

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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



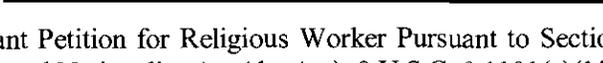
U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



D13

Date: **MAY 09 2012** Office: CALIFORNIA SERVICE CENTER 

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.

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

The petitioner is a Buddhist foundation. 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 liturgical assistant/assistant nun. The director determined that the petitioner had not established that the beneficiary is qualified for the proffered position.

On appeal, counsel asserts that the director's decision "was based on an inadequate review of the evidentiary record and was thus made in error." Counsel submits a brief and additional documentation in support of the appeal.<sup>1</sup>

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.

---

<sup>1</sup> Counsel alternatively asserts that the petitioner is filing an appeal and a motion to reopen and reconsider. However, he indicated on the Form I-290B, Notice of Appeal or Motion, that the petitioner is filing an appeal and that declaration takes precedence over contrary assertions in counsel's brief. Counsel's arguments regarding the standard for granting a motion to reopen and to reconsider are therefore inapplicable and not considered in this decision.

The issue presented is whether the petitioner has established that the beneficiary is qualified for the proffered position.

The U.S. Citizenship and Immigration Services (USCIS) 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.”

On the Form I-129, Petition for a Nonimmigrant Worker, Supplement R, the petitioner stated that the beneficiary's proposed duties would consist of:

Out reach [sic] to regular Buddhist members by explaining the Buddhist doctrines, creed, and texts as an eight precept nun; Write and edit newsletters and web sites to promote the Pure Land Buddhism; Sort, select and categorize Buddhism teaching tapes, CD, and videos from the past 20 years, make transcripts of the selected teaching tapes and TV lectures given by [REDACTED] instruments at group practice.

The petitioner stated that the beneficiary was qualified for the proposed position based on her experience:

Volunteer work at [REDACTED] as a liturgical assistant; Deep understanding of Buddhist cosmology, text books, and how to attain full enlightenment to become a Buddha; Experience and training at Dallas Buddhist Association as a Religious Worship and Library Assistant; Commitment to eight precept [sic] nun; Familiarity with Chinese Buddhist Chinese liturgy/texts. Her skills of playing Buddhist instrument.

In its March 29, 2011 letter submitted in support of the petition, the petitioner indicated:

This is a liturgical assistant or assistant nun position. This person must: have deep understanding of Pure Land Method of Chinese Mahayana and committed to religious life to live in the Temple; observes eight precepts which is about the level of monk or nun but not ordained; has better connection and communication skills to [sic] our regular Buddhists than ordained nun and monk; fluent in both Chinese and English and very familiar with Buddhist liturgy and texts; has been trained to play Buddhist instruments, and experienced in using modern electronic media.

The letter also outlined the beneficiary's qualifications:

At Bao Lain Shi temple, she has volunteered to work as a liturgical assistant and gained deep understanding of Buddhist cosmology and doctrines. She has been trained for the skill to play Dharma instrument such as wood fish, zhong gu

during group practice. Due to her familiarity with Chinese Buddhist liturgy and texts, she helped the library to sort hard copy books and electronic books in the library and select publications from the market.

She worked for Dallas Buddhist Association as a Worship and Library Assistant under R-1 visa from 2005 to 2009 on full time basis. . . . During that period, she used all her skills she had to help the worship and library of Dallas Buddhist Association and improved her communication skill with lay persons to promote Pure Land Chinese Mahayana. Through her work and practice at Dallas Buddhist Association, she attained more profound understanding of Buddhism and committed herself to religious life as an eight precept nun. . . .

The petitioner submitted a December 14, 2010 letter from the [REDACTED] temple in Malaysia certifying that the beneficiary “attends our activities and practice regularly, helps our library to archive documents and electronic documents, plays dharma instruments during our group practice, help coordinate retreat and ceremony.” In a March 8, 2011 statement, [REDACTED] the petitioner’s head monk, stated that he had previously been head monk at the Dallas Buddhist Association and that the beneficiary worked for that organization in an R-1 status as a worship and library assistant. The petitioner also provided a copy of a 1993 certificate from the Ministry of Education for Malaysia, which indicates that the beneficiary passed courses in the Malaysian, English and Chinese languages. The document is partially in English; the petitioner did not provide a translation of the full document as required by the regulation at 8 C.F.R. § 103.2(b)(3), which provides:

*Translations.* Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.

In a May 31, 2011 request for evidence (RFE), the director noted that the petitioner stated that the beneficiary must be “fluent in both Chinese and English and very familiar with Buddhist liturgy and texts; has been trained to play Buddhist instruments, and experienced in using modern electronic media,” and instructed the petitioner to “submit verifiable evidence that the beneficiary meets these requirements.”

In its June 21, 2011 letter submitted in response, the petitioner, through its director and secretary, Julie Hsieh, stated :

[The beneficiary’s] language skills and her familiarity with Chinese Buddhist liturgy and texts, her Buddhist instrument training and work experience are what we expect from such a position. She is born in a Malay Chinese family who also speaks Cantonese at home. Chinese is her native language. In Malaysia’s multi-culture education system, she learned Chinese reading and writing, English, and Malay languages. She also has continuous education in English language. After

four and half year[s] instrument playing at Dallas Association and her understanding of the texts, we have confidence in her for being a mature and great Buddhist instrument player.

