



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **JAN 22 2013**

Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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,

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 Roman Catholic order of nuns. It seeks to classify 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 sister." The director determined that the petitioner has not established that the beneficiary had been a member of its religious denomination for two full years immediately preceding the filing of the petition.

Counsel asserts on appeal that the beneficiary's baptismal certificate was submitted with the petition, and that documentation submitted "shows the beneficiary was a member of a religious order of women in Concord, California for nine years." The petitioner submits 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 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 U.S. Citizenship and Immigration Services (USCIS) 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 March 12, 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.

In Section 1, question 4 of the Form I-129 Supplement R, which instructs the petitioner to "Describe the relationship, if any, between the religious organization in the United States and the organization abroad of which the beneficiary is a member," the petitioner stated, "Both organizations are in the Catholic Community." The petitioner did not identify the organization of which the beneficiary is a member.

With the petition, the petitioner submitted a copy of the beneficiary's undated "application for admission of candidates to the postulancy." While the application requests the religion of the applicant's parents, it does not ask the applicant to identify her own religion. Question 15 asks the applicant if she has "been a Postulant or worn the habit of any Religious Community." The beneficiary answered that she had been a member of the "[redacted]" (sp) for about 9 years. She did not state when the nine-year period began or ended.

In a request for evidence (RFE) dated March 29, 2012, the director instructed the petitioner to, *inter alia*, "[p]rovide evidence that the beneficiary has the two-year membership in the religious denomination or organization." The director advised the petitioner that such evidence could include "baptismal records, evidence of confirmation, certificates of participation, awards given, titles conferred, attendance records, etc." In response, the petitioner resubmitted the beneficiary's application for postulancy and submitted an April 29, 2012 letter in which it notified the beneficiary of her acceptance into the postulancy program. The letter indicates that the beneficiary "met the requirements of entrance" but did not specify what those requirements were.

Despite counsel's assertion to the contrary, the record does not indicate the beneficiary's baptismal certificate was submitted with the petition and the petitioner did not indicate in its response to the RFE that the document had been previously submitted. The petitioner submits a copy of the certificate on appeal. The document indicates the beneficiary was baptized on January 7, 1979 by Priest [redacted] in the [redacted] Diocese. The petitioner also submits an extract of the beneficiary's confirmation that allegedly occurred in Norway on September 10, 1994. The document was apparently translated by the parish priest, [redacted], on March 1, 2012. However, the translation submitted by the petitioner does not comply with the provisions of 8 C.F.R. § 103.2(b)(3), which requires that

documents submitted in a foreign language "shall be accompanied by a full English 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." Furthermore, none of the documents indicate that the beneficiary's baptism and confirmation were in the Roman Catholic faith.

The petitioner has failed to establish that the beneficiary was a member of its religious denomination for two full years prior to the filing of the petition.

Beyond the decision of the director, the petitioner has failed to establish that it is a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 214.2(r)(3) defines a tax-exempt organization as "an organization that has received a determination letter from the IRS [Internal Revenue Service] establishing that it, or a group it belongs to, is exempt from taxation in accordance with section[] 501(c)(3) of the Internal Revenue Code of 1986 [IRC]." The regulation at 8 C.F.R. § 214.2(r)(9) provides:

*Evidence relating to the petitioning organization.* A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the IRS showing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or
- (iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3), or subsequent amendment or equivalent sections of prior enactments, of the [IRC], as something other than a religious organization:
  - (A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;
  - (B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;
  - (C) Organizational literature, such as books, articles, brochures, calendars, flyers, and other literature

describing the religious purpose and nature of the activities of the organization; and

- (D) A religious denomination certification. The religious organization must complete, sign and date a statement certifying that the petitioning organization is affiliated with the religious denomination. The statement must be submitted by the petitioner along with the petition.

The petitioner submitted a December 4, 2009 letter from the Most Reverend [REDACTED] chancellor of the [REDACTED], certifying that the petitioner "is a religious community of the Roman Catholic Church, [REDACTED] and as such is tax exempt and entitled to Non-Profit Status. . . . They are listed on page 497 of the 2009 edition of the Official Catholic Directory." The petitioner also submitted page 256 from the 2012 Catholic Directory that includes the petitioner in the list of member organizations. The petitioner submitted a copy of an April 15, 2011 letter from the IRS confirming the petitioner's name change for its taxpayer identification number, a copy of its articles of incorporation, and documentation from the Texas Comptroller of Public Accounts, exempting the petitioner from franchise, sales and use taxes. The petitioner, however, has failed to submit a currently valid determination letter from the IRS granting it, the [REDACTED], or the Roman Catholic Church exemption under section 501(c)(3) of the IRC.

Accordingly, the petitioner has failed to establish that it is a bona fide nonprofit religious organization as defined by the above-cited regulation.

Additionally, the petitioner has 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."

The petitioner states that the proffered position is that of a "religious sister." However, the record does not reflect that the beneficiary has been ordained as a nun within the petitioning organization or within the Catholic Church. The record contains the beneficiary's "application for admission of candidates to the postulancy" and an April 29, 2012 letter accepting the beneficiary into the petitioner's "Postulancy Program." The letter advises the beneficiary of the beginning of the "academic year," that she would be responsible for her school tuition, and requires her to pay \$1,000 "to support the formation program." The record therefore reflects that the beneficiary is in training to be a nun.

The petitioner has failed to establish that the beneficiary is qualified for the proffered position.

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 (9<sup>th</sup> 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.