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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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Washington, DC 20529-2090

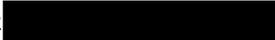


U.S. Citizenship  
and Immigration  
Services

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:

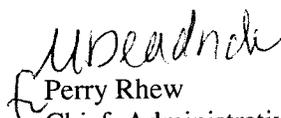
SELF-REPRESENTED

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 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 missionary. 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, how it intends to compensate the beneficiary, and that the position qualifies as that of a religious occupation.

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 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 petition was filed on February 18, 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 Section 1, question 4 of the Form I-129 Supplement R, the petitioner stated that the beneficiary "is serving the supporting church which is The [REDACTED]. This church is sharing a [sic] same mission goal for Native American without any established relationship." In Section 2, the petitioner certified that it is affiliated with the [REDACTED].

In a request for evidence (RFE) dated April 26, 2011, the director instructed the petitioner to, *inter alia*, "[p]rovide evidence that the beneficiary has the two-year membership in the religious denomination or organization." The petitioner submitted no evidence in response to the director's instructions.

On appeal, the petitioner submits a copy of a December 15, 2010 certificate of employment from the [REDACTED] certifying that the beneficiary had worked for the organization from March 1992 to the present, and a December 15, 2010 certificate of tenure certifying that the beneficiary had served as a missionary pastor with the [REDACTED] from 1992 to the present. The petitioner also submits a December 15, 2010 "certificate of missionary" from the [REDACTED] appointing the beneficiary as a missionary pastor to serve with the petitioning organization and a June 15, 2010 letter to the beneficiary in which the petitioner stated:

[Y]ou have reflected your willingness to participate in our missionary work, becoming one of our missionary ministers, working with children, you also mentioned how your church {your church denomination} can support our mission work.

[O]n the condition that your denomination of church will support our missionary plan in financial aspect, we would like to have you here in our area as a missionary pastor.

The record does not reflect the denomination claimed by the petitioner. However, the information quoted above indicates that the petitioner and the beneficiary's church in Korea are of different denominations. The petitioner provides no clear documentation to establish that the

beneficiary is a member of its denomination and has been a member of the denomination for two years immediately preceding the filing of the petition.

The second issue presented on appeal 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.

(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.

The petitioner indicated on the Form I-129 that the beneficiary would not receive a salary for his services. In section 1, question 5d of the Form I-129 Supplement R, the petitioner stated that it was submitting "documents for self-supporting" and that:

The [REDACTED] will send a base living expense and missionary activity expense from foreign missionary fund of church. Two thousand five hundred dollar[s] is monthly supporting amount from church.

The petitioner submitted a copy of a July 15, 2010 "certificate of missionary support" from the [REDACTED] indicating that it had appointed the beneficiary as a missionary with the petitioning organization and that it would pay the beneficiary \$2,500 per month. The petitioner submitted no verifiable documentation with the petition to establish how the petitioner or the [REDACTED] would compensate the beneficiary.

In her RFE, the director advised the petitioner that the "certificate of missionary support" was insufficient to establish how the petitioner intended to compensate the beneficiary. She instructed the petitioner that if the beneficiary was to be self-supporting, the petitioner must submit documentation in accordance with the above-cited regulation to establish that the position the beneficiary 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. The petitioner submitted no documentation in response to the director's request for additional documentation.

In its June 15, 2010 letter to the beneficiary, which it submits on appeal, the petitioner advised the beneficiary to “please note that our church all [sic] not the responsibility for paying any salary coming to you, [i]t is your church’s responsibility {in Korea} to support you in full regards to your expenses and living cost.” The petitioner resubmits the copy of the “certificate of missionary support” and submitted a copy of an undated document “Employ Salary of Payment” indicating that the [REDACTED] paid the beneficiary a stipend of \$1,800. The date of the payment is unclear as the dates indicated are “Jan 1, 2011 to Dec 31 2011 Payroll payment Report.”

The record contains several documents in the Korean language that are not accompanied by English translations. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. The documentation in the record does not establish that the beneficiary will be self-supporting as outlined in the regulation at 8 C.F.R. § 214.2(r)(11)(ii).

The petitioner has failed to submit competent and verifiable documentation of how it intends to compensate the beneficiary.

The third issue is whether the petitioner has established 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.

*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.

The petitioner stated that the proffered position is that of a missionary and that as a certified black belt-holder, the beneficiary "will carry out Tae-Kwon Do (Korea Marshal [sic] Art) for children and adults two times a week, led bible study three times a week, work with church for gospel music, Christian education." In the RFE, the director advised the petitioner of the definition of religious worker as defined by the above-cited regulation, and instructed the petitioner to "[p]rovide a detailed explanation as to the requirements for the position offered, and how the beneficiary meets those requirements. Submit the religious denomination's or organization's by-laws, manuals, brochures, or guidebooks establishing the requirements for the position." The petitioner provided copies of its bylaws and articles of incorporation; however, neither includes any information on the position of missionary within the petitioner's denomination or organization. The petitioner submitted no other documentation that was responsive to the director's instructions.

On appeal, the petitioner provides a "proposed mission plan" signed by the beneficiary in which he states that he will organize worship service for Boys and Girls Club members on Sunday, hold a bible study class on Wednesday, missionary works through "Takwondo" class on Thursday and Friday, counseling services, praise meeting on Friday, visiting families of communion, organizing a sport activity once a week, organizing a monthly social activity and hold bible quizzes, retreats and other missionary activities. In a July 7, 2011 letter, the petitioner, through its [REDACTED] stated that the beneficiary's missionary works consist of the following:

- Bible study on Wednesday
- Worship service on Sunday
- Praising meeting on Friday
- Counseling
- Visiting family for communion
- Evangelism activities for nonbeliever
- Teaching Taekwondo (Thursday and Friday)
- Volunteering work for hair cut (once a month)
- Retreat per every year

All activities are based on the mission statement of Christian evangelism to introduce them a love of Jesus for the Native American Indian people who are indulged in alcoholism, and drug addiction through continuous bible study, praising, and other missionary events.

The petitioner provides a “certificate of missionary” from the [REDACTED] certifying that the beneficiary has been appointed as a missionary with the petitioner “for the work of Mission, Evangelism, Education, Taekwon-do Mission and Social Service.” As discussed previously, the petitioner submitted several documents in Korean that were not accompanied by English translations. Without certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims, and the record, as it stands, does not establish that the duties of the proffered position primarily relate to a traditional religious function, clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination, and that the position is recognized as a religious occupation within the denomination.

The record does not sufficiently establish that the proffered position is a religious occupation or vocation as defined by the regulation.

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.