

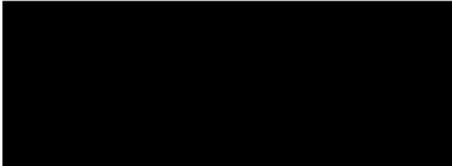
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



813

Date: **MAR 22 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 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 extend the beneficiary's status 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 its director of programs. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation or that the beneficiary is qualified for the proffered position.

On appeal, counsel asserts that the proffered position "is not a purely administrative position" and that the beneficiary "has the required skills and education to hold the position" with the petitioning organization.

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 on appeal 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.

In its November 18, 2010 letter submitted in support of the petition, the petitioner, through Reverend German Pineda, its pastor and the official who signed the petition on behalf of the petitioner, stated that the church had purchased property on which it expected to build a church and community center. Reverend Pineda stated:

We are in the process of renovating an existing barn on the property and have also started holding fundraising and recreational activities on this new land. [The beneficiary] has been instrumental in soliciting various church members to aide [sic] in the renovation by donating a wide range of services (painting, electrical work, construction). We strongly believe that this new purchase will enable The Church to provide many more free services to our members, such as a food bank, an informational resource center for Governmental and community services, a gym for our youth, English as a second-language classes, and other assistance to our lower income members. In her role as Director of Programs [the beneficiary] will be responsible for leading the various members of the church in their efforts to develop this expanded programming to be conducted on the new property. This will include the many programs described above and additional Christian education programs for our members. [The beneficiary] will also be responsible for developing fundraising programs to be held on the new property.

The Director of Programs remains a vital religious position to The Church community and entails a great deal of responsibility. As Director of Programs, [the beneficiary] oversees all church programs, such as community meetings, inviting other religious speakers to The Church and our ongoing fundraising

efforts. [She] oversees all adult, youth, and child religious programs from weekly prayer meetings to baptisms. In her role as Director of Programs, [the beneficiary] also organizes all special activity-related events, including Christmas and Easter. These events require a great deal of organizational and administrative responsibility, as well as experience, faith, and knowledge of the beliefs and practices of The Church. Of key importance is [the beneficiary's] work overseeing The Church's capital fundraising and macro programs which directly contribute to The Church's continued growth.

In a March 11, 2011 request for evidence (RFE), the director instructed the petitioner to:

Provide a detailed description of the work to be done, including specific job duties, level of responsibility, the number of hours per work performing each duty and the minimum education, training, and experience necessary to do the job. Further, explain how the duties of the position relate to a traditional religious function.

In an April 21, 2011 letter submitted in response, the petitioner stated:

The Director of Programs is a vital religious position to The Church community and entails a great deal of responsibility. This religious position in the administration oversees all church programs including religious speakers, community meetings and special events held at The Church. As the Director of Programs [the beneficiary] oversees various types of religious programs from weekly prayer meetings to baptisms of children and new church members. Her daily duties include a variety of administrative tasks including coordinating with The Church accountant, depositing tithes and offering from Sunday services, managing and operating The Church's business office. [The beneficiary] spends at least 10 hours a week on purely administrative tasks. [She] is also responsible for ensuring the successful direction and organization of the majority of The Church's religious programming including: (1) acting as ministry leader coordinator (2) supervising the "Friends Meeting Group" (3) coordinating the UNGIDOS ministry conference, (4) directing church choirs, (5) leading community outreach ministry and (6) directing church-wide fasting known as "Forty Days of Fire."

The petitioner also stated that as Director of Programs, the beneficiary oversees all other church directors and "ensures that all are working together towards the same goals." The petitioner stated that the beneficiary "spends at least five hours a week working with each ministry's leader to organize fasts, prayer meetings sponsored by each ministry, special church services directed by members of each ministry and helping each ministry prepare for their yearly retreats." As leader of the Friends Meeting Group, which meets twice a week, the beneficiary "spends at least two hours a day studying the bible to help her prepare a topic to present at each meeting. Following her individual study, she then meets with the Pastor to prepare ministry guides and a

mini-sermon that she is able to deliver to the group.” The petitioner stated that the beneficiary spends a minimum of “three hours a week preparing for” the yearly UNGIDOS meeting that brings together “all the United Pentecostal Hispanic churches in the North East.” According to the petitioner, as choir leader, the beneficiary “spends 2-4 hours a week selecting music for The Church’s choirs” which perform “at least once a week during church services” and, as part of her community outreach ministry, “works with the Pastor for ideas on how to better reach out to community members” spending “2-3 hours per week putting together packages with The Church’s information, and creating and writing pamphlets describing The Church’s beliefs.” The petitioner also stated that the beneficiary spends 1 to 2 hours per week beginning in January of each year and 8 to 10 hours in June preparing for the yearly Forty Days of Fire held each July.

