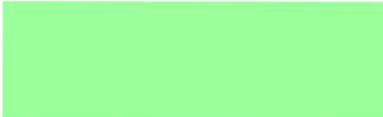
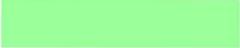




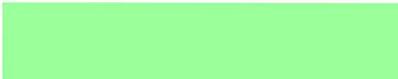
(b)(6)



Date: **MAR 22 2013**

Office: CALIFORNIA SERVICE CENTER FILE: 

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:

SELF-REPRESENTED

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 church. 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 pastor. The director determined that the petitioner had not submitted a properly completed petition, and had not established how it intends to compensate the beneficiary, that the beneficiary qualifies for the proffered position, or that the position qualifies as that of a religious occupation.

On appeal, the petitioner apologized for the errors in its submission, stating that it was the organization's first attempt at filing a petition. The petitioner submits a letter 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 first issue presented is whether the petitioner has submitted a properly completed petition.

The regulation at 8 C.F.R. § 103.2(a)(1) provides, in pertinent part: "*Preparation and submission.* Every benefit request or other document submitted to DHS [Department of

Homeland Security] must be executed and filed in accordance with the form instructions, notwithstanding any provision of 8 CFR chapter 1 to the contrary”

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

An authorized official of the prospective employer of an R-1 alien must complete, sign and date an attestation prescribed by USCIS and submit it along with the petition. The prospective employer must specifically attest to all of the following:

- (i) That the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation;
- (ii) That the alien has been a member of the denomination for at least two years and that the alien is otherwise qualified for the position offered;
- (iii) The number of members of the prospective employer's organization;
- (iv) The number of employees who work at the same location where the beneficiary will be employed and a summary of the type of responsibilities of those employees. USCIS may request a list of all employees, their titles, and a brief description of their duties at its discretion;
- (v) The number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past five years by the prospective employer's organization;
- (vi) The number of special immigrant religious worker and nonimmigrant religious worker petitions and applications filed by or on behalf of any aliens for employment by the prospective employer in the past five years;
- (vii) The title of the position offered to the alien and a detailed description of the alien's proposed daily duties;
- (viii) Whether the alien will receive salaried or non-salaried compensation and the details of such compensation;
- (ix) That the alien will be employed at least 20 hours per week;

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- (x) The specific location(s) of the proposed employment; and
- (xi) That the alien will not be engaged in secular employment.

In a September 10, 2012 request for evidence (RFE), the director advised the petitioner of deficiencies contained on the Form I-129, Petition for a Nonimmigrant Worker, filed on August 31, 2012. Specifically, the director instructed the petitioner to sign the denomination certificate and the employer attestation in Supplement R and to provide a responsive answer to question 9 of the attestation. The petitioner did not cure these deficiencies in its response to the RFE.

On appeal, the petitioner submits a signed copy of the denomination certificate and explained that the beneficiary "has never worked for payment in the US, but has in fact volunteered in the position as a member of [the petitioning organization. The petitioner's] answer for Question 9 should have been, 'The Beneficiary will solely be working in a religious vocation with [the petitioner].'"

The attestation provided by the petitioner is not signed or dated. Therefore, the petitioner has failed to submit a properly executed attestation as required by the regulation at 8 C.F.R. § 214.2(r)(8).

The second issue presented is whether the petitioner has established how it intends to compensate the beneficiary.

The U.S. Citizenship and Immigration Services (USCIS) 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 it had an annual gross income of \$24,800,000 but did not state its net income. The petitioner also stated that it had 468 employees and that the beneficiary would receive wages of \$275.50. The petitioner submitted no documentation with the petition to establish how it intends to compensate the beneficiary. In her RFE, the director instructed the petitioner to submit verifiable documentation in accordance with the above-cited regulation to establish how it intends to compensate the beneficiary.

In response, the petitioner submits what appears to be a list of current and prospective employees, including the beneficiary, the number of hours they are expected to work, and their hourly wage. The document indicates that the beneficiary is expected to work 29 hours per week with a proposed wage of \$9.50 per hour. The petitioner submitted no documentation to establish that it has paid the beneficiary this wage in the past and submitted no other documentation to establish how it will compensate the beneficiary. In denying the petition, the director noted that the petitioner stated that it had 468 employees but provided "no W-2 or 1099-MISC wage report forms of similar pastor positions."

