



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **SEP 09 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 (the Act), 8 U.S.C. § 1101(a)(15)(R)

ON BEHALF OF PETITIONER:

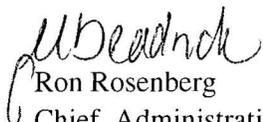
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The matter is now before the AAO on appeal. The AAO will dismiss the appeal.

The petitioner is a Baptist church. 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 minister of worship and music. The director determined that the petitioner had not established that the beneficiary seeks employment in a qualifying religious occupation.

On appeal, the petitioner submits a brief from counsel and copies of previously submitted exhibits.

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 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;

- (ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);
- (iii) Be coming solely as a minister or to perform a religious vocation or occupation as defined in paragraph (r)(3) of this section (in either a professional or nonprofessional capacity);
- (iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and
- (v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

The USCIS regulation at 8 C.F.R. § 214.2(r)(1)(ii) requires that the beneficiary must be coming to the United States to work at least in a part time position (average of at least 20 hours per week). The USCIS regulation at 8 C.F.R. § 214.2(r)(3) defines a “religious occupation” as 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.

The petitioner filed the Form I-129 petition on July 23, 2012. The petitioner indicated that the position would be full-time. On the accompanying employer attestation, the petitioner repeatedly referred to the beneficiary as a “Pastor,” and, listing the beneficiary’s qualifications, stated that he “has been ordained . . . since December 2006.” Describing the beneficiary’s experience, the petitioner indicated that the beneficiary “served [REDACTED] as Worship Minister from March 1993 to March 1998.”

The petitioner’s “[d]etailed description of the beneficiary’s proposed daily duties” reads:

As the Minister of Worship and Music for our church, [the beneficiary's] primary responsibility is to provide leadership in the area of worship and music. His detailed job duties are as follows:

- Establish, maintain, and be responsible for the Church's ministry of Worship and music;
- Set the direction and quality of the music program;
- Provide spiritual and musical instruction, guidance, standards, and supervision in the following areas (but not limited to):
 - Congregation worship;
 - Band and singers;
 - Worship department community groups
- Be responsible for the following areas:
 - Selecting weekly worship music;
 - Arrange worship music as required;
 - Prepare band and singers to present weekly service music;
 - Attend weekly staff meeting;
 - Provide Senior Pastor with weekly status report;
 - Lead worship department and congregation in worship services;
 - Interview and audition musicians;
 - Select and train new musicians;
 - Interview and audition singers;
 - Select and train new singers;
 - Develop back up resources for all positions;
 - Develop choir for seasonal and special music;
 - Interview and audition new sound technicians;
 - Develop training plan for all department personnel;
 - Provide status reports to Senior Pastor;
 - Mentor and teach worship department spiritually;
 - Develop worship department community groups;
 - Lead a worship department community group

The petitioner submitted a "[redacted]" indicating that the church has a total of 248 members, with "Primary Worship Attendance" of 115. The worksheet indicates that the "Total Music Ministry" consists of seven members.

In a request for evidence dated August 14, 2012, the director instructed the petitioner to submit "evidence to establish that the proffered position is recognized as a religious occupation related to a traditional function in [the petitioner's] religious denomination," as well as a detailed schedule of the beneficiary's daily duties.

In response, counsel asserted that the beneficiary qualifies as a minister, and therefore the specific requirements for religious occupations do not apply to him. Counsel asserted that USCIS should, instead, judge the petition by the regulatory definition of a “minister” at 8 C.F.R. § 204.5(m)(5)¹:

Minister means an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination’s standards, to conduct such religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and
- (D) Works solely as a minister in the United States, which may include administrative duties incidental to the duties of a minister.

The petitioner submitted a copy of the beneficiary’s December 2006 certificate of ordination.

Antonio Herrera, pastor of the petitioning church, stated:

In our Baptist Churches we have a pastor who preaches messages on Sundays and leads the congregation in Christian ministry. We also have a minister who leads our music in our worship services. That person was traditionally given the title of Minister of Worship but in recent years many churches have begun to use the title of Worship Pastor.

The petitioner submitted a copy of its Spanish-language *Constitución y Reglamentos (Constitution and Regulations)*, with a partial translation listing the duties of the minister of music. Some of those duties are as follows:

Seek to direct a music program to win people to Christ, strengthen worship, evangelism encouraged.

Give general direction to the music program of the church.

Encourage alertly evangelistic opportunities within the choir program if possible.

¹ Although counsel mistakenly cites to the regulatory provision pertaining to the *immigrant* definition of minister, that definition is identical to the *nonimmigrant* definition at 8 C.F.R. 214.2(r)(3).

Plan and direct the work of the adult choir, youth choir and groups.

Arrange the order of all services and music.

The translation also indicated: "In the absence of the minister of music, a secular leader of music will be chosen by the Church and the duties agreed to by the pastor and the Church will need to fill the identified needs [*sic*]."

