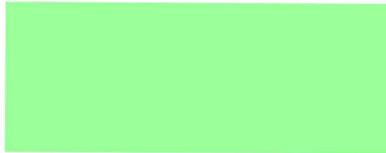
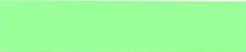


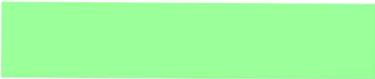


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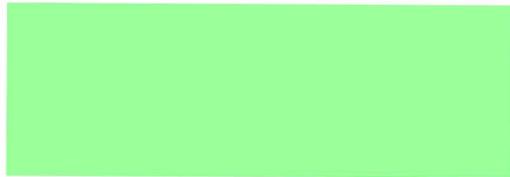


DATE **AUG 26 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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)

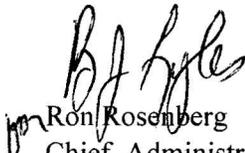
ON BEHALF OF PETITIONER:



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
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 withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, we will remand the petition for further action and consideration.

The petitioner is a Jewish day school. It seeks to extend the beneficiary's classification 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 Judaic Studies teacher. The director determined that the petitioner failed to establish that the beneficiary would be employed in a qualifying position and to establish the beneficiary's denominational membership during the two years preceding the filing of the petition. The director also determined that the beneficiary engaged in unauthorized employment and was not, therefore, eligible for a change in immigration status.

On appeal, the petitioner submits 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 first 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.

The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, on June 21, 2013, seeking to employ the beneficiary as a Judaic Studies teacher. As initial evidence that the proffered position qualifies as a religious occupation, the petitioner submitted a June 14, 2013 letter from [REDACTED] the petitioner's Executive Director, stating:

[The petitioner] is a modern orthodox Jewish day school which has provided students with a superior educational foundation built on the Yavneh philosophy of Torah Shebichtav, Torah Sh'Baal Peh, Mitzvot, Middot, Ivrit, Eretz Yisrael, Medinat Yisrael and excellence in all Judaic and general studies. Our school is dedicated to cultivating the spiritual lives of our students and nurturing their commitment to Jewish values.

Mr. [REDACTED] stated that the petitioner employed 120 individuals, including 50 salaried religious teachers and 50 salaried non-religious employees who teach secular courses. He indicated that the beneficiary is being offered a position as a Judaic Studies teacher in the Judaic Studies Department and the Early Childhood Ivrit Religious Studies department. Mr. [REDACTED] also stated:

As [a] Judaic Studies Teacher, [the beneficiary] will be responsible for developing the educational skills of young Jewish children, between the ages of 5 and 13, in a program which provides religious instruction and training in Jewish principles. As such, [the beneficiary] will teach the religious subjects of the Jewish religion, the Bible, Jewish traditions and culture, appropriately to her class. She will be responsible for teaching stories with Jewish themes and lessons about Jewish religion and culture. She will be responsible for integrating religion and Jewish tradition in regular class activities. For example, during meal times, she will ensure that the religious blessings are said and adhered to by her students. . . .

In the proffered position, [the beneficiary] will be responsible for the religious function of ensuring that the young students under her tutelage are offered a solid religious and secular foundation in order for progression to higher levels of learning. Furthermore, on a day[-]to[-]day basis, [the beneficiary] will have the responsibility of organizing the daily Jewish religious lessons for our Judaic Studies Department and providing these to staff. She will also be available to our young girls in the upper grades should they need to review any of their Judaic religious texts or lessons.

The petitioner further submitted copies of USCIS approval notices showing the beneficiary was approved to work for [REDACTED] in New York in R-1 nonimmigrant status from September 1, 2009 through September 1, 2014, copies of the beneficiary's 2012 Form W2, Wage and Tax Statement, showing the beneficiary earned \$50,241.65 from [REDACTED] in that year, a copy of the petitioner's mission statement, a copy of its handbook detailing its Judaic studies, and a copy of its employment contract with the beneficiary which states that the beneficiary will be employed as a full-time teacher working 50 percent of the time in the Judaic Studies Department and 50 percent of the time as an Early Childhood Ivrit teacher.

The director issued a Request for Evidence (RFE) on September 4, 2013 asking, in part, that the beneficiary submit a detailed description of the position offered, how the duties of the position relate to a traditional religious function of the beneficiary's denomination and evidence that the offered position is recognized as a religious occupation by the Jewish religion.