On appeal, the petitioner submits IRS Forms W-2 for the year 2011 for two individuals that it states are "for pastors in a similar position." The petitioner also submits an undated list of employees, including their hire dates and year-to-date earnings. The petitioner did not allege, and submitted no documentation, that the beneficiary will replace any of its current employees. The petitioner has submitted no verifiable documentation, such as audited financial statements, bank statements, or similar documentation to establish how it intends to compensate the beneficiary.

The third and fourth issues are whether the petitioner has established that the beneficiary is qualified for the proffered position and that the position is a religious occupation.

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 regulation also 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,

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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 proffered position is that of pastor. The regulation at 8 C.F.R. § 214.2(r)(10) requires that, if the alien is a minister, the petitioner must submit:

- (i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and
- (ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological education is accredited by the denomination, or
- (iii) For denominations that do not require s prescribed theological education, evidence of
 - (A) The denomination's requirements for ordination to minister;
 - (B) The duties allowed to be performed by virtue of ordination;
 - (C) The denomination's levels of ordination, if any, and
 - (D) The alien's completion of the denomination's requirements for ordination.

In question 5 of Section 1 of the Form I-129 Supplement R, the petitioner stated that the beneficiary would work in the children's ministry department, and that her duties would include "teaching, pastoral care of children and volunteers (both youth and adult), oversight of teachers. Development of lessons including biblical instruction for the children. Small group development pastor: creating structure and teaching for small groups of children." In an appendix to the Form I-129, the petitioner stated that the beneficiary would also be responsible for "[b]uilding the supporting material for curriculums to expand the program to serve other churches nationally and internationally, including teacher's manuals. Expanding [the petitioner's] children's ministry

volunteer network. Facilitating and speaking at [the petitioner's] children's ministry [redacted] for children's leaders for [the petitioner's] relational network."

In response to the RFE, the petitioner outlined the beneficiary's duties as:

[She] will oversee our Wed night service, consisting of 1 staff pastor under her, as well as 3 interns, with at least 4 students on this team.

She will oversee the lessons, preparing for the lessons, teaching children, interacting with the parents, mentoring the team.

This requires:

Wed 2-5:30p meeting with interns/students

Wed 6-8:30p conducting the religious service

Totaling 6 hours per week.

She will be assistant pastor on Sunday mornings, assisting in overseeing 15+ volunteers, mentoring and training them. She will oversee the jr. volunteers who help on this team (students under 14 who help on Sundays). She will also oversee the store that the children can earn prizes from. This also includes lesson preparation and teaching Biblical studies to children, as well as interacting with parents. She will supervise 6 teams of 3-4 people each.

This requires:

Tue 1-4p meeting with staff/interns.

Thu 9-11a meeting with volunteers

Sun 7a-2p conducting religious services.

Totaling 12 hours per week.

She will also assist our worship pastor on outreaches in the city, leading children in songs and hand motions.

This requires:

Thur 2-5p conducting religious worship services

Totaling 3 hours per week.

Her remaining hours per week will be toward purchasing items for the store, creating props for the lessons, practicing skits, plus necessary administrative work for these services. She will also work on our events for families that we conduct every other month (family movie night, family roller skate day, etc).

This relates to traditional religious function as she is "raising a child in the way they should go, and when they are old, they will not depart from it" PR. 22:6 as well as is teaching the children of [petitioning] church according to the "we believe" doctrine of this community of believers.

The petitioner described the beneficiary's qualifications for the job as being a high school graduate, completing courses with the petitioner's [redacted]" the [redacted]

team training, and “Loving our Kids on Purpose Training” with the petitioner. The petitioner also stated that the beneficiary is a licensed minister with the . The beneficiary’s experience for the position included being a camp counsel at in Alberta, Canada; a children’s pastor with in Alberta, Canada; a ministry volunteer and intern with the petitioner; and coordinator and speaker at a children’s conference in Vacaville, California.

In a June 5, 2012 unsigned statement, Pastor , who is identified in the record as head of the petitioner’s children’s ministry, certified that the beneficiary “has been a member of this denomination () since she was accepted into our Ministry School on the 2nd June 2009. Since that time she has been a student in our school and played an active role in the life of our church and school.” Pastor also stated that the beneficiary “achieved a pass with credit which is the highest level of pass in our school. She is therefore well qualified to pastor in our church and transformation school. [The beneficiary] was also certified and recognized as an Ordained Minister of the Gospel within our organization in June 2012.”