In his June 14, 2011 letter submitted in response [REDACTED] stated that the beneficiary was recommended to work at the Dallas Buddhist Association by her temple in Malaysia, the Bao Lian Shi Temple and that:

Another reason that she was a big help of the Temple is her language skills. She could speak English, Mandarin Chinese, Cantonese, Taiwanese and Malay fluently. She could translate the textbooks, saturas, and treaties into a language that the member preferred. In addition to her language skills, [she] was also adept at using the computer, managing our temple's website and utilizing electronic communications to connect with our devotees. She also proved crucial in our media department, making many recordings, DVDs, and CDS of Buddhism lectures and services. We appreciate her previous training at Bao Lian Shi Temple that her skill of playing Buddhist instrument give the chanting and retreat a more pure mind.

In a June 12, 2011 letter from [REDACTED] stated:

With years of trainings, practice and dedication, [the beneficiary] was very capable to explain the Dharma meaning to other members during our retreat and Dharma classes. Being born in Malaysia and receiving primary and secondary education here, she is fluent in writing and speech for three languages, Malay, Chinese, and English. With her multilingual background, she can use many different languages to introduce Buddhism to diverse people, especially with her specialty of translating Chinese Buddhist scriptures into English.

Also she is very familiar with the temple service liturgy and procedures, etiquette, and the use of Dharma instruments. She helps services and chanting events. Following the growing trend of online communications, [the beneficiary] set up a website for the temple, using emails and electronic newsletter to communicate to members of the congregation in order to promote Dharma spirit and meaning. After services and lectures, she is in charge of recording the services and lectures. She is also very good at selecting different part of the services, lectures and transforming them into electronic media, like DVDs, mp3, and CDs of these events. . . .

The petitioner submitted a copy of a December 4, 1993 "certificate of achievement" from Rima College, indicating that the beneficiary successfully completed "Rima Intensive Programme for SPM English (RIPE)" from August 1993 to October 1993. The petitioner also submitted a certified translation of the beneficiary's certificate of education indicating that she had achieved

certain grade levels in the Malay, English and Chinese languages. The significance of each grade level is not explained in the record.

In denying the petition, the director acknowledged receipt of the letter (certificate of membership) from [REDACTED] the letter from [REDACTED] the beneficiary's high school certificate and the Form I-797, Notice of Action, approving the beneficiary's previous R-1 status to work for the Dallas Buddhist Association. The director concluded:

The certificate of membership only establishes that the beneficiary has been a member of the Buddhist Society it does not establish that the beneficiary is fluent in Chinese and English or that she is experienced in using "modern electronic media."

The job letter from [REDACTED] . . . too does not establish that the beneficiary is fluent in Chinese and English or that she is experienced in using modern electronic media.

The high school certificate only indicates that the beneficiary studied English Language and Chinese Language in high school in 1993. It does not establish that the beneficiary were [sic] or is fluent in either language.

The Form I-797 only documents that the beneficiary was previously granted R-1, religious worker status. . . . It does not establish that the beneficiary meets the requirements of the position. [REDACTED] establishes in his letter that the beneficiary worked as a Worship and Library Assistant under the previous R-1 visa. [REDACTED] does not indicate that the requirements for the position are the same.

The petitioner has not established that the beneficiary is fluent in both the Chinese Language and the English Language or that she is experienced in using modern electronic media.

On appeal, counsel states that the director failed to consider "verifiable evidence" that the beneficiary had completed additional training in English from Rima College and the letter from [REDACTED] stating that the beneficiary was fluent in English, Chinese and Malay. The petitioner submits an August 18, 2011 affidavit from [REDACTED] who attests to the beneficiary's ability to play "the big-wooden fish, a dharma instrument," copies of three certificates issued to the beneficiary in February 1994 and March 1994 by [REDACTED] certifying that she had completed courses of study in practical accounting, [REDACTED]

The petitioner has submitted sufficient documentation in the form of letters from her temple in Malaysia, [REDACTED] her school certificate, and the certificate from Rima College, to establish that she is fluent in English and Chinese and that she has sufficient experience to meet

the petitioner's requirements for using "modern electronic media." The petitioner stated that Chinese is the beneficiary's native language. The letter from [REDACTED] of the Bai Lian Temple in Malaysia clearly stated that the beneficiary was fluent in Malay, Chinese, and English, and that she was in charge of selecting parts of the service and lectures and transforming them into electronic media. [REDACTED] stated that the beneficiary spoke several languages fluently, including English and Chinese and that she managed the temple's website and was crucial in the media department, making recordings, DVDs, and CDS of lectures and services. The director's decision is therefore withdrawn.

Nonetheless, the petition cannot be approved as the record now stands. The petitioner states that it will provide the beneficiary with lodging and food and would reimburse her for other living expenses such as transportation, clothing and "other daily commodities." The petitioner submitted photographs of its facilities that included a room for "overnight stays" and a room for the nun/monk. The photographs depict only the two rooms and it cannot be ascertained from the record the number of rooms set aside for the nuns and monks and where the beneficiary would reside. The photographs also do not depict any facilities where food can be stored and prepared.

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 has not submitted sufficient verifiable documentation of how it intends to compensate the beneficiary.

Additionally, the regulation at 8 C.F.R. § 214.2(r)(16) provides:

*Inspections, evaluations, verifications, and compliance reviews.* The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning

organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The record does not reflect that the petitioner has successfully passed an onsite inspection or other compliance review.

The matter is remanded for the director to address the above issues. 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. As always in these proceedings, the burden of proof 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.