



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **MAY 03 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)(1) of the Immigration and Nationality Act (the 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.

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 sustained.

The petitioner is a Jewish school. It seeks to extend the beneficiary's status as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act 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 and that the beneficiary is qualified for the position.

Counsel asserts that the denial of the petition is "legal error" and that the director "failed to account for the extensive documentary evidence submitted with form I-129 as well as in response to the Request for Additional Evidence [RFE]." 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 issues presented are whether the petitioner has established that the proffered position qualifies as that of a religious occupation or vocation and whether 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 regulation additionally 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 February 7, 2012 letter submitted in support of the petition, the petitioner stated:

[The beneficiary] is responsible for the children in our lower grades 5-6 where he will continue [to] teach the children under his tutelage the subjects such as Bible Studies, Hebrew Language and Skill, prophets, Jewish History, Sing Religious Songs and Hymns, Torah and Jewish Halacha (Law). [He] is also required to serve as a religious counselor to the boys under his tutelage, for example, he will teach proper table manners, and appropriate peer relationship, etc.

In a July 12, 2012 RFE, the director instructed the petitioner to submit additional documentation about the proffered position, including:

- A **detailed description** of the work to be done as RELIGIOUS STUDIES TEACHER that includes specific job duties, level of responsibility, and 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.

[Emphasis in the original.]

The director also instructed the petitioner:

**Requirements for the Position:**

- Provide a detailed explanation as to the requirements for the position, and how the beneficiary meets those requirements. Submit the religious denomination's [sic] or organization's by-laws, manuals, brochures, or guidebooks establishing the requirements for the position. Provide detailed evidence that the beneficiary meets the denominations 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 explaining how the position offered qualifies as a traditional religious function. Clearly indicate who has been performing this function in the past.

In response, the petitioner declared in an undated statement:

[The beneficiary] is a Religious Studies teacher. Some of his duties include, introducing the weeks studies, translating the words from Hebrew (bible) to Yiddish, the boys speaking language, practicing and quizzing the boys at end of week. He reports to the principal and he is responsible for overseeing the work of his students. [The beneficiary] works full-time 35 hours per week. As religious studies teacher is also required that he counsel [sic] his students, and grade papers and exams. His usual hours are between 8:30 am to 3:30 p.m. [The beneficiary] is responsible for teaching the children in our lower grades and will continue to teach the children under his tutelage the subjects such as Bible Studies, Hebrew Language and Skills, Prophets, Jewish History, Sing Religious Songs and Hymns, Torah and Jewish Halacha (Law). [He]also serves as a religious counselor to the young boys some who are recent Jewish émigrés from the form Russian Republics which under his tutelage.

In order to adopt the position of Religious Studies Teacher, the individual must have a competent level of religious education that enables one to impart that knowledge to the pupils at our Academy. [The beneficiary] is a graduate of the [redacted] which is a prestigious organization for Jewish religious education. Therefore [he] has a very high level knowledge of Jewish law, religious stories and history as well as traditions and customs. [The beneficiary] has also been raised his entire life in the Orthodox Jewish faith, within a Chassidic Jewish background. The [petitioner] is at the heart of the Chassidic Community in [redacted] and accordingly, [the beneficiary] is well-placed to communicate effectively with others who come from the same background as himself in addition to understanding their needs and concerns. [He] exceeds the minimum education and training required to assume the position of Religious Studies Teacher. He studied at the [redacted] from September [2004] through June 2009 as an F-1 student, and majored in Religious Education. The role of Religious Studies Teacher at the [petitioning organization] is critical to our teachings of the Jewish faith to our pupils. Without skilled and knowledgeable religious teachers, the continuity of our faith would easily be lost to the next generation. [The beneficiary's] role is very important in allowing our faith to strengthen and flourish.

