



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **APR 02 2014** OFFICE: CALIFORNIA SERVICE CENTER [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.

Thank you,

Ron Rosenberg
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 Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further action and consideration.

The petitioner is a church. It seeks to classify the beneficiary as a nonimmigrant 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), to perform services as a music director. The director determined that the petitioner failed to establish that the beneficiary will be employed in a qualifying religious occupation.

On appeal, the petitioner submits a brief from counsel and additional evidence.

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 issue to be discussed is whether the petitioner has established that the beneficiary will be employed in a qualifying position.

The USCIS regulation at 8 C.F.R. § 214.2(r)(3) includes the following definitions:

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.

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.

On the Form I-129, Petition for a Nonimmigrant Worker, Supplement R, the petitioner stated that it is affiliated with the [REDACTED] N.A. denomination. The petitioner described the beneficiary's proposed duties as follows:

The Worker in Charge of Music Ministry is required to coordinate the affairs of the music ministry, organize, teach and train members of the choir, recruit new members. Assist the parish pastor in preaching the gospel, train and reorganize workers in the church, organize crusades and evangelical outreaches, [e]stablish ministerial classes where workers and ministers would be trained. Teach and [p]repare parents for child dedication and coordinate and organize baptismal classes and workers in training classes.

Accompanying the petition, the petitioner submitted a November 7, 2012 letter from the petitioner's pastor detailing the beneficiary's duties and stating that the beneficiary would be in charge of the music ministry and spiritual growth class, and that the beneficiary had been previously employed by a [REDACTED] as a music director. The petitioner also submitted a letter from the coordinator of "[REDACTED]" stating that the beneficiary served under him as the music director of "[REDACTED]" from 2009 to 2012.

On February 28, 2013, the director issued a Notice of Intent to Deny (NOID) erroneously referencing the regulation at 8 C.F.R. § 204.5(m)(2) which governs special immigrant religious workers. The director also discussed derogatory information about individuals unrelated to the instant petition. Pertinent to the instant proceedings, the director asked the petitioner to submit specific information about the offered position, including a detailed description of the duties of the offered position and the time devoted to performing each of those duties, a daily and weekly schedule for the position, the minimum requirements for the position and proof that the beneficiary meets those requirements, and an explanation of how the duties of the position relate to a traditional religious function.

In response to the NOID the petitioner submitted a copy of the letter from the petitioner's pastor which was originally submitted with the filing of the petition.

The director denied the petition on April 3, 2013, finding that the beneficiary's duties did not relate to a traditional religious function of the church, and that the beneficiary's duties would primarily involve secular and non-religious activities. The director also found that the petitioner failed to establish that the position of music director is traditionally recognized as a religious occupation within the organization.

On appeal, the petitioner submits a brief asserting that the proffered position qualifies as a religious occupation as defined in 8 C.F.R. § 214.2(r)(3). In support of the appeal, the petitioner submits: a copy of the petitioner's Sunday bulletin showing that music is part of the petitioner's worship service; a copy of the petitioner's bylaws; documentation detailing the petitioner's beliefs and values; a document on the petitioner's letterhead entitled "[REDACTED]"¹ which states that the music ministry is "a core department within the church, without which our church can't exist," and that the music ministry position is normally a permanent

[REDACTED]
as stated by the petitioner and listed on the website of [REDACTED]
[REDACTED]

position within the church; church literature and pictures showing church functions including music and singing; a copy of an article detailing the importance of music within the Pentecostal faith worship services; and a copy of a job advertisement at a [REDACTED] for a Director of Music from [REDACTED]

The documentation submitted by the petitioner establishes that the duties of the proffered position primarily relate to traditional religious functions and that the position is recognized as a religious occupation within the petitioner's denomination. The duties are primarily related to, and clearly involve, inculcating or carrying out the petitioner's religious creed and beliefs. The position therefore meets the regulatory definition of a religious occupation under 8 C.F.R. § 214.2(r)(3). The director's decision to the contrary is withdrawn.

While the petitioner has overcome the only stated basis for the director's denial of the petition, additional grounds of eligibility have not been established. The AAO conducts appellate review on a *de novo* basis. See *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The USCIS regulation at 8 C.F.R. § 214.2(r)(16) reads:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The director shall determine whether the petitioner has satisfied the regulation at 8 C.F.R. § 214.2(r)(16) and whether a compliance review, onsite inspection or other verification of the petitioner's claims is appropriate in this instance.

Finally, as defined in the regulation at USCIS regulation at 8 C.F.R. § 214.2(r)(3), a religious worker must be qualified for a religious occupation or vocation according to the denominations standards. In the letter from the petitioner's pastor dated November 7, 2012, referenced in Section 1, question 5.c. of the Form I-129 Supplement R, the minimum qualifications required of the proffered position are completion of a high school education, completion of the New Believers class, and completion of the workers in training class.

The petitioner states that the beneficiary meets these qualifications, but there is no evidence of record, other than the petitioner's statement, that the beneficiary has completed a high school education, the

New Beginners class and the workers in training class. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). As such, the petitioner has failed to establish that the beneficiary is qualified for the proffered position.

This matter shall be remanded to the director for consideration of the issues stated above and such other matters as the director deems appropriate. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. In visa petition proceedings, it is the petitioner's 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).

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.