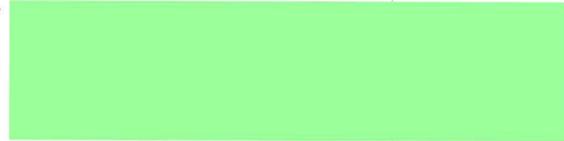




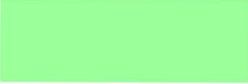
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JAN 09 2013**

Office: CALIFORNIA SERVICE CENTER

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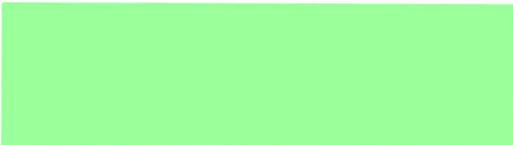
IN RE:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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f Ron Rosenberg
Acting 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 private, nondenominational church-based Christian school. It seeks classification of 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 religious studies teacher. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation.

On appeal, counsel asserts that the director “misclassified the Beneficiary’s proposed employment as a nonreligious occupation.” The petitioner submits a statement 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 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.

On the Form I-129, Petition for a Nonimmigrant Worker, filed on February 10, 2012, the petitioner stated that the duties of the position consist of “[i]nstructing students in religious studies including bible studies, preparing classroom materials, establishing course objectives, assign lessons and administer and correct homework.” In a February 24, 2012 request for evidence (RFE), the director instructed the petitioner to submit additional documentation regarding the proffered position, including the requirements for the position and a “detailed description of the beneficiary’s work schedule, including specific class schedules, and number of hours per week performing specific work duties.”

In response, the petitioner submitted a March 9, 2012 letter in which it indicated that the position was that of “teacher/Swahili.” The petitioner identified the responsibilities of the position to include:

- Relate to students by loving them with the love of Christ, encouraging them to begin and/or develop a relationship with God through Christ, and challenging them to love God with all their heart, mind, soul, and strength.
- Be a role model of Christian love, faith, truthfulness, and virtue both in the classroom and in your personal life.
- Manage the class by setting clear expectations of behavior, establishing reasonable routines and promoting self-discipline based on Biblical principles.
- Apply Bible Truths and comply with school policy in administration of behavioral. [sic]
- Teach students in a challenging, enthusiastic and age-appropriate manner using the Bible Truths. Ensure that within the year, the scope and sequence of skills assigned to the grade are taught to the students.

- Integrate Bible Truths and utilize valid teaching techniques to achieve curriculum goals within the framework of the school's philosophy.
- Employ a variety of instructional aids, methods, and materials that will provide for creative teaching to reach the whole child: spiritual, mental, physical, social, and emotional.
- Prepare a Swahili curriculum that will help the students become proficient in listening, speaking, reading, and writing the Swahili language.
- Utilize storytelling as a tool for teaching Swahili language; and sharing knowledge and experience of the Kenyan culture and Christian religion.
- Incorporate cultural activities such as, foods, music, and dance, to help the students appreciate the vital cultural context of the Swahili language.
- Guide students toward insights into themselves and their own language and culture through comparisons with the Swahili language and culture.

In a separate statement, the petitioner stated that the qualifications for the teaching position of "language and culture" consisted of being of the Christian faith, "highly knowledgeable in the Language and Culture warranted by the position," and possession of a bachelor's degree. The petitioner provided a copy of the beneficiary's transcripts indicating that she received a bachelor's degree in commerce in 1997 from the [REDACTED] and copies of her July 2008 "Level 6 Professional Diploma in Marketing" and her February 2010 "Professional Postgraduate Diploma in Marketing" from the [REDACTED]

The director denied the petition, finding that the proffered position is that of a language and culture teacher, and that "[a] lay teacher who will devote most of her time to teaching secular subjects in a religious school does not qualify for nonimmigrant religious worker."

In a July 31, 2012 statement, the petitioner's pastor states:

I also want to make clear that [REDACTED] is a private Church based Christian School. In order to be selected as an employee of the School one must provide a statement of Faith, which professes Jesus Christ as their personal Savior. All of our subjects in the school are founded on Biblical principles and Jesus Christ is not only threaded throughout, but is the center of everything we do. One cannot be an employee of the school without both knowing and understanding the Word of God.

