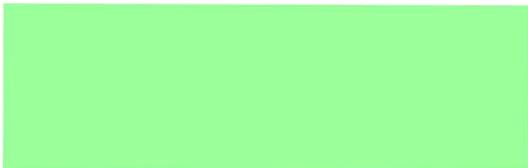
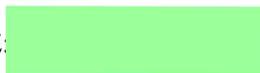


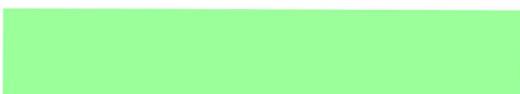


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **APR 18 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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:

SELF-REPRESENTED

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 Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner is a church. It seeks classification of 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 youth pastor. The director determined that the petitioner failed to establish the beneficiary's qualifications for the proffered position.

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 established the beneficiary's qualifications for the proffered position as of the time of filing the Form I-129, Petition for a Nonimmigrant Worker.

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

Minister means an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct 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.

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.

The USCIS regulation at 8 C.F.R. § 214.2(r)(10) requires the petitioner to submit the following documentation if the alien will work as a minister:

(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 a 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.

The petitioner filed the Form I-129 petition on November 20, 2012, seeking to employ the beneficiary as a youth pastor. On the petition, the petitioner stated that it is affiliated with the [REDACTED] denomination. The petitioner submitted a job offer letter and a job description listing the "purpose" and "accountabilities" of the proffered position. The petitioner also submitted a "Certificate of Completion" from the [REDACTED] dated May 14, 2010, stating that the beneficiary completed "the Second Year Course of Study."

The director issued a Request for Evidence (RFE) on March 27, 2013, stating that it was unclear whether the beneficiary would be working in a religious occupation or as a minister. The director asked, in part, that the petitioner provide evidence establishing the nature of the proffered position. If the beneficiary was to be working as a minister, the petitioner was instructed to provide a certificate of ordination or similar documentation reflecting acceptance of the beneficiary's qualifications as a minister. If the beneficiary was to be working in a religious occupation, the petitioner was instructed to provide evidence that the offered position qualified as a religious occupation.

In a letter dated April 9, 2013, submitted in response to the RFE, the petitioner stated that the position of youth pastor is a religious occupation within the denomination. However, in contrast, the petitioner listed the duties of the position, which included conducting baptisms and offering communion, duties which cannot be performed by lay ministers. The petitioner submitted a document entitled "Policy for Establishment of Religious Positions," setting forth the requirements and procedures for the ordination of its ministers, as well as listing the recognized religious occupations within the [REDACTED] denomination." The position of youth pastor was included on the list of religious occupations. The petitioner also submitted a letter from [REDACTED] Vice President, [REDACTED] Director, [REDACTED] USA, stating that the position of youth pastor is a recognized religious occupation within the denomination. Mr. [REDACTED] further stated:

Youth Pastors are expected to undertake baptism, communion, religious instruction (through preaching and teaching), spiritual counseling and conduct weekly services geared towards the youth age group.

The director determined, based on the stated duties, that the beneficiary would be working as a minister. The director denied the petition for failure to submit documentation showing the beneficiary's qualifications as a minister within the denomination, including a certificate of ordination.

On appeal, the petitioner states that its response to the RFE "was made on the basis of the beneficiary working in a religious occupation," but that "the board has reconsidered the position and agrees that the beneficiary's duties are that of a minister." The petitioner submits evidence that the beneficiary was ordained as a minister on July 12, 2013.

Based upon evidence offered in support of the petition and in response to the director's RFE, as well as the petitioner's statements and evidence offered on appeal, the proffered position is that of a minister. As such, the USCIS regulation at 8 C.F.R. § 214.2(r)(10) requires the documentation detailed above pertaining to the beneficiary's qualifications as a minister. The petitioner must establish that the beneficiary met the qualifications of a minister at the time the petition was filed. 8 C.F.R. 103.2(b)(1), (12). A petition may not be approved if the beneficiary was not qualified at the time of the filing of the petition, but expects to become eligible at a subsequent time. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978). The evidence indicates that the beneficiary was not ordained as a minister until July 12, 2013, after the petition had been denied on

June 20, 2013. Accordingly, the petitioner failed to establish that the beneficiary was qualified for the proffered position when the petition was filed.¹

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). Here, that burden has not been met.

ORDER: The appeal is dismissed.

¹ Although not at issue in this proceeding, the petitioner requests a change and extension of the beneficiary's current status. The petitioner indicates that it employed the beneficiary from November 2008 through August 2011 and that the beneficiary currently resides in the United States. The record, however, does not contain any documentation to establish the beneficiary's immigration status.