The petitioner submitted a copy of the beneficiary’s May 30, 2012 certificate of ordination issued by the . The petitioner also submitted a copy of the beneficiary’s May 16, 2010 “certificate of completion” certifying the beneficiary’s completion of the “first year course of study” with the , a May 11, 2012 certificate of completion for completion of the third year of study at the school, a May 11, 2012 letter from , “Deployment Program Overseer,” certifying that the beneficiary had completed the third year program, which is “a nine-month internship offered by the Global Legacy Deployment which is a part of the ” Information provided about the indicates that the “school is divided into two 9-month segments” and that “[g]raduates of these two years may apply for internships or be deployed into various opportunities.”

The petitioner also provided a copy of its “Statement of Purpose, Statement of Faith, and Bylaws.” Article 15 of the bylaws outlines the qualifications and procedures for ordination, and states that the educational, experience, and personal qualifications are set by the Council of Elders (COE), who can also “make exceptions to these qualifying standards.”

In denying the petition, the director determined that the detailed duties outlined by the petitioner in response to the RFE indicated that the duties are “primarily administrative, or support, or secular in nature” and therefore do not establish that the proffered position is a religious occupation. Regarding the beneficiary’s qualifications for the job, the director also determined:

[The ordination] certificate was not issued by the petitioner’s Council of Elders or having a similar format as prescribed by the petitioner’s Bylaws . . . The Bylaws does [sic] not establish a relationship with internship for ordination or relationship with the but a relationship with the (page 6, Bylaws . . .). And the petitioner did not

explain whether the Council of Elders . . . accepts ministerial ordination certificate issued by [REDACTED]. Therefore, the petitioner has not established the beneficiary's ministerial qualification.

On appeal, the petitioner states that the previously submitted documentation "failed to properly describe the areas of responsibility held by this Ministerial role" and that it is submitting "additional information missing in the previous form." The petitioner submits a more detailed hourly breakdown of the duties that the beneficiary will perform in the proffered position and stated that her ministerial duties would encompass approximately 75% of her time and that her administrative duties would encompass approximately 25% of her time.

The director did not identify any of the prospective duties that she deemed were administrative, "support," or secular in nature. A duty that is in a "support" role does not necessarily indicate that it is not religious in nature. A review of the duties as previously outlined by the petitioner reveals that the meetings with interns and volunteers, including lesson preparation, teaching, and mentoring are reasonably related to the religious duties of the position and clearly involve inculcating or carrying out the religious creed and beliefs of the petitioner's denomination. To the extent that the director excluded these duties as religious in nature, her decision was in error. The petitioner has submitted sufficient documentation to establish that the proffered position is a religious occupation within the meaning of the regulation; the director's decision to the contrary is withdrawn.

The petitioner also states that it mistakenly provided a copy of an earlier version of its bylaws and that:

Article Two on page 5 notes [the petitioner's] withdrawal from the Assemblies of God denomination. Although we will continue to accept ministers licensed under the Assemblies of God denomination, we no longer require that association. . . . Section 15.03 list the qualifications which no longer limits where the minister was licensed and as such, licensing through [REDACTED] is accepted by [REDACTED]. Many, but not all of [the church's] ministers are currently licensed through The River. . . . We have also included the [REDACTED] Standards for Credentials to demonstrate the similarities in qualifications.

The petitioner resubmits its bylaws that were approved on November 13, 2005. Rather than documenting the petitioner's severance of its relationship with the Assemblies of God, however, the article cited by the petitioner indicates only that it "reserves the rights to sever its affiliation with the Assemblies of God." Additionally, section 15.03 of the bylaws makes no provisions for the petitioner's acceptance of ordination or licensure from other denominations.

Nonetheless, the documentation of record indicates a clear association between the petitioning organization and [REDACTED]. Documentation provided with the petition reflects that the petitioner's pastor is on the board of elders for [REDACTED].

[REDACTED], which is responsible for approving candidates for ordination and licensure, and one of the petitioner's members is a regional leader for that organization. The petitioner states that the credentialing process for [REDACTED] is similar to its own, and that several of its current pastors are licensed through [REDACTED].

The petitioner has submitted sufficient documentation to establish that the beneficiary is qualified for the proffered position and we withdraw the director's determination to the contrary. However, as the petitioner has failed to submit a properly completed petition and has failed to establish how it intends to compensate the beneficiary, the petition cannot be approved.

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.