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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**

[Redacted]

D13

Date: **SEP 10 2012** Office: CALIFORNIA SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted] A
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.

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 church. It seeks classification of the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as its director of music. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation.

Counsel asserts on appeal that the director "erroneously denied" the petition and that "Federal Case law has rejected such a dismissal of this occupation." Counsel states on the Form I-290B, Notice of Appeal or Motion, that he would submit a brief and/or additional evidence within 30 days. As of the date of this decision, however, more 7 months after the appeal was filed, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

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 established that the proffered position qualifies as that of a religious occupation or vocation.

The U.S. Citizenship and Immigration Services (USCIS) 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 petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that as director of music, the beneficiary would “research contemporary praise and worship songs,” develop and design the worship music for the upcoming weekly services,” “conduct[] rehearsals twice a week,” and “play[] the keyboard for all services and programs.” The petitioner stated that the beneficiary would receive an annual salary of \$24,000 per year. In its job offer of [REDACTED] 2011, the petitioner advised the beneficiary:

You will serve as a part of the church’s ministry team and function within the overall ministry and strategic vision of the church. As Director of Music you will be responsible to oversee the music ministry of the church. Your specific duties will be to design, develop, implement, and coordinate all the music for the worship services and special performances, and to lead the church in worship songs. You will be responsible for teaching and conducting choir rehearsals for both the adult and youth choirs and to direct the choirs during performances.

The petitioner provided a copy of its membership handbook that lists its ministries, which includes the music ministry, and states that the music ministry will be led by the director of music who in turn would be supervised by the pastor. The petitioner submitted a copy of an [REDACTED] 2010 church magazine that contains information about the music ministry.

In a September 14, 2011 request for evidence (RFE), the director instructed the petitioner to provide additional documentation to establish that the position qualifies as that of a religious occupation:

- **Requirements for the Position:** Provide 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. Provide detailed evidence that the beneficiary meets the

denominations [sic] organization's 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 explain how the position offered qualifies as a traditional religious function. Clearly indicate who performed this function in the past.
- **Offered Position:** What is the beneficiary's job title? Provide a detailed description of the work to be done, including the name of the employer, specific job duties, level of responsibility, number of hours per week performing the work duties 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.

The petitioner again submitted a copy of its membership handbook that describes the music ministry and states that the director of music is supervised by the pastor. The handbook also outlines the job responsibilities. The petitioner also resubmitted a copy of the [REDACTED] 2010 church magazine and information from its website that includes information about the music ministry.

The petitioner submitted a statement from its board of trustees stating that at its [REDACTED] 2011 meeting, it selected the beneficiary based on her previous experience as a music director in her church in Nigeria, and that its recommendation was "based on her honesty, high moral standard, and ability to play and teach multiple musical instruments, multi-lingual abilities and her previous ministerial appointment."

The director denied the petition, stating:

In response [to the RFE], the petitioner submitted a letter indicating the duties of a "Music Director": Directs the planning, organizing, conducting and evaluating a comprehensive music program including choir, vocal and instrumental ensembles, lead the planning and promoting a graded choir program and co-ordinate the work of choir, assist the Pastor in planning all series of worship and musical concerts of the church, liaising with the Senior Pastor about the needs, mode of operations, training of members, disciplinary process and general welfare of the choir.

The beneficiary's duties do not relate to a traditional religious function. A review of the petition reveals that the beneficiary will be primarily involved in secular and not religious activities. The petitioner has not shown that the beneficiary's essential job functions are inherently or predominantly religious. The beneficiary's own familiarity with the religious subject matter is clearly an assent [sic] in his [sic] performance of his [sic] job,

but it does not follow that a secular worker could not perform the same core functions, or that the position of a “Music Director” relates in any straightforward traditional religious function.

The petitioner has not submitted evidence to prove that the beneficiary’s position is a traditionally permanent and salaried occupation within the religious organization. In this instance, the duties of the occupation do not have religious significance and embody the tenets of that particular religious denomination.

The AAO notes that the “letter” referred to by the director is actually information obtained from the petitioner’s website.

On appeal, counsel states:

The petitioning Pastor is shocked to learn that the music which is an integral [sic] part of the Christian church service does not have a permanent and traditional religious function. According to the Pastor, “the place of music director/worship leader is an un-replaceable, vital and spiritual role that plays in our all our [sic] services to our God. Our church services are not secular in nature but spiritual hence the Church will use people who believe in the vision of the ministry in this regard. We worship and praise our God through the coordinated works and functions of the worship leader/music director. . . .”

The record does not contain the document from the pastor that is quoted by counsel. Citing *Perez v. Ashcroft*, 236 F. Supp.2d 899 (N.D. Ill. 2002) and *Love Korean Church v. Chertoff*, 549 F.3d 749 (9th Cir. 2008), counsel also asserts that the federal courts have recognized the “integral role” of music in a church’s worship service and has held that a church music director is a religious occupation if it has “some religious significance.”

The AAO takes notice, as did the courts in [REDACTED], that music plays an important role in most church worship services. The AAO cannot concur with the director’s findings that the duties as outlined by the petitioner are primarily administrative or secular in nature. The petitioner stated that the beneficiary’s duties would include designing, developing, implementing, and coordinating all the music for the worship services and special performances, leading the church in worship songs, and teaching and conducting choir rehearsals. The petitioner also stated that the director of music would be part of the church’s ministry team. These activities are consistent with the duties of a religious occupation and of a religious function rather than duties that are more administrative in nature. The petitioner has submitted sufficient documentation to establish that the proffered position is a religious occupation within the meaning of the regulation.

Nonetheless, the petition cannot be approved as the record now stands. The record does not reflect that 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.

The petitioner states that it will compensate the beneficiary with an annual salary of \$24,000. With the petition, the petitioner submitted a copy of its 2011 budget in which it budgeted \$633,000 in income and expenses of \$340,000, including a line item of \$24,000 in "other salary." The petitioner submitted no other documentation, such as bank statements or audited financial statements, to reflect that its budget is based on realistic expectations. The petitioner resubmitted this document in response to the director's [REDACTED] Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

On remand, the director shall address whether the petitioner has submitted verifiable documentation of how it intends to 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. 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.