Our goal at the school is to raise Christian leaders. In no way are we a secular institution, nor do we higher [sic] secular individuals. At this time, we are in need of a missionary from East Africa for the following reasons and we feel that [the beneficiary] is the right person.

We need to gain a more thorough knowledge of the comprehension level of the East African people in relation to the Word of God. This will help us continue to

focus our efforts in the right place and intensify them accordingly. We believe that this can only come from someone who (1) has the knowledge (2) understands the Word of God (3) is from East Africa (4) is fluent in the language (5) understands the culture and (6) who has the ability to teach our children to be prepared for the Christian mission in East Africa.

On appeal, counsel asserts:

The proposed employment is a religious occupation because

1. The duties relate to a traditional religious function (teaching related to Jesus Christ);
2. The duties are primarily related to carrying out the religious creed (evangelizing nonbelievers [sic]);
3. The duties are not primarily nonreligious (primarily teaching about Jesus and assisting the Petitioner to evangelize in Kenya); and
4. The Beneficiary is not pursuing study during the proposed time in R-1 status.

Counsel's argument is not persuasive. Although counsel alleges that the duties involve teaching related to Jesus Christ, the record indicates that the position is that of a language teacher; the petitioner submitted no documentation that the instruction would include teaching about Jesus Christ as alleged by counsel. Counsel also asserts that the duties involve evangelizing to nonbelievers but nothing in the record supports counsel's conclusion. Counsel asserts that the duties primarily involve teaching about Jesus and assisting the petitioner to evangelize in Kenya. Although an understanding of Swahili and the culture will assist the petitioner in its religious activities in Kenya, the record does not provide any evidence that the position involves teaching about Jesus or that the beneficiary would be engaged in evangelizing in Kenya. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

The petitioner has presented conflicting information about the proffered position. The petitioner first alleged that the proffered position was that of a religious studies teacher and that the duties would include instructing students in religious studies including bible studies. In response to the RFE, the petitioner identified the position as "teacher/Swahili" and as a "language and culture" instructor. Although the petitioner then stated that the responsibilities of the position included relating to students "by loving them," encouraging them to develop a relationship with God through Christ, and challenging them to love God, the "detailed description" of the proposed duties and schedule requested by the director in her RFE does not establish that the subject matter to be taught by the beneficiary is religious in nature. The evidence indicates that the proffered position is that of a language teacher, and does not establish that duties relate to a traditional religious function, or that they primarily relate to and clearly involve inculcating or carrying out the religious creed and beliefs of the denomination.

The petitioner has failed to establish that the proffered position is a religious occupation as defined by the regulation.

Beyond the decision of the director, the petitioner has failed to establish 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.

The petition was filed on February 10, 2012. Therefore, the petitioner must establish that the beneficiary was a member of its denomination for at least the two years immediately preceding that date.

The petitioner indicated on the Form I-129 that it is a nondenominational church. The petitioner submitted a December 12, 2011 letter from [REDACTED] stating that the beneficiary had been a member of the Anglican Church since 1979. In a January 23, 2012 letter, the petitioner stated that both churches are of the "Christian faith." However, being of the Christian faith is not sufficient to establish that the organizations are of the same denomination.

The regulation at 8 C.F.R. § 214.2(r)(3) provides:

Denominational membership means membership during at least the two-year period immediately preceding the filing date of the petition, in the same type of religious denomination as the United States religious organization where the alien will work.

Religious denomination means 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 petitioner submitted no documentation in accordance with the above regulation to establish that the beneficiary was a member of its religious denomination for at least the two years immediately preceding the filing of the petition.

The petitioner has also failed to establish 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 stated on the Form I-129 that the beneficiary would receive wages of \$25,000 per year, or \$14 per hour, for a 40-hours work week. The petitioner submitted a copy of its State of California Employment Development Form (EDD) Form DE 6, Quarterly Wage and Withholding Report, for the quarter ending December 2011. However, as the beneficiary is not listed as a paid employee on the form and the petitioner does not allege that she is replacing one of the employees named, the document provides no evidence of the petitioner's ability to pay the beneficiary. The petitioner provided no other documentation to establish how it intends to compensate the beneficiary.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043

(E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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.