the Design of the Parish Web Site." The petitioner also stated that the beneficiary would be responsible "To make available the Choir CD for sale to the Public and monitor revenues from the sale of the Choir CD and ensure it gets to the Parish."

The documentation submitted by the petitioner does not establish that the proffered position is recognized as an occupation within the normal meaning of that term or as a religious occupation within the Catholic denomination. The term occupation normally refers to an individual's job or "[a]n activity serving as one's regular employment."¹ The duties as described for the position of ecclesial minister and music minister indicate that they are opportunities available to members of the church to participate in church activities by assisting the priest in administering the sacraments and by singing in the choir. The positions indicate that they are open to any member of the congregation without any prior skill or experience. In fact, the petitioner states that the beneficiary has been performing in these positions for over two years. The petitioner does not claim that all of the members of the choir or the extra-ordinary ministry are employees. The petitioner submits no documentation to establish how the requirements for the beneficiary in these positions differ from that of any other member of its congregation and how her duties would make the beneficiary's position constitute an occupation. While the petitioner states that it has specific requirements that the beneficiary meets, the evidence of record indicates that the

¹ WEBSTER'S II NEW COLLEGE DICTIONARY 757 (2001).

requirements are no more than those needed to become a member of the church. The petitioner indicated that the beneficiary had passed the child abuse clearance, however it provided no evidence that this clearance is needed in any of the positions that the beneficiary occupies.

The petitioner states that the beneficiary initiated the "broadcasting ministry." However, there is nothing in the job description indicating that the duties primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination. The duties are clearly primarily administrative in nature, requiring the beneficiary to market CDs, update schedules, and maintain the petitioner's website. The petitioner has failed to establish that the proffered position qualifies as that of a religious occupation.

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 appeal will be dismissed.

ORDER: The appeal is dismissed.