Religious studies is a subject which is a part of the curriculum for our pupils and is vocational in nature. When [the beneficiary] was in F-1 status from April 2006 until April 2009 at the [redacted] he majored in Jewish Religious Education which allows him to teach Jewish religion to 5<sup>th</sup> and 6<sup>th</sup> grade boys at the [petitioning organization]. Combined with his working experience at our organization, [he] is more than qualified to continue in his position as Religious Studies Teacher. Our organization requires an individual with in intimate knowledge and experience of the Orthodox Jewish faith, in addition to a suitable form rabbinic education which includes detailed knowledge of all of the religious texts. In addition to this, the individual must be suited to teaching and must have good interpersonal skills in order to impart his teachings to the pupils at our Academy.

The petitioner submitted a copy of its bylaws, which provide at Article II, "The Corporation has been organized for the purpose of maintaining a Theological Seminary to teach young men of the Orthodox Hebrew Faith the religious and Talmudic laws, customs and tradition of the Orthodox Hebrew Faith." Article II also provides, "The seminary shall also conduct and maintain an elementary Hebrew school for the religious education of Jewish orthodox children."

In denying the petition, the director stated that the petitioner's response to the RFE was "limited to a cover letter with the declarations similar to those provided with the filing of the petition without providing supporting documentation." The director further stated:

The petition or the response has not provided evidentiary documentation of the denomination's or organization's [sic] that reflects the requirements for the position to validate the beneficiary's meeting the requirements. Mere statements of [sic] indicating the beneficiary's possession of the [sic] some qualifications are not sufficient to establish that he qualifies for the position.

On appeal, the petitioner submits a November 22, 2012 letter signed by Rabbi [REDACTED], who states that the petitioning organization was established in 1949 and "is one of the oldest schools for Orthodox religious education to Jewish children and Rabbis alike in New York City." Rabbi [REDACTED] states:

[The petitioner] is engaged in providing our students with an excellent early secular education and introduces our students to religious education in Torah, Talmud, Jewish Observance and Philosophy, Jewish Prayers and Jewish Law, Halacha, Jewish history, Hebrew Language, and Prophets and Bible studies. The [petitioner's] goal is to promote and increase interest in the teachings and ideals [of] the Jewish Orthodox faith.

The petitioner submits a November 16, 2012 letter from the [REDACTED] certifying that the beneficiary had graduated on June 30, 2009 with a "First Talmudic Degree." The letter was accompanied by a transcript of the beneficiary's courses and grades. Counsel states that the beneficiary "was tested on his knowledge of the Talmud tractates and further of the Shulchan Aruch, which is the most comprehensive and authoritative Code of Jewish Law and the Torah." The petitioner submits a statement from Rabbi [REDACTED] who stated that on July 22, 2009, he tested the beneficiary on his study of the Talmud tractate Ketubot and tractate Nedarim, and the study of Shulchan Aruch *Yoreh De'ah* volume 1, and that the beneficiary was "able to answer every question appropriately." Rabbi [REDACTED] further stated:

[A]nd also regarding positive character traits and fear of G-d that precedes his wisdom, for he has fulfilled the dictum to exile oneself to a place of Torah to its fullest extent. Therefore I crown with a glorious crown that he should be considered a *tzurba me'rabonon* (junior rabbi) – would that others like him received ordination, for he is worthy of that mantle.

The petitioner has submitted sufficient documentation to establish that the proffered position is a religious occupation within the meaning of the regulation at 8 C.F.R. § 214.2(r)(3). The documentation submitted establishes that the position, which teaches Jewish language, history and law, primarily relates to a traditional religious function in the petitioner's denomination, and is recognized as a religious occupation within the denomination. Additionally, the evidence establishes that the duties of the position primarily relates to, and clearly involves, inculcating or carrying out the religious creed and beliefs of the denomination. Furthermore, the petitioner has submitted sufficient documentation to establish that the beneficiary is qualified for the position of religious studies teacher within the petitioning organization.

Accordingly, the AAO withdraws the director's decision. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

**ORDER:** The appeal is sustained.