In response to the RFE, the petitioner submitted a letter dated October 25, 2013 from the petitioner's executive director, [REDACTED]. Mr. [REDACTED] stated that as a Judaic Studies Teacher, the beneficiary's duties would include "the teaching of Shabbat, Prayer, Jewish Holidays, Hebrew language and customs to students in Kindergarten and 1st grade. She will be based for approximately half of her time in the Judaic Studies Department (approximately 16.5 hours), with the other half of her time spent in the Early Childhood Ivrit Department (approximately 16.5 hours)." Mr. [REDACTED] indicated that the beneficiary would always work 35 hours per week. He further asserted that the position of Judaic Studies teacher is a recognized religious occupation within the Orthodox Jewish denomination. The petitioner submitted copies of the beneficiary's Forms W-2 for 2009, 2010, 2011 and 2012 as evidence that the beneficiary was employed by another Jewish school as a teacher while in R-1 nonimmigrant status. The petitioner also submitted documentation from the petitioner's web site ([http://www.\[REDACTED\]](http://www.[REDACTED])) stating that its Early Childhood Department designs curricula teaching traditional Jewish values, and documentation from the petitioner's Judaic Studies site ([http://www.\[REDACTED\]](http://www.[REDACTED])) stating that the petitioner "provides students with a superior Limudei Kodesh program whose foundation is built upon Torah Sh'bichtav, Torah Sh'Baal Peh, Mitzvot, Middot, Ivrit, Eretz Yisrael and Medinat Yisrael."

On November 15, 2013, the director issued a Notice of Intent to Deny (NOID) the petition. The director found, in part, that the petitioner had failed to establish that the beneficiary would be working at least 20 hours per week in a religious occupation. In response to the NOID, the petitioner submitted a letter dated November 22, 2013 from the petitioner's principal and its executive director, stating:

[The beneficiary] is a full-time (35 hours a week) Judaic Studies teacher and is very highly qualified. Although she splits her time between two age groups, her position is for a full-time Religious Studies Teacher. She teaches Judaic studies to a group of 20 first grade students (ages 6 to 7) during the afternoon hours (12:00 to 3:30). Her mornings (8:00 to 12:00 approximately) are also spent teaching only Judaic religious subjects in the early childhood department (kindergarten, ages 4 to 6). In [this] group she teaches six separate groups of 8 students each, conducted entirely in the Hebrew (Ivrit) language and the subject matter of the lessons she teaches to both groups is completely religious in nature, including Torah studies, reading religious Hebrew texts, and stories (generally covering the weekly Torah portion), Sabbath observances and their requirements, religious holidays (most currently Chanukah), blessings made over various foods and occasions, Sabbath and holiday prayers and meals, observances and songs, etc.

With respect to her morning classes with Early Childhood students, she moves from one class to another covering all six groups during the morning hours, spending about ½

hour or more with each group, speaking and singing only in the Hebrew language, covering only religious studies and various religious observances, and teaching a part of our curriculum which only she is qualified to teach.

She does not teach English or Secular subjects at all. . . .

The petitioner also resubmitted the evidence previously submitted in its response to the director's RFE.

The director denied the petition on December 11, 2013, stating, in part, that the petitioner failed to establish that the proffered position qualifies as a religious occupation.

On appeal, the petitioner contends that the director erred in determining that the proffered position does not qualify as a religious occupation. In support of its appeal relative to this issue, the petitioner submits a letter from the petitioner's principal, Rabbi [REDACTED] dated February 6, 2014. Rabbi [REDACTED] states that the director has mischaracterized the position of teacher in the petitioner's Early Childhood Ivrit Department as being a secular teaching position. Rabbi [REDACTED] states that the word "Ivrit" is the English translation of the term "Hebrew" in the Hebrew language, and that an Early Childhood Ivrit Teacher is not a language teacher, but one "involved in teaching Hebrew as it relates to the study of Jewish Bible, Jewish law, Jewish ethics, and Jewish religious [thought]." He contends that "Hebrew or 'Ivrit' in this context is used for religious instruction alone." The petitioner further submits a detailed weekly schedule of the beneficiary's work activities, indicating that the beneficiary devotes the vast majority her full-time work activities to religious teaching. In addition, the petitioner submits a February 20, 2014 letter from the Vice Provost for Teaching and Learning of [REDACTED] in New York, discussing, in part, the required qualifications of Judaic Studies teachers at Orthodox Jewish schools.

The petitioner has established that the proffered position qualifies as a religious occupation. The record shows that the duties of the position primarily relate to a traditional religious function of Orthodox Judaism, specifically the training and education of children in the religious observances, history, thoughts and beliefs of Orthodox Judaism. The petitioner has submitted sufficient evidence to establish that the duties of a Judaic Studies Teacher, as detailed in present record, are recognized as a religious occupation within the Orthodox Jewish denomination, and that the duties primarily relate to and clearly involve inculcating or carrying out the religious creed and beliefs of the Orthodox Jewish faith. We will therefore withdraw the director's findings relative to this issue.

The second issue to be considered is whether the petitioner established the beneficiary's denominational membership during the two years immediately preceding the filing of the petition.

As stated previously, the USCIS regulation at 8 C.F.R. § 214.2(r)(1)(i) states that the beneficiary must 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.

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

Denominational membership means membership during at least the two-year period immediately preceding the filing date of the petition, in the same type of religious denomination as the United States religious organization where the alien will work.

