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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

b13

Date: MAR 22 2012 Office: CALIFORNIA SERVICE CENTER FILE: [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:

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.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

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 AAO will withdraw the director's decision and will remand the petition for further action and consideration.

The petitioner is a church. It seeks to classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as a youth ministry intern. The director determined that the petitioner had failed to provide the attestation required by the regulation at 8 C.F.R. § 214.2(r)(8).

On appeal, counsel states that the denial of the petition "focuses on the training aspect of the position of ministry assistant" and "ignores the daily duties of the position." 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 provided the required attestation.

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

Attestation. An authorized official of the prospective employer of an R-1 alien must complete, sign and date an attestation prescribed by USCIS and submit it along with the petition. The prospective employer must specifically attest to all of the following:

- (i) That the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation;
- (ii) That the alien has been a member of the denomination for at least two years and that the alien is otherwise qualified for the position offered;
- (iii) The number of members of the prospective employer's organization;
- (iv) The number of employees who work at the same location where the beneficiary will be employed and a summary of the type of responsibilities of those employees. USCIS may request a list of all employees, their titles, and a brief description of their duties at its discretion;
- (v) The number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past five years by the prospective employer's organization;
- (vi) The number of special immigrant religious worker and nonimmigrant religious worker petitions and applications filed by or on behalf of any aliens for employment by the prospective employer in the past five years;
- (vii) The title of the position offered to the alien and a detailed description of the alien's proposed daily duties;
- (viii) Whether the alien will receive salaried or non-salaried compensation and the details of such compensation;
- (ix) That the alien will be employed at least 20 hours per week;
- (x) The specific location(s) of the proposed employment; and
- (xi) That the alien will not be engaged in secular employment.

A review of the Form I-129, Petition for a Nonimmigrant Worker, and the Form I-129 Supplement R, filed on July 20, 2011, reveals that the petitioner provided all of the information requested. The director's determination that the petitioner failed to provide the required attestation is without basis and is withdrawn.

In Part 5 of the Form I-129, the petitioner described the proffered position as "youth ministry intern." In question 5 of Section 1 of the Form I-129 Supplement R, the petitioner stated that the position was that of "ministry assistant" and that the duties would entail assisting pastors with the organization of youth rallies and outreach programs and preaching during youth groups and other services. In its response to question 4 of the supplement, the petitioner stated that the beneficiary was working at the petitioning organization "for the purpose of mentoring and learning certain preaching, organizational, and evangelistic techniques and practices."

In denying the petition, the director questions whether the beneficiary will be working in 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.

The director noted that the duties of the proffered position include "learning certain . . . techniques and practices" and thus did not qualify as a religious occupation. However, the record is not clear that the beneficiary's proposed duties of learning new "techniques and practices" constitute the religious study or training as outlined in the above-cited regulation. The petitioner stated that the beneficiary was an ordained minister and has previously preached at its youth services. Although the petitioner stated that it was providing a copy of the beneficiary's ordination certificate, no such documentation is included in the record of proceeding. The record also does not include a work schedule to establish the primary duties of the proffered position. The record is remanded to the director for further review and determination as to whether the proffered position is a religious occupation within the meaning of the regulation.

Additionally, the petitioner has not 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 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.

In a June 8, 2011 letter, the petitioner stated that it is "an independent inter-denominational church not affiliated with an organized denomination," that it "does not have a formal membership" but that it has "a historic relationship with [REDACTED]" The petitioner further stated that the beneficiary "serves in a church in France that is part of the international.

██████████ and that he has worked with the petitioning organization on several occasions. The regulation at 8 C.F.R. § 214.2(r)(1) defines religious denomination as:

a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes one or more of the following:

- (A) A recognized common creed or statement of faith shared among the denomination's members;
- (B) A common form of worship;
- (C) A common formal code of doctrine and discipline;
- (D) Common religious services and ceremonies;
- (E) Common established places of religious worship or religious congregations; or
- (F) Comparable indicia of a bona fide religious denomination.

The record contains no documentation to establish that the beneficiary has been a member of the petitioner's denomination for the two years immediately preceding the filing of the petition or documentation to establish that the petitioner and the beneficiary's denomination in France are governed or administered under a common type of ecclesiastical government as outlined by the above-cited regulation. On remand, the director shall address whether the petitioner has established that the beneficiary had been a member of its religious denomination for two full years immediately preceding the filing date of the petition.

Furthermore, the record does not establish how the petitioner will compensate the beneficiary. On the Form I-129, the petitioner stated that the beneficiary would receive a salary of \$780 per month provided by the petitioner and a housing stipend of €1,800 from his church in France. The petitioner submitted an April 3, 2011 letter from the treasurer of the ██████████ ██████████ stating that the beneficiary had received a salary of €1,800 in January, February and March of 2011. However, the petitioner submitted no verifiable documentation of the beneficiary's receipt of this salary or documentation of how the petitioning organization will compensate the beneficiary with the proposed salary of \$780. On remand, the director shall address this issue and how the petitioner will compensate the beneficiary.

The matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.