In denying the petition, the director determined that the petitioner had failed to establish that the proffered position qualifies as a religious occupation as the majority of the duties were administrative in nature. On appeal, counsel asserts that the petitioner’s April 2011 letter “did not portray [the beneficiary’s] entire value and commitment to The Church” and that “this breakdown only encapsulated the majority of her duties.” Counsel states that as director of programs, the beneficiary “oversees all adult, youth, and child religious programs, and she organizes all special activity-related events” and that the duties of the position “require experience, faith, and knowledge of the beliefs and practices of The Church.” Counsel further asserts that the beneficiary “is not simply performing administrative tasks for The Church; rather, her teaching and leadership duties primarily relate to a traditional religious function recognized by leaders of her religious denomination and are primarily related to inculcating and carrying out the religious creed and beliefs of The Church.”

Counsel states that the courts have recognized that religious occupations can encompass both religious and secular duties. Counsel cites *Camphill Soltane v. DOJ*, 381 F.3d 143 (3rd Cir. 2004), in which the court held that an occupation may qualify as a religious occupation if it has some religious significance. *Camphill Soltane*, however, was decided under regulations that were superseded on November 26, 2008. Under the current regulations, the petitioner must establish that the duties of the proffered position are primarily religious in nature.

The petitioner submits a July 5, 2011 letter from [REDACTED], a retired [REDACTED]

[REDACTED] states that the beneficiary’s role as lay minister with the petitioning organization “is vital to ministry of the church” and that her work with the choirs along with her other duties “enhance the life of the church.” In a June 10, 2011 letter, [REDACTED] the senior pastor of [REDACTED], states that the beneficiary “has been granted a Christian Workers License under the direction of the United Pentecostal Church International [(UPCI)] and is therefore duly licensed as a minister and Director of Programs for the” petitioning church [REDACTED] the district secretary of the Maryland/DC District of the UPCI and [REDACTED] senior pastor of the [REDACTED], also state that the beneficiary had been licensed by the UPCI as a minister and director of programs. The petitioner did not allege that the beneficiary was a UPCI licensed minister and director of programs prior to the appeal. Furthermore, the record does not contain a copy of the license nor does it contain any

documentation from the UPCI that establishes that the position of director of programs is recognized as a religious occupation within the denomination.

The petitioner also submits documentation attesting to the importance of the lay ministry within the evangelical community and the beneficiary's work within the petitioning organization. Nonetheless, in its initial correspondence, the petitioner stressed that the duties of the position are primarily administrative in nature with a special emphasis on fundraising. The outline of the beneficiary's daily duties does not establish that the beneficiary will be primarily engaged in religious work. The petitioner has provided insufficient documentation to establish that the coordination and assistance she provides for the other church departments and programs primarily involve, and is primarily related to, inculcating or carrying out the religious creed and beliefs of the denomination.

The petitioner has also failed to establish that the position of director of programs is recognized as a religious occupation within its denomination. The evidence presented indicates that the duties associated with the beneficiary's position are those tailored to her specific and unique skills. For example, the petitioner and those supporting the beneficiary stress her musical talents; however, the petitioner presents no documentation to establish that the music ministry is an inherent part of the duties of programs director. Additionally, the petitioner submits no documentation to explain the function of fundraising in the duties of director of programs as that position is recognized by the denomination.

Accordingly, 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 director also determined that the petitioner had failed to establish 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."

In its initial submission, the petitioner did not identify any specific qualifications for the proffered position. In its April 21, 2011 letter submitted in response to the director's RFE, the petitioner listed several qualifications necessary for the position and stated that the beneficiary met each one. To work as the ministry leader coordinator, the petitioner stated that the individual must "have spent at least two years serving in a church administrative capacity working directly with ministry." The petitioner stated that the beneficiary met this requirement because she had "spent three years at Iglesia Evangelica Amigos . . . while in her native Guatemala learning about different church ministries." To lead the Friends Meeting Group, the petitioner stated that the beneficiary must "have at least two year[s] of active membership in the leadership of The Church." The petitioner stated that the beneficiary had led these meetings since 2006. For her responsibilities with the UNGIDOS conference, the petitioner stated that the beneficiary must have been a member of the church for at least five years, must have worked directly with the

pastor during the previous year to organize the conference, and must have demonstrated excellent organizational skills. The petitioner stated that the beneficiary meets this requirement as she has served as director of programs for the previous two years. The petitioner also stated that the beneficiary "attended a variety of music seminars charged with preparing her to direct and organize church choirs."

In denying the petition, the director acknowledged the petitioner's statements regarding the beneficiary's qualifications. The director determined, however, that the petitioner had failed to provide evidence that the qualifications for the proffered position are recognized by the governing body of its denomination.

On appeal, the petitioner submits letters attesting to the importance of the lay ministry and music in the petitioner's denomination and the importance of the role the beneficiary plays in the petitioning organization. Nonetheless, as discussed above, the petitioner has not provided sufficient documentation to establish that the position of director of programs is recognized as a religious occupation within the denomination and that the denomination has set specific requirements for the position. Accordingly, the petitioner has failed to establish that the beneficiary is qualified for the position according to the standards set by the denomination.

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.