Religious denomination means a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes one or more of the following:

- (A) A recognized common creed or statement of faith shared among the denomination's members;
- (B) A common form of worship;
- (C) A common formal code of doctrine and discipline;
- (D) Common religious services and ceremonies;
- (E) Common established places of religious worship or religious congregations; or
- (F) Comparable indicia of a bona fide religious denomination.

On the Form I-129 petition, the petitioner identified its denomination as "The Jewish Religion." In the June 14, 2013 letter accompanying the petition, the petitioner indicated that it is affiliated with Orthodox Judaism. As initial evidence of the beneficiary's denominational membership during the two years preceding the filing of the petition, the petitioner submitted copies of USCIS approval notices showing the beneficiary had been approved to work in R-1 nonimmigrant status as a teacher for [REDACTED] in New York from September 1, 2009 through September 1, 2014. The petitioner also submitted a July 7, 2009 letter from Rabbi [REDACTED], stating that he worked with the beneficiary as a Jewish educator at [REDACTED] during the summer of 2009, and that the "[beneficiary] has for the past two years, and in fact her entire life, been an active and practicing member of the Jewish faith." The petitioner further submitted a diploma from The [REDACTED] indicating that the beneficiary earned a Master of Arts degree on March 21, 2009. The petitioner submitted an additional letter from [REDACTED] dated July 15, 2009, stating that the beneficiary worked as a Jewish Educator at [REDACTED] during the summers of 2008 and 2009 and has been a teacher of Judaic Studies working for various organizations from 2005 through 2007.

On September 4, 2013, the director issued an RFE asking, in part, that the petitioner provide evidence of the beneficiary's denominational membership in the Jewish faith. In response to the RFE, the petitioner submitted an October 16, 2013 letter from Rabbi [REDACTED] of [REDACTED] in New York, stating that the beneficiary has regularly attended services there for the last four years. The petitioner also submitted an October 15, 2013 letter from Rabbi [REDACTED], Ontario, Canada, attesting to his knowledge

of the beneficiary for more than 10 years as “an observant, religious Jew,” and stating that his organization is “affiliated with worldwide Jewish Orthodoxy.” In addition, the petitioner submitted copies of the beneficiary’s academic transcripts, diplomas and certificates of achievement showing her educational background in Judaic studies, as well as published articles relating to the beneficiary’s religious beliefs and position as a Jewish educator.

In denying the petition, the director stated that the petitioner failed to establish the beneficiary’s denominational membership for at least two years prior to filing the petition. On appeal, the petitioner states that the director erred in this regard. In support of the appeal, the petitioner submits a February 20, 2014 letter from [REDACTED] Office of the Provost, stating that the petitioner is a Jewish school that conforms both in philosophy and practice to the common form of Orthodox Jewish worship, and that Judaic Studies teachers of such institutions are required to be Jewish and to have studied Jewish Bible, Jewish law and Rabbinics, Jewish Prayer, Jewish holidays and the Sabbath, in addition to Jewish history and religion. The letter also states that Orthodox Judaism does not have a centralized structure or governing body, but that Orthodox Jewish institutions follow a common form of worship and doctrinal code.

The petitioner has submitted sufficient evidence to establish the beneficiary’s two-year denominational membership preceding the filing of the petition. The regulations do not require the petitioner to demonstrate that the beneficiary has been a member of “the petitioning organization or its ecclesiastical government or governing hierarchy” as stated by the director. As noted above, the regulation at 8 C.F.R. § 214.2(r)(3) states that “denominational membership” includes membership in “the same type of religious denomination” during the two year period immediately preceding the filing of the petition that is governed or administered under a “common type” of ecclesiastical government involving a common creed or statement of faith shared among denomination members, a common form of worship, a common formal code of doctrine and discipline or common religious services and ceremonies. The record establishes the beneficiary’s membership for more than two years in the same type of denomination to which the petitioner belongs. The director’s finding to the contrary is withdrawn.

The final ground for denial cited by the director was that the beneficiary engaged in unauthorized employment that would render her ineligible “for a change of status.” Under the USCIS regulation at 8 C.F.R. § 248.1(a), an alien must maintain status in order to qualify for change of nonimmigrant status. We note that the petitioner in this instance is not seeking a change of status for the beneficiary, but rather a change of employer and extension of previously approved nonimmigrant status. The regulation at 8 C.F.R. § 214.2(r)(5) provides that an extension of status is available only to aliens who maintain R-1 status. This issue, however, lies outside our appellate jurisdiction. An application for extension is concurrent with, but separate from, the nonimmigrant petition. There is no appeal from the denial of an application for extension of stay filed on Form I-129. 8 C.F.R. § 214.1(c)(5). Because the beneficiary’s maintenance of status is an extension issue, rather than a petition issue, we lack authority to decide this question.

The above discussion indicates that the petitioner has overcome all stated grounds relevant to denial of the petition. However, review of the record shows an additional ground of eligibility that has not

been established. We conduct 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.

On remand, 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 the instant petition.

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.