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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]

Date: **JUL 05 2013** 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) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(R)

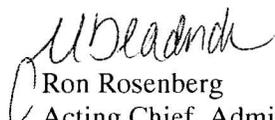
ON BEHALF OF PETITIONER:
[Redacted]

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.

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 Buddhist association. It seeks to classify the beneficiary as a nonimmigrant religious worker under section 101(a)(15)(R) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R), to perform services as a “religious teacher of Buddhism.” 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 denied the petition “without fully reviewing the documents submitted by the Petitioner as the records have shown this proffered position meets the requirements for R-1 religious workers.” 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 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.

In its April 20, 2012 letter submitted in support of the petition, the petitioner, through its abbot Reverend [REDACTED] stated:

As a Religious Teacher of Chinese, Mathematics, and Microeconomics, [the beneficiary] will be responsible for a multitude of duties. He is mainly responsible for teaching of Chinese, Mathematics, and Microeconomics for the high school curriculum.

In particular, [his] duties will be as follows:

1. Design a Chinese curriculum that incorporates the Confucian virtue and the teachings of the [REDACTED] for Ninth grade to Eleventh grade;
2. Assign lessons, give tests, listen to oral presentation, and maintain classroom discipline to help pupils to better understand the Chinese language, culture, as well as Confucian virtue.
3. Design a full year curriculum for the course of Algebra II for Ninth grade to Twelfth grade, and a half-year curriculum for the course of AP Microeconomics for Twelfth grade;
4. Assign lessons, give tests, and maintain classroom discipline to help pupils to better understand the subjects of Algebra 2 and AP Microeconomics;

5. Counsel and interview high school students regarding their daily practices of Confucian core virtue;
6. Supervise both the junior high and high school basketball team practices and coach basketball games while emphasize [sic] the idea of teamwork, fair play, sportsmanship, and leadership, which are also qualities the schools develop in the students.

[The beneficiary] is currently working at [the petitioning organization] as a religious Teacher of Chinese, Mathematics, and Microeconomics under Optional Practical Training in F-1 status. His daily schedule is as follows:

Monday-Friday

Morning

9:40-10:30 Algebra 2 (High school)

Afternoon

12:00-12:45 Teach Chinese (9th to 11th grades)

2:25-4:05 [Monday, Tuesday, and Friday] Physical Education (Junior High to 12th grade)

Friday Evening

4:05-5:00 After School Study Sessions (Junior High to 12th grade)

6:00-9:00 Basketball Practices (Junior High to 12th grade)

Saturday Morning

9:00-11:00 AP Microeconomics (12th grades)

It is important for a Religious teacher of the [redacted] School to have a thorough understanding and in-depth knowledge of Buddhism, as well as the ideal, culture and practices of our monastery. . . . [The beneficiary] received formal Buddhist education through his education at [redacted] Elementary School and [redacted] School for ten years.

He became a member of [the petitioning organization] since May 1997. In addition, [he] graduated from [redacted] majoring in Economics. This rigorous academic and spiritual training have equipped [the beneficiary] with the necessary knowledge, expertise, and tools needed to perform the job duties of Religious Teacher of Chinese, Mathematics, and Microeconomics.

In a September 4, 2012 request for evidence (RFE), the director instructed the petitioner to submit additional evidence of the proffered position, including a detailed description of the work to be done and documentation to establish that the proffered position is a religious occupation as defined by the above-cited regulation.

In response, the petitioner submitted a November 16, 2012 letter in which it stated that “courses in Buddhist Studies are requisite for all students. Ethics, mediation and Buddhist Studies are an integral part of the curriculum.” The petitioner restated the duties of the proffered position, stating that the beneficiary “is mainly responsible for teaching the Chinese curriculum with Buddhist teachings of compassion and vegetarianism.” The petitioner also identified the beneficiary’s duties as:

Monday-Friday (Weekly)

Morning (Daily)

9:40-10:30 Teach Algebra II (High School)
10:30-12:00 Meal Offering Ceremony, Luncheon, Ending the Meal Ceremony, and supervise recess (K-12th grades)

Afternoon (Daily)

12:00-12:45 Teach Chinese (9th to 11th grades)
12:50-1:35 Teach Buddhist Studies & Mediation (9th to 11th)
1:40-2:25 Teach Chinese (12th grade)
2:30-3:15 Teach Buddhist Studies (Tuesday and Thursday, 12th grade)
[2:30-4:05] Physical Education (Monday, Tuesday & Friday, Junior High to 12th grade)

Evening (Daily)

5:15-5:45 Dinner
6:30-7:30 Attend and supervise Evening Ceremony
7:30-9:00 Attend Evening Lecture
9:00-9:30 Attend Evening Mantra

The petitioner further stated:

In carrying out the duties of teaching Chinese, economics and mathematics, the Teacher will also teach the students knowledge of Chinese history and development of character through language, and at the same time, teach the student how to apply of [sic] knowledge of Buddhist Sutra and Mantras and Confucius to everyday life so that the students will understand the relation between establishing good roots and resultant vigor, health, and scope of the life experience.

