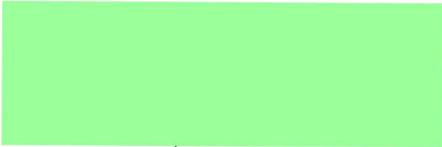


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: DEC 05 2014

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:

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,

A handwritten signature in black ink, appearing to read "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 appeal will be dismissed.

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 minister-in-training intern. The director determined that the petitioner failed to establish the beneficiary will be employed in a qualifying position and failed to establish the beneficiary's denominational membership during the two years immediately preceding the filing of the petition.

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

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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 states on the Form I-129, Petition for a Nonimmigrant Worker, that the beneficiary will be employed without monetary compensation as a "Minister In Training Intern." The duties of the proffered position are detailed in Section 1 of the Form I-129 Supplement R as follows:

- Meet weekly with [the] Internship Director (ID);
- Attend Board of Director's meetings;
- Lead or assist a discipleship group and develop and maintain close relationships with these people;
- Attend leadership Bible study weekly;
- Report on assessments, personal growth, study progress and personal wellbeing;
- Attend all church services and meetings;
- Assume an administrative task;
- Remain current in study programs;
- Accompany staff on presentations;
- Organize a basic filing system reflecting the philosophy of ministry, leadership and fund raising;
- Keep a journal of daily reflections on feelings and impressions from various facets of experience, and share those with the ID at weekly meetings;
- Keep a weekly calendar;
- Attend all fellowship events;
- Prepare and share a five minute teaching at kinship or church;
- Prepare a monthly newsletter to send to friends, supporters and the beneficiary's home church;

- Attend all retreats and outreaches;
- Participate in a month-long mission experience with a [REDACTED] to assist in exploring a call to missions; and
- Join in a short-term missions experience.

The petitioner submitted with the filing of the Form I-129 a copy of its [REDACTED] – Minister In Training Manual [REDACTED] which indicates that an internship with the petitioning organization is a nine-month program designed to train individuals in every aspect of Christian ministry. The internship program is described as “much like an apprenticeship in which ministry skills are learned under the supervision of an experienced ministry staff person.” The manual states that interns are not additional staff and are not being invited into the ministry. As such, interns have no authority in the ministry other than the authority to disciple members in kinship/bible study if they lead the study. According to the manual, the purpose of the internship is to train people who feel God is calling them into eventual full-time ministry. Completion of the program does not guarantee moving directly into the ministry.

On June 18, 2013, the director issued a Request for Evidence (RFE) requesting, in part, that the petitioner provide evidence pertaining to the religious occupation. Specifically, the petitioner was asked to provide a detailed description and evidence of the requirements of the proffered position, how the beneficiary met these requirements, and evidence that the proffered position was recognized as a religious occupation by the petitioner’s denomination. In response to the RFE the petitioner resubmitted the job description for the position as set forth in the Form I-129 and the petitioner’s [REDACTED]. The petitioner also resubmitted its Mission, Vision, Values, Priorities and Purposes statement along with an Account Quick-Report showing funds paid to other individual interns in 2011 and 2012.

On December 28, 2013, the director issued a Notice of Intent to Deny (NOID) the petition stating, in part, that the evidence suggested that the beneficiary had been invited to become part of a minister-in-training program and that a valid job offer had not been made as the training program did not constitute employment in a religious occupation.

The petitioner stated in response to the NOID that the beneficiary is being hired as a youth worker for the petitioner, and that the beneficiary’s attendance in the ministry-in-training intern program is incidental to that employment. The petitioner listed the beneficiary’s duties as a youth worker as follows:

- Teaching at youth services;
- Counseling with youth;
- Praying with and for the youth; and
- Teaching regularly at Sunday services.

The director denied the petition stating, in part, that the petitioner failed to establish that the beneficiary will be employed in a qualifying religious occupation.

On appeal, the petitioner states that it extended to the beneficiary an offer of employment as a youth worker on May 15, 2013, and submits a May 15, 2013 letter addressed to the beneficiary from the petitioner's pastor offering the beneficiary employment as an uncompensated youth worker. The petitioner states that this offer of employment is separate and distinct from the beneficiary's application and acceptance into the minister-in-training program. In addition to the duties listed by the petitioner in the May 15, 2013 letter, the petitioner states that the beneficiary would "lead youth in celebration of communion and participate in the administration of the ordinance of baptism." The petitioner asserts that the beneficiary would replace a compensated minister who resigned the position effective May 2013. The petitioner submitted a copy of an IRS Form 1099-MISC, Miscellaneous Income, for the pastor who resigned showing \$2,500 in nonemployee compensation paid to him by the petitioner in 2013. The petitioner also submitted a copy of a document/flyer listing the resigned pastor as the youth director and the petitioner's associate pastor. The petitioner states that the duties of a youth worker qualify as a religious occupation and meet the requirements of 8 C.F.R. § 214.2(r)(3).

