

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: **DEC 17 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, 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 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,

Ron Rosenberg  
Acting 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 pastor. The director determined that the petitioner had not established that the beneficiary is qualified for the proffered position.

On appeal, counsel asserts that the petitioner “has sufficiently established that [the beneficiary] is qualified as an ordained minister to serve in the R-1 religious worker position of Pastor at [the petitioning organization].” Counsel 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 issue presented is whether the petitioner has established that the beneficiary is qualified for the proffered position.

The regulation at 8 C.F.R. § 214.2(r)(3) defines religious worker as “an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister.” The regulation at 8 C.F.R. § 214.2(r)(10) requires that, if the alien is a minister, the petitioner must submit:

- (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.

In its January 4, 2011 letter submitted in support of the petition, the petitioner stated that the beneficiary "is extremely well-qualified" for the proffered position, that he "holds a Bachelor's degree in Theology from the Covenant Life University in Florida" and that he is "ordained as Pastor with the license to perform Christian sacraments and services in 1995 by the Immoveable Foundation Church." The petitioner submitted a copy of its articles of incorporation with the petition. Section 23 of Article III addresses "ordination and commissioning" but does not set forth any specific education or training. The section provides: "We believe that God calls men into specific ministries as Apostles, Prophets, Evangelists, Pastors and Teachers. God calls. Man can only recognize the call and acknowledge it."

In Article XI, the petitioner recognizes "two classes of credentials and authority": the ordained minister and the commissioned minister.

- a) **Ordained Minister:** Ordination by this church recognizes the development of the ministry gift of apostle, prophet, pastor, teacher, evangelist, although not giving them one of those specific titles. . . . He/She is authorized to perform all the ministry functions such as preaching, teaching, discipling and officiating at weddings and funerals.

- b) **Commissioned Minister:** Issued following a period of training and instruction. The commission to preach authorizes an individual to fulfill certain ministry functions such as preaching, teaching, discipling and officiating at weddings and funerals, and to serve as a member of the local church ministry. The commissioned person is duly recognized as a minister of Jesus Christ, but without the acknowledgment of being a ministry gift as recorded in Ephesians 4:11 (apostle, prophet, pastor, teacher, evangelist).

The petitioner submitted a copy of the beneficiary's June 15, 2010 Bachelor of Theology degree from the Covenant Life University in Fort Myers, Florida, a copy of the beneficiary's October 1, 1995 "certificate of license" from the Immovable Foundation Church [IFC] in Milwaukie, Oregon, a March 1998 "certificate of license" from the Immovable Foundation International Christian Center in Milwaukie, and a June 2, 1998 "certificate of license" from the IFC. The 1995 license contains a seal showing the pastor as [REDACTED] the two signatures on the certificate are illegible. The seal on the March 1998 certificate is illegible; however, the signature blocks show the names of [REDACTED] and [REDACTED]. The June 1998 certificate contains two seals similar to that on the October 1995 certificate. The seals are placed directly over the signatures, which indicate that they are of the pastor and secretary of the church.

On April 6, 2011, the director notified the petitioner of her intent to deny the petition, stating:

In order to confirm the validity of the documentation submitted with the petition, USCIS contacted the [IFC] and spoke to the church's secretary in their HR departments. The secretary spoke to the Pastor of the church, who is also the signatory on the [1995 certificate], and she said that according to the pastor, the certificates were not issued by the church. She said that even the pastor himself, does not have a certificate. She added that church had never filed a petition on behalf of the beneficiary and upon discovering [the beneficiary] had been applying for a visa using documents with a forged signature of their Pastor, their attorney sent a letter to the US Embassy in Tbilisi[].

Contact made to the Consulate officer in Tbilisi[] has revealed that the beneficiary obtained nonimmigrant R1 visas in 1998, 1999, 2001, 2003, and 2004, with annotations of the Immovable Foundation Church as the petitioner. Based on the derogatory information provided to the Consulate office from the attorney for the Immovable Foundation Church, on July 25, 2005, the Department of State[] revoked the beneficiary's R1 visas for fraud/misrepresentation.

The director also advised the petitioner that the Covenant Life University is not an accredited school and there were no records of the beneficiary's attendance there.

In his May 2, 2011 letter accompanying the petitioner's response to the Notice of Intent to Deny (NOID) the petition, counsel alleged that the issues regarding the beneficiary's previous R-1 nonimmigrant religious worker visas were based on a misunderstanding by counsel for IFC.