During the intervals between classes, the Teacher will also teach students to do Buddhist meditation to gain deeper understanding of Buddhist practices and the relation between meditation and childhood development and let the student understand that meditation can lead to inner peace of mind and that mediation can make contributions to future achievements.

In addition, through practices of Morning/Evening Ceremony and Lunch and Dinner Offerings, the Teacher will take the opportunities to teach students the comprehensive knowledge of Standards of Conduct for Students and Buddhist Ceremony and also the combination of those ceremonies to character development.

Therefore, the Beneficiary will at least spend 60% of the time engaging in religious activities as opposed to teaching Chinese, Mathematics and Economics.

The petitioner also provided an analysis of each of the activities associated with the position and how they “are primarily related to carrying out the religious creed and beliefs of Buddhist denomination.” For example, the petitioner states that in teaching Chinese, the beneficiary:

Works directly with the Monastic community to establish the Chinese curriculums that incorporate the Confucian virtues and the teachings of Buddhist doctrines, cultures and practices of our Monastery. Requires an in-depth knowledge of Chinese history and Buddhism. Development of character through understanding the Chinese language, culture and Confucian and Buddhist virtues.

The petitioner’s bylaws indicate that it has a two-fold purpose: to establish religious training centers and to establish educational institutions to “explain and propagate Buddha teachings,” to “grant academic degrees through the Doctoral level,” and to “provide education to all people from birth to death.”

In denying the petition, the director stated that the petitioner has not shown that the position “requires [any] particular training and . . . can be carried about by one who instead possess training in Economics.” On appeal, counsel states that “there is no such rule that someone possessing a degree in Economics cannot be classified as R-1 worker: and that the petitioner submitted evidence that the proffered position “requires the incumbent to possess ‘through [sic] understanding in the Chinese language and in-depth knowledge of Buddhism’ as well as ‘a background in Buddhism.’”

Other than what is required for the position of minister, the regulations do not require the beneficiary to have any specific religious training other than being qualified according to the petitioner’s standards. The director’s decision, to the extent that the director appears to incorporate specific religious training as a requirement for the position, is withdrawn. The petitioner has, however, failed to establish that the position qualifies as that of a religious

occupation and beyond the director's decision, that the beneficiary is qualified for the proffered position.

First, the petitioner has failed to establish that the position is recognized as a religious occupation within its denomination. While the petitioner initially describes the position as that of a Buddhism teacher, the record is clear that the beneficiary will also be responsible for teaching mathematics and economics, although the petitioner omitted any responsibility for teaching economics in the schedule provided in response to the RFE. The petitioner submitted no documentation to establish that any of these positions, particularly a position that incorporates all three disciplines, is recognized as a religious occupation within the Buddhist religion.

Additionally, while the petitioner argues that the proffered position incorporates duties that "are primarily related to carrying out the religious creed and beliefs of Buddhist denomination" such as "incorporat[ing] the Confucian virtues" in the teaching of algebra and Chinese, no other documentation in the record supports the petitioner's statements. The petitioner's bylaws do not contain the requirements of the position, and the petitioner submitted no handbook, job description used for recruitment, or information on other positions that incorporate similar requirements. The petitioner alleges that the beneficiary will teach meditation "between classes" but provides no specific time or hours that the meditation will be done, and thus the record is not clear as to how often he will allegedly perform this task. There is insufficient evidence that the beneficiary will spend approximately 60% of his time engaged in religious activities. 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)). The evidence does not establish that the duties of the proffered position are primarily related to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

The petitioner failed to establish that the position qualifies as that of a religious occupation.

Additionally, the petitioner failed to establish that the beneficiary is qualified for the proffered position according to the petitioner's own standards. The regulation at 8 C.F.R. § 214.2(r)(3) provides that the term "*Religious worker* means 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 to be qualified for the position, an individual must "possess a minimum of bachelor's degree in Chinese studies or closely related discipline and a strong background in Buddhism." The petitioner argues that the beneficiary meets these requirements based on his educational background attending the elementary and secondary school under the auspices of the petitioning organization, and attending [REDACTED] and [REDACTED] where he received his degree in economics. The petitioner provided no explanation as to how the beneficiary's degree in economics is "closely related" to Chinese studies. Additionally, while the petitioner alleges that the beneficiary's "spiritual training" has equipped him "with adequate knowledge," the petitioner provides no evidence of the beneficiary's

“spiritual training,” stating only that the beneficiary continued to attend the monastery after graduating from the petitioner’s secondary school. The record does not provide any evidence of the beneficiary’s “strong background in Buddhism” other than attending a monastery on a regular basis. The petitioner does not explain how this regular attendance qualifies as the “strong background” in Buddhism that it requires for the position.

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 (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.