The petitioner provided the following schedule of the beneficiary's duties:

Every day: from Monday to Saturday from 7:00 a.m. to 8:00 a.m. prayer meetings
Monday- 8:00 a.m. to 12:00 p.m. Bible Study and Meditation in worship
Monday- 1:00 p.m. to 4:00 p.m. preparation of hymns and contemporary songs
Monday- 6:00 p.m. to 9:00 p.m. trial practice and worship team
Tuesday- 8:00 a.m. to 12:00 p.m. Phonebook order of activities
Tuesday- 1:00 p.m. to 5:00 p.m. Pastoral visit
Wednesday- 8:00 a.m. to 5:00 p.m. Preparation for the service of praise and prayer of the Church
Wednesday- 7:00 p.m. to 9:00 p.m. service and prayer meeting
Thursday- 8:00 a.m. to 12:00 p.m. In the Office studying the Bible and preparing music classes and the ministry of the services
Thursday- 1:00 p.m. to 6:00 p.m. Pastoral Visit
Friday- 6:00 p.m. to 9:00 p.m. Prayer Meeting and group test with the guitars and choral
Saturday- 9:00 a.m. to 12:00 p.m. piano guitar lessons
Saturday- 1:00 p.m. to 3:00 p.m. worship team rehearsal
Sunday- 8:00 a.m. to 8:00 p.m. Domical School, worship service, lunch camaraderie and family visits, Bible studies, committee meeting, etc.

The director denied the petition on January 23, 2013. The director quoted the regulatory definition of a "religious occupation," and stated:

Although the petitioner submitted a daily schedule for the beneficiary of over 40 hours per week, the religious duties versus the secular duties of the beneficiary are not an average of at least 20 hours per week working in a religious occupation.

... Lay persons who have completed some prescribed course of religious training and who possess some type of certification or qualifications issued by the denomination fill religious occupations. In contrast, a great number of activities carried out within a religious organization are not classifiable as either vocation or occupational. Such activities usually are concerned with participating in worship services or to there [*sic*] church-sponsored religious programs. These activities require only a modest time

commitment and no specialized religious training or education. Volunteers from among the congregation as an expression of their faith and practice of their beliefs traditionally perform these duties.

. . . While the general description of the beneficiary's activities may be traditional church related activities, the record is not persuasive that such activities are sufficiently specialized in a theological doctrine so as to constitute a religious occupation.

. . . Therefore, the petitioner has not established that the beneficiary will be working in a religious occupation at least 20 hours per week.

On appeal, the petitioner submits copies of previously submitted materials, including the *Constitución y Reglamentos* with its irregularly formatted "Ministro De Música" section. Counsel attributes the decision to the director's "complete failure to appreciate [the] exclusively religious/spiritual nature of duties carried out by a minister of worship and music," and repeats that claim that the position "is not even a religious occupation" subject to the regulatory definition of that phrase. Counsel asserted that "submitted documents (church constitution and regulation), and senior pastor's letter clearly indicates these duties are that [*sic*] of ministers."

The beneficiary's December 2006 certificate of ordination supports the assertion that the beneficiary is an ordained minister. Ordination, however, does not imply that the duties of the ordained individual are necessarily ministerial. Under the regulation at 8 C.F.R. 214.2(r)(3), the activities must have a rational relationship to the religious calling of the minister, and must include duties that require ordination or comparable authorization. The principal duties of the position must usually be performed by authorized members of the clergy. If a layman holds a given church position, and later receives ordination but remains in the same position, the position does not become ministerial.

In this instance, the petitioner had previously indicated that the beneficiary held the title "Worship Minister" as early as March 1993, almost 14 years before his December 2006 ordination. The beneficiary's own claimed employment history, therefore, does not indicate that ordination is a requirement for a worship minister. (There is no evidence of ordination in 1993 or earlier, and no explanation for why a second ordination would have been necessary in 2006.)

In a similar vein, [REDACTED] the petitioner's church secretary, stated: "In previous years we have had one member of our church who has been volunteering his time as our Worship & Music Pastor." It is not evident that the beneficiary's intended position requires the services of an ordained minister, either at the petitioning church or elsewhere within the same religious denomination.

Counsel, in discussing the regulatory definition of a religious occupation, quotes an obsolete version of 8 C.F.R. § 204.5(m)(2), which is a regulation relating to special immigrant religious workers. The current controlling regulation at 8 C.F.R. § 214.2(r)(3) states the duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.

These two factors are separate and independent. Attending worship services and receiving baptism both relate to traditional religious functions in the Baptist tradition, but neither of those functions is an occupation for which participants typically receive compensation.

In the present instance, the petitioner has submitted no evidence that the beneficiary has ever received compensation for his work as a music minister. The petitioner claims that the beneficiary has volunteered at the petitioning church since early 2012, and that he volunteered at a different church for several years before that. The petitioner submitted minimal documentation regarding the beneficiary's earlier endeavors outside the United States, none of which established that he received compensation for performing the duties of a music minister.

