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Administrative Appeals Office (AAO)
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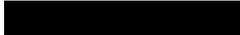
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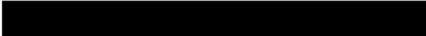
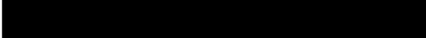
D13



Date: **FEB 23 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:



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,


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 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 a ministry assistant to the youth leaders coach. The director determined that the petitioner had not established that the position qualifies as that of a religious vocation or occupation and how it intends to compensate the beneficiary.

On appeal, counsel asserts that the duties of the proffered position are religious in nature and that the petitioner did not change the position after the petition was filed. Counsel also asserts that the director erred “in finding that there was no verifiable evidence to support the ability to pay for compensation.” Counsel submits a brief 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 two issues presented on appeal are whether the petitioner has established that the proffered position qualifies as that of a religious vocation or occupation.

On the Form I-129, Petition for a Nonimmigrant Worker, filed on January 24, 2011, the petitioner identified the duties of the proffered position as:

Oversight of children's ministry, helping to map out and plan ministry trips for the intern level and lead representatives for the [REDACTED] where youth pastors come to Atlanta to be mentored [sic] and inspired. He will also be Head leader in one of the internship groups and a small group director to one of the college small group[s].

The petitioner further stated:

The beneficiary has been studying to become a minister in the denomination of the Assembly of God. He is a certified Reverend through the Assemblies of God. He is expected to be ordained reverend in May 2011. He has been active in Masters Commission since 2008. Masters Commission falls under the umbrella of the Assemblies of God.

In an undated letter submitted in support of the petition, members of the Masters Commission Atlanta Staff, including [REDACTED] certified that the beneficiary had been a member of the program for 2½ years and that he was currently in his intern year. They further stated:

[The beneficiary] carries a heavy set of responsibilities. At the top of the list, he is [REDACTED] which includes working in [sic] the behind-the-scenes of my national ministry known as Youth Leaders Coach, being an oversight of our children's ministry, helping to map out and plan ministry trips for the intern level and in being one of our lead representatives for the [REDACTED] where youth pastors come to Atlanta to being [sic] mentored, encouraged and inspired. Along with that, [he] is also known as [REDACTED] and Alliance Liaison, which again is another arena of my national ministry of coaching. On a local front of things, [he] is the director of our Masters Commission Atlanta Alumni Newsletter, a head leader in one of our mentorship groups and a small group director to one of our college small group, in our youth ministry. ON the side of Masters Commission Atlanta, [the beneficiary] works heavily in the discipleship of around 60 students striving to become pastors or enter full time ministry.

The beneficiary states in his résumé that he was certified as a reverend through the Assemblies of God in May 2010, ordained as a reverend with Jesus for All Nations in November 2010, and was currently "working towards completion of licensing through" the Assemblies of God, which he expected to complete in May 2011. The beneficiary indicated that he had served as administrative assistant to [REDACTED] from September 2009 to September 2010, stating:

As [REDACTED] was in charge of helping her day to day work run smoothly by formulating databases, spreadsheets and word documents to better organize and prioritize work. I will also help manage communication between herself, [REDACTED] and members of Youth Leaders' Coach and the

Cadre through telephone calls and emails. In being [REDACTED] I have been given insight into multiple world such as [REDACTED] Coach, the Alliance, [REDACTED] The Tabernacle budget and additional finances, Masters Commission Atlanta 3rd Year Discipleship and Ministry Enrichment.

In describing his ministry experience, the beneficiary stated that he had served as [REDACTED] since September 2010:

After spending a year as her administrative assistant my role as [REDACTED] assistant became much more intentional. As her Life Assistant, I make sure to take care of [REDACTED] herself, such a [sic] helping balance schedules etc. As her [REDACTED] I come under [REDACTED] to help facilitate and run the behind the scenes of the nationwide leadership training program for youth pastors. While my title has become much more central and focused, I still carry a lot of the administrative weight for [REDACTED]

I am the central contact of the [REDACTED] in terms of communication with [REDACTED] with the [REDACTED]. My job includes but is not limited to follow up phone calls regarding advances, conference calls and transportation needs, building and maintaining relationships with the [REDACTED] and helping communicate and filter information from the [REDACTED] and the Alliance in regards to Youth Leaders Coach, the Alliance, the [REDACTED] the upcoming National Youth Leaders' Conference.

The beneficiary also identified other duties that he has performed while serving as [REDACTED] including writing for the [REDACTED] working in the organization's admissions department, serving on the cadre's housing oversight (coordinating between host apartments and cadre members), mentoring the "parents' of the AC Families."

In response to the director's request for evidence (RFE) dated April 5, 2011, the petitioner provided a new Form I-129 on which it stated that the proposed position was a religious vocation and that the beneficiary "has been studying to become a minister in the denomination of the Assembly of God. He is a certified Reverend through the Assembly of God. He is expected to be ordained reverend in June 2011." The petitioner also described the duties of the proffered position:

[REDACTED] Director of Operations. Beneficiary will play a heavy role in public relations and directing and facilitating National Youth Leader's Conference. Will help launch Alliance program which equips Youth

Leader's nationwide to hold [REDACTED]. Will also Co-Direct 3rd Year Discipleship and Ministry Small Group Leaders.

The petitioner provided a breakdown of the duties of the position, stating that as part of the cadre, the beneficiary "will play a heavy role in handling the general public relations side of the Cadre," that he "will be intricate in both the directing and facilitating of various teams" during the preparation for the March 2012 National Youth Leaders' Conference, that he "will play a role in the continued launch of our branch of Youth Leader's Coach, known as the Alliance, where we equip youth leaders to hold their own Cadre-like experiences," and that he "will jump on to assistant as a co-discipleship director for the third year Master's Commission Atlanta students and provide oversight for a small group within our youth ministry."