The petitioner clearly identified the proffered position in the Form I-129 as a "Minister in Training Intern" and set forth the duties of that position. The petitioner now seeks to change the position being offered to the beneficiary to that of a youth worker, with duties that are dissimilar to the duties of the proffered position. The petitioner now states that the minister-in-training program the beneficiary will attend is incidental to the youth worker position offered and that attendance in such training is permitted under 8 C.F.R. § 214.2(r)(3)(D). The regulations, however, do not permit the petitioner to amend the petition to change the position being offered. If the petitioner wishes to petition for the position of a youth worker, it must file a new petition with the appropriate fee. A visa petition may not be approved after the beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to U.S. Citizenship and Immigration Services (USCIS) requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a nonimmigrant religious worker. *See Matter of Michelin Tire Corporation*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978).

Additionally, the position of minister-in-training intern is not a religious occupation as that term is defined by the regulation at 8 C.F.R. § 214.2(r)(3). The position as described in the Form I-129 is an offer to attend training to become a minister or missionary. This training is a prerequisite in the petitioner's denomination to become a minister or missionary. The regulation specifically provides that religious study or training for religious work does not constitute a religious occupation. The proffered position is, therefore, not a religious occupation as defined in the regulations and the petition must, accordingly, be denied.

Furthermore, the petitioner's pastor stated in a letter dated May 12, 2013 that the beneficiary will be self-supporting and "hold a position that is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by our church." The regulation at 8 C.F.R. § 214.2(r)(11) provides:

Evidence relating to compensation. Initial evidence must state how the petitioner intends to compensate the alien, including specific monetary or in-kind compensation, or whether the alien intends to be self-supporting. In either case, the petitioner must submit verifiable evidence explaining how the petitioner will compensate the alien or how the alien will be self-supporting. Compensation may include:

(i) *Salaried or non-salaried compensation.* 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 [Internal Revenue Service] documentation, such as IRS Form W-2 [Wage and Tax Statement] 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.

(ii) *Self support.*

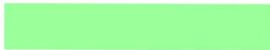
(A) If the alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.

(B) An established program for temporary, uncompensated work is defined to be a missionary program in which:

- (1) Foreign workers, whether compensated or uncompensated, have previously participated in R-1 status;
- (2) Missionary workers are traditionally uncompensated;
- (3) The organization provides formal training for missionaries; and
- (4) Participation in such missionary work is an established element of religious development in that denomination.

(C) The petitioner must submit evidence demonstrating:

- (1) That the organization has an established program for temporary, uncompensated missionary work;
- (2) That the denomination maintains missionary programs both in the United States and abroad;



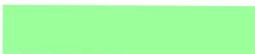
- (3) The religious worker's acceptance into the missionary program;
- (4) The religious duties and responsibilities associated with the traditionally uncompensated missionary work; and
- (5) Copies of the alien's bank records, budgets documenting the sources of self-support (including personal or family savings, room and board with host families in the United States, donations from the denomination's churches), or other verifiable evidence acceptable to USCIS.

Assuming that the proffered position was a qualifying religious worker position, which it is not, the petitioner has not established that the position of minister-in-training-intern is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination; that the denomination maintains missionary programs both in the United States and abroad; and has not provided evidence of the beneficiary's acceptance into the missionary program or copies of the beneficiary's bank records, budgets documenting the sources of self-support, or any other verifiable evidence of the beneficiary's ability to be self-supporting. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The final issue to be considered is whether the beneficiary was a member of the petitioner's religious denomination during the two years immediately preceding the filing of the petition.

The 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 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.

The petitioner did not present with the filing of the petition any evidence that the beneficiary was a member of the petitioner's religious denomination during the two years immediately preceding the filing of the petition. In her June 18, 2013 RFE, the director requested that the petitioner provide evidence that the beneficiary meets this statutory requirement. The petitioner did not provide this evidence in response to the RFE.

In response to the director's December 28, 2013 NOID, the petitioner stated that the beneficiary had been a member of its denomination as an active member of its ministry group, Finding Faith, since September 2011. The petitioner stated that the church consists of small groups that meet in homes in communities with services in the United States, West Africa and China. The petitioner did not submit evidence of the the beneficiary's attendance in any such services.

The director denied the petition stating, in part, that the petitioner failed to establish the beneficiary's denominational membership during the two years immediately preceding the filing of the petition.

On appeal, the petitioner asserts that the beneficiary has been a member of its denomination for two years preceding the filing of the petition and states that she “attended our [REDACTED] fellowship in [REDACTED]” The petitioner submits a document containing an address for [REDACTED] China. The document purports to be a 2011 fall roster with the names of four individuals, including the beneficiary. The information is on the petitioner’s letterhead and signed by [REDACTED] the petitioner’s [REDACTED]. The petitioner does not identify the source of the information contained in the letter and provides no other evidence of the beneficiary’s membership in its denomination prior to the filing of the petition. The nonexistence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

The evidence submitted is insufficient to establish the beneficiary’s two-year membership in the petitioner’s denomination preceding the filing of the petition on June 6, 2013. The document does not contain dates of attendance at any denominational function, an explanation of the beneficiary’s denominational activities, or otherwise indicate that the beneficiary was a member of the petitioner’s denomination, or any other denomination during any portion of 2012 or 2013. The statement of the petitioner’s pastor alone is insufficient to establish the denominational membership requirement. *Matter of Soffici*, 22 I&N Dec. at 165. The evidence of record does not establish the beneficiary’s denominational membership during the two years immediately preceding the filing of the petition. For this additional reason, the petition must be dismissed.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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.