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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

PUBLIC COPY



**U.S. Citizenship
and Immigration
Services**

[REDACTED]

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Date: **JAN 19 2012** OFFICE: CALIFORNIA SERVICE CENTER [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 (the Act), 8 U.S.C. § 1101(a)(15)(R)(1)

ON BEHALF OF PETITIONER:

[REDACTED]

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 music director. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation and how it intends to compensate the beneficiary.

On appeal, counsel asserts that the petitioner, acting pro se, “failed to submit the readily available documents which would have shown USCIS the desired occupation is [a] religious occupation since the petitioner failed to understand what the service center was looking for” and for the same reason failed to “substantiate their claim by submitting evidences that beneficiary is a non-compensated worker.” 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 an immigrant 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 proffered position qualifies as that of a religious occupation or vocation.

The U.S. Citizenship and Immigration 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.

On the Form I-129, Petition for a Nonimmigrant Worker, filed on October 15, 2010, the petitioner stated that the duties of the proffered position would include the following:

- Plan and schedule rehearsals, Sunday and Event performance with the Pastor/music team
- Identify developmental needs, coach, mentor or help others to improve their skills
- Assess performance in arranging, copying, music & vocal coaching to make improvement
- Direct to achieve desired effects, tonal & harmonic balance dynamics, rhythm & tempo

The petitioner stated in its October 3, 2010 letter submitted in support of the petition that it had been "compelled to bring worship leaders and piano/organ players from outside our Metro area and we have found it very critical in lieu of this situation to have a music leader." The petitioner submitted no documentation with the petition to establish that the proffered position qualifies as a religious occupation as defined in the above-cited regulation.

In a February 17, 2011 request for evidence (RFE), the director advised the petitioner of the above regulations and instructed the petitioner to:

Provide the following evidence to establish that the position qualifies as a religious occupation:

Requirements of the Proffered Position (Music Director)

- Provide a detailed explanation as to the requirements for the position offered.
- Submit the religious denomination's or organization's by-laws, manuals, brochures, or guidebooks establishing the requirements for the position.
- Provide detailed evidence that the beneficiary meets the denominations organization's [sic] 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 [been] performing this function in the past.

Proffered Position: Provide a **detailed description** of the work to be done, listing the specific job duties, level of responsibility, number of hours per day/week performing the each [sic] specific task/work. [Emphasis in the original.]

In response, the petitioner restated the duties of the position as listed in the Form I-129 petition. It also submitted a copy of the bylaws of the [REDACTED]. The petitioner submitted no documentation to establish a relationship between the [REDACTED] and the petitioning organization. The director denied the petition finding, *inter alia*, that the petitioner had not established that the position qualifies as that of a religious occupation.

On appeal, the petitioner provides a job description that outlines the purpose of the position, the qualifications, its "principal functions," and the duties and responsibilities of the petition. The document describes the salary and benefits as follows:

- Our brother-in-Christ, [REDACTED] will provide a furnished room free of charge for at least two years; and Church will pay stipend from its savings.
- No other benefits.

The petitioner also submits a copy of its unsigned and undated bylaws, which list the position of music director in Article VI, Committees and Organizations.

The petitioner also submits a June 7, 2011 letter from the [REDACTED], indicating that the petitioner has met in the [REDACTED] since 2003 and that the petitioner's pastor uses a church office on the premises.

The petitioner has failed to submit documentation to establish that the duties of the proffered position primarily relate to a traditional religious function, that they are primarily related to, and 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 its denomination. Despite counsel's assertion that the documents submitted on appeal were "readily available," this assertion is not supported in the record. The petitioner's October 3, 2010 letter does not indicate that the position of music director existed in the petitioner's organization prior to the filing of the instant petition. However, the bylaws submitted on appeal identify the position as a prominent office within the petitioning organization. The bylaws are undated and appear to have been drafted specifically to meet USCIS requirements. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

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

The second issue 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:

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 documentation, such as IRS Form W-2 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 stated on the Form I-129 that the beneficiary's compensation would consist of room, board, and transport. With the petition, the petitioner provided a September 2, 2010 letter from its bank, verifying that its current balance was \$32,154.11.

In her RFE, the director instructed the petitioner to submit documentation in accordance with the above-cited documentation to establish how it intends to compensate the beneficiary. In response, the petitioner stated that the beneficiary would serve the church in a non-salaried capacity with compensation consisting of covering board and transport cost. The director determined that the petitioner had not submitted verifiable documentation of how it intends to compensate the beneficiary and denied the petition.

On appeal, the petitioner submits a June 9, 2011 affidavit from [REDACTED], who states he is a member of the petitioning organization and that he “would like to offer a fully furnished room for free for a couple of years” in his home. The petitioner provides a partial copy of [REDACTED] unsigned and undated IRS Form 1040, U.S. Individual Income Tax Return, which indicates that it was filed jointly with his wife. The return does not, by itself, provide evidence of [REDACTED] ability to provide the beneficiary with board and the petitioner submits no other documentation to establish how it will provide the beneficiary with a place to reside.

The petitioner has submitted insufficient 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.

ORDER: The appeal is dismissed.