The petitioner stated:

Since we are such a people ministry, daily duties are subject to change. However, here are some of the constants throughout the year:

- Check and return voicemails and emails – 10%
- Behind the scenes work on each Cadre Advance (9 a year – from October through May) and NYLC (National Leaders Conference) which includes but is not limited to transportation, running of various teams, administrative and computer work, research, etc. – 40%
- Help manage incoming Cadre applications and nominations for upcoming Cadre year – 5%
- Communicate with youth pastors on upcoming National Youth Leaders' Conference through the facilitating and oversight of a call team – 10%
- Help type, print and package Alliance packets for youth pastors to receive. This process takes about a week per quarter – 5%
- Discipling Master's Commission and youth group students through phone calls, emails, one-on-one meetings and group events, in addition to running the leadership team of one of your youth ministry's small groups – 30%

The petitioner also provided an hourly breakdown of the beneficiary's duties. The duties reveal that the beneficiary's work hours are primarily consumed in administrative duties and staff meetings.

The regulation at 8 C.F.R. § 214.2(r)(3) provides:

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.

In denying the petition, the director determined that in responding to the RFE, the petitioner made material changes to the duties of, and qualifications for, the proffered position. The director stated that the petitioner changed the duties of the beneficiary from overseeing the children's ministry to assisting the director of operations, that it changed the beneficiary's qualifications for the position "from having a reverend certification of Assemblies of God denomination with active participation in Masters Commission to having no reverend certification, having [a] high school diploma and completion of Master's Commission of Atlanta." The director also found that the petitioner had materially changed the petition because it failed to answer question 9 of Section 1 of the Form I-129 Supplement R regarding the beneficiary's compensation when it submitted the original petition but checked the block "no" on the Form I-129 Supplement R submitted in response to the RFE. The director determined that the petitioner submitted no documentation to establish that the proffered position was a religious vocation.

On appeal, counsel denies that the petitioner had changed the "employment factors and job qualifications," stating that the position "involves ministry and a dedication to religious practices and functions. The petition entails daily prayer leading and disciplining [sic] Master's Commission and Youth groups. The same is reflected in the job description filed with the initial application in addition to the RFE."

The AAO concurs with counsel that there has been no material change in the duties of the proffered position or in the beneficiary's qualifications for the position. However, although the petitioner states that the beneficiary is a "certified reverend," it does not explain that term in the context of its religious denomination nor does it state the requirements for becoming a "certified reverend." The petitioner provided no documentation to establish that the proffered position of ministry assistant to the youth leaders coach requires a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life and therefore that the proffered position is a religious vocation as that term is defined by the regulation at 8 C.F.R. § 214.2(r)(3).

The petitioner has failed to establish that the proffered position is a religious vocation within the meaning of the regulation.

The regulation at 8 C.F.R. § 214.2(r)(3) also 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 director also determined that the petitioner had not established that the proffered position qualifies as a religious occupation, finding that the duties are primarily administrative in nature. While counsel alleges on appeal that the position involves religious duties such as “daily prayer leading” and discipling, the position description, the beneficiary’s description of his duties and the hourly schedule all reflect that the beneficiary’s duties are primarily administrative in nature. The petitioner submitted no documentation to establish that the duties of the proffered position primarily relate to a traditional religious function, primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

The petitioner has failed to establish that the proffered position is a religious occupation as defined by the regulation at 8 C.F.R. § 214.2(r)(3).

The third issue presented is whether the petitioner has 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. 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.

The petitioner stated that it would pay the beneficiary wages of \$20,000 per year. However, it provided no documentation of how it intends to pay the beneficiary and indicated on the Form I-129 that it had a net annual income of \$1,000. In response to the director's RFE, the petitioner submitted a copy of an IRS Form W-2 reflecting \$900 that it paid in wages to another individual, a copy of its IRS Form 941, Employer's Quarterly Federal Tax Return, for the first quarter of 2011, and a copy of its March 2011 bank statement showing an ending balance of \$151,072.23. In denying the petition, the director determined that the petitioner had not established that it could pay the beneficiary more than \$1,000 in salary.

On appeal, counsel asserts that the "bank statement provided by the Petitioner shows the net gross left in the bank account after all payroll and bills have been made." Nothing, however, supports counsel's assertion. The petitioner submitted only one bank statement. Additionally, the petitioner indicated on the Form I-129 that it had a net annual income of \$1,000. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel also stated that the IRS Form W-2 was for an employee in a similar position who had been working for only two months, and "should not be used as proof of inability to provide funds." However, the petitioner apparently submitted the IRS Form W-2 to establish that it had the ability to pay the beneficiary the proffered wage; it would be equally supportive that the petitioner could not pay the beneficiary a salary of \$20,000 per year.

Counsel also asserts that the petitioner, as a nonprofit organization, "should not make an income. Annual income reflected in the bank statements is net and therefore is after payment of salaries, rent etc." Counsel's argument is without merit. There is nothing to prevent a nonprofit organization from having an income. In fact, nonprofit organizations could not exist without an income and certainly could not pay its employees, including the beneficiary without an income. Presumably counsel means that a nonprofit organization should not make a profit. Nonetheless, while the nonprofit may not report a profit, there is no reason that it cannot have excess revenues over expenses in order to meet its financial obligations.

The petitioner has failed to provide sufficient documentation to establish how it intends to compensate the beneficiary.

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.

[REDACTED]

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ORDER: The appeal is dismissed.