Counsel challenges the allegation that the certificates of license are not “factually accurate” and stated that “Careful review of the documents will show that they are clearly authentic and these allegations appear to be motivated by the rift that, ironically was caused by the misunderstanding of the church’s legal counsel.” [Emphasis omitted.] Counsel further states, “We encourage the Department of Homeland Security to please submit the documents to forensic analysis because this will show that they are authentic.”

The petitioner submitted documentation intended to show the relationship between the beneficiary and the IFC. One of the documents is a copy of a June 2, 1998 Memorandum of Action of the Board of Directors of IFC which “anoints” the beneficiary as a pastor. A copy of a June 2, 1998 letter containing a seal for the IFC and allegedly signed by [REDACTED] recognizes the beneficiary as a “duly anointed pastor of the Immovable Foundation Church.” Other documents indicate that the beneficiary was traveling to the United States to observe the workings of the church. The petitioner, however, also submitted copies of a letter from counsel for the IFC denying that the beneficiary was sponsored by the church and that the documents were forgeries. Although the petitioner provided a statement from the beneficiary in which he denied IFC counsel’s allegations and copies of e-mail between the beneficiary and counsel alleging that [REDACTED] had acknowledged to others the beneficiary’s relationship with IFC, the petitioner submitted no documentation from [REDACTED] retracting his statements or those of IFC’s counsel regarding the legitimacy of the documentation from IFC.

In denying the petition, the director stated that because of IFC’s allegations that the beneficiary had used fraudulent documents, the U.S. Department of State would not issue an R-1 visa to the beneficiary. Counsel asserts on appeal that the director “erred in denying the petition on this ground,” that the “Service’s jurisdiction is limited to reviewing the approvability of a petition filed before its office” and that the “fact that the beneficiary has an ‘unresolved’ issue with the Department of State . . . should not prevent USCIS from approving the petition once the petitioner and the beneficiary have met all the requirements under the regulations.” [Underlines in original omitted.]

The AAO withdraws any implication by the director that the denial is based on the fact, real or perceived, that the Department of State will not issue the beneficiary a visa. Whether this is a true statement of fact is irrelevant to whether the petitioner has established that all of the requirements of the regulation regarding eligibility have been met.

The director also stated in her denial that the Covenant Life University was not an accredited university and that “without an equivalency evaluation USCIS can not determine their validity.” On appeal, counsel states “whether or not [the beneficiary] obtained his Bachelor’s degree in Theology from an accredited theological institution is highly irrelevant in this case because the petitioner does not require the completion of any prescribed course of theological education to become an ordained minister of the church.” Counsel states that the petitioner’s senior pastor’s reference to the beneficiary’s degree was simply to point out that he was “extremely well-qualified” for the proffered position.

The AAO concurs that the petitioner's articles of incorporation do not require any specific training or education for ordination, and whether the beneficiary has attended an accredited school of theology is not an issue. The regulation at 8 C.F.R. § 214.2(r)(10)(iii) provides that for those denominations that do not require a prescribed theological education, the petitioner must submit evidence of the denomination's requirements for ordination to minister; the duties allowed to be performed by virtue of ordination; the denomination's levels of ordination, if any, and the alien's completion of the denomination's requirements for ordination. The AAO withdraws the director's statement that the petitioner has not established that the beneficiary graduated from an accredited university.

Counsel asserts on appeal that the petitioner has accepted the beneficiary's qualifications as an ordained minister pursuant to 8 C.F.R. § 214.2(r)(10)(i), and the fact that these documents cannot be authenticated by USCIS is "NOT a legal basis to reject the petition." The AAO must reject counsel's assertion. The organization that allegedly issued the beneficiary's qualifying credentials has disputed their authenticity. Counsel now argues that if potentially fraudulent documents are acceptable by the petitioning organization, USCIS must also accept them "as accurate and reliable." This is clearly not a tenable position. Counsel's argument would require subordination of U.S. immigration laws to any claim of eligibility by a religious organization regardless of the legitimacy of documents provided to support those claims. While the determination of an individual's status or duties within a religious organization is not under the purview of USCIS, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with USCIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

The petitioner states that the proffered position is that of an ordained pastor. However, it has failed to provide verifiable documentation that the beneficiary has been ordained and therefore has failed to establish that the beneficiary is qualified for the proffered position.

The AAO notes that counsel requested USCIS to perform a forensic analysis of the documentation presented. However, USCIS is not equipped and not required to prove the beneficiary's eligibility for the requested visa. 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.