The petitioner resubmits a copy of its *Constitución y Reglamentos* as supporting evidence on appeal. Review of this document undermines its value as evidence. In the Spanish-language original of the *Constitución y Reglamentos*, the entire "Ministro De Música" section is in a visibly different font (typeface) from the rest of the document, and the formatting is different. The "Deberes de la Secretaria" section, for instance, includes the following passage:

DEBERES DE LA SECRETARIA

1. Todo negocio de la Iglesia se mantendrá en la más estricta confidencia.
2. El secretario sera responsable al pastor, o en su ausencia al president de diáconos en llenar los deberes secretariales de la Iglesia.
3. El secretario de la Iglesia ayudará al pastor en lo siguiente:
 - Escribirá la correspondencia de la Iglesia.
4. Mantendrá, y distribuirá ciertas listas de información en lo siguiente:
 - Información de visitante
 - Hospital
 - Casa de Ancianos
 - El que espera ser bautizado
 - Mantendrá el calendario de la Iglesia y citas del pastor
 - Proporcionará información y reports cuando sea solicitados

The section heading is centered, in all capital letters. The formatting of the above list uses numbers at the first level of organization and bullets (●) at the second level. The "Ministro De Musicá" section, in contrast, uses letters at the first level and numerals in parentheses at the second level. The section heading is on the left, not fully capitalized, and preceded by an extraneous letter "C." The "Ministro De Musicá" section also used a depth of indentation found nowhere else in the document. Also, while the rest of the document shows fully justified text, aligned on both the left and right margins, the "Ministro De Música" section aligns only on the left margin. There are also extra spaces before the word "Musicá" in the heading, and before the word "asuntos" in the "Alcance" section. An illustration of this formatting appears below:

C. Ministro De Música

Alcance

El ministro de música, sera responsable de todas fases de la música de la Iglesia. Los deberes de esta descripción de trabajo se diseñan para ayudar y guiar al Ministro de Música, pero no lo limitará en áreas listadas. En todos los asuntos, él sera responsable directamente a la Iglesia.

Deberes

- A. Como relacionado al programa complete de la música de la Iglesia
 - (1) Procurara dirigir un programa de música que ganará a gente para Cristo, fortalecerá el culto, animara el evangelism.
 - (2) Dará dirección general al programa de música de la Iglesia.
 - (3) Procurara encontrar y desarrollar la música entre miembros de la Iglesia con talent para cantar, tocar instrumentos, y dirigir.

In all the ways listed above, the “Ministro de Musicá” section of the Spanish-language *Constitución y Reglamentos* is visibly different from every other portion of the otherwise uniformly-formatted document. These differences are consistent with the insertion of new language into an existing document.² Therefore, the discrepancies diminish the document’s credibility. Doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Counsel maintains, on appeal, that the beneficiary’s duties amount to a “full time” obligation. The petitioner’s own documentation indicates that the music ministry comprises only seven church members. The petitioner has not credibly shown that organizing and managing a group of this size plausibly requires a full-time paid employee.

The director’s decision is not without flaws. For example, the director indicated that a religious occupation requires “some prescribed course of religious training,” but cited no authoritative source for this assertion. Nevertheless, the petitioner has not overcome the director’s underlying finding that the petitioner has not established that the beneficiary’s intended position qualifies as a religious occupation.

The AAO may deny an application or petition that fails to comply with the technical requirements of the law 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.

² The *Constitución y Reglamentos* is an April 2012 revision, but all references to the revision match the formatting of the main document. Therefore, there is no reason to attribute the formatting differences to that revision.

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 USCIS regulation at 8 C.F.R. § 214.2(r)(11) requires the petitioner to state how it intends to compensate the beneficiary, and to submit verifiable evidence explaining how the petitioner will do so. The regulation at 8 C.F.R. § 214.2(r)(11)(i) states:

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 documentation, such as IRS Form W-2 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.

Pastor [redacted] stated that the petitioner's "gross annual income is about \$90,000," and that the beneficiary "will be compensated with \$21,000 per year." Budget documents show the following expenses for the petitioning organization:

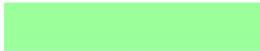
	Budgeted	Actual
2010	\$71,856.00	\$89,954.70
2011	\$72,329.00	\$78,576.64
2012	72,729.00	—

The budgets for 2010-2012 do not show the beneficiary's intended \$21,000 salary. That salary, therefore, would amount to a new expense in addition to existing costs. Subtracting the petitioner's budgeted 2012 expenses from its \$90,000 gross income leaves only \$17,271, insufficient to cover the beneficiary's salary. Furthermore, in previous years the petitioner's actual expenses have exceeded the budget by several thousand dollars, which would drain existing reserves. Therefore, the submitted materials do not establish that the petitioner can pay the beneficiary \$21,000 as claimed. Furthermore, the petitioner did not submit any IRS documentation or explain its absence. The petitioner's documentation, therefore, is not sufficient to satisfy the regulatory requirements at 8 C.F.R. § 214.2(r)(11)(i).

The AAO will dismiss the appeal for the above stated reasons, with each considered as an independent and alternate basis for the decision.³ In visa petition proceedings, it is the petitioner's

³ The record of proceeding includes a favorable report from a site inspection on April 11, 2008. This report, however, does not apply to the petitioning church. The name is the same, but the address and employer identification number are different. Therefore, for any future matters involving this church and the beneficiary, the director should not construe this compliance review report as evidence that the present petitioner has passed compliance review.

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NON-PRECEDENT DECISION

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burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.