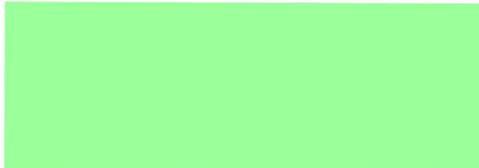




U.S. Citizenship
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Services

(b)(6)

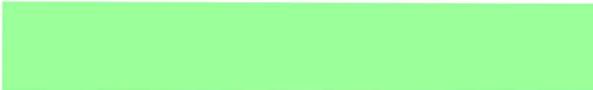


DATE: JAN 28 2014

OFFICE: CALIFORNIA SERVICE CENTER

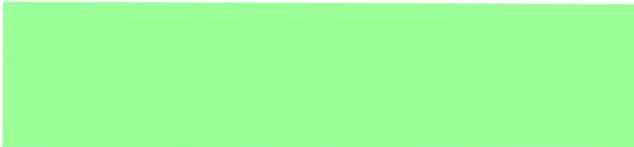


IN RE: Petitioner:
Beneficiary:



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. 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 nondenominational 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 "Spanish Ministries Coordinator." 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 and additional documentation.

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:

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 vocation means a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life. The religious denomination must have a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. Examples of vocations include nuns, monks, and religious brothers and sisters.

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 the Form I-129, Petition for a Nonimmigrant Worker, on June 20, 2012. On July 13, 2012, USCIS issued a Request for Evidence (RFE), in part requesting additional evidence regarding the proffered position. In response, the petitioner submitted a summary of the beneficiary's duties and work schedule which indicated that the beneficiary would perform services as follows:

- 3 Hours Per Week - Individual prayer and counseling;
- 4 Hours Per Week - Website Blog and Events Update;
- 5 Hours Per Week - Visitor and Member follow-up/connect;
- 2 Hours Per Week - Evening Spanish Bible Study for Mixed Group;
- 2 Hours Per Week - Staff Meeting;
- 2 Hours Per Week - Spanish Bible Study for Women; and
- 2 Hours Per Week - Spanish Meeting Team Meeting and Training.

The director issued a decision denying the petition on September 11, 2012, finding that the petitioner failed to establish that the beneficiary would be working for at least 20 hours per week. In support of a subsequent motion to reopen, the petitioner stated that in addition to the hours indicated, additional time would be required to prepare and plan for accomplishment of the listed duties, bringing the total number of hours worked to between 25 and 30 hours per week. The director granted the motion and issued a second RFE, dated February 20, 2013, requesting evidence to establish that the proffered position qualifies as a religious occupation.

On April 4, 2013, the director again denied the petition, finding that the petitioner had failed to establish that the duties of the position “primarily relate to and clearly involve, inculcate or carry out the religious creed and beliefs of the denomination.” The director found that the majority of the duties to be performed by the beneficiary were secular in nature and did “not have religious significance that embodies the tenets of the religious denomination.” Further, the director found that the petitioner failed to establish that the position of “Spanish Ministries Coordinator” is recognized as a religious occupation within the denomination.

On appeal, the petitioner submits a letter signed by the [REDACTED] which states that the proffered position is recognized by the church as a “religious occupation related to a traditional religious function within our denomination.” The petitioner also submits job advertisements from other churches for positions similar to the proffered position, demonstrating that other churches recognize the present position as a religious occupation.

In further support of the appeal, the petitioner submits a detailed description of the duties of the beneficiary, referencing the duties and schedule set forth on the duty and work schedule summary above, to show that the beneficiary’s duties traditionally relate to the religious functions of the church and are not primarily secular in nature. For example, the director stated that the beneficiary’s duties with reference to “Website Blog and Events Update” appeared to be secular in nature rather than religious duties. The petitioner’s description on appeal, however, indicates that those duties involve creating, developing and distributing, via the Internet, Biblical devotionals in accord with themes and messages promoted by the spiritual leaders of the church. The petitioner states that the beneficiary’s counseling duties involve meeting with congregants to attend to their religious and spiritual needs through prayer, adherence to the Bible’s teachings and the religious values of the petitioning church. The evidence indicates that the majority of the duties of the proffered position relate to a traditional religious function which clearly involves inculcating or carrying out the religious creed of the petitioner. The petitioner has, therefore, overcome the only stated basis for denial of the petition.

However, review of the record shows additional grounds that preclude approval of the petition. 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. 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)(3) states, in pertinent part:

Definitions. As used in this section, the term:

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 stated that the beneficiary last arrived in the United States on January 30, 2012. The petitioner indicated in the employer attestation that there is no relationship between the petitioning church and the organization abroad of which the beneficiary was a member. The July 13, 2012, RFE requested additional documentation regarding the beneficiary's denominational membership. In a letter responding to the notice, the petitioner stated that it was submitting evidence of the beneficiary's membership in the petitioning church "effective July 1, 2011." The petitioner submitted an "Individual Profile" stating that the beneficiary joined the church on July 1, 2010. No explanation was provided regarding the discrepancy between the dates. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In a letter dated June 4, 2012, [REDACTED] states that his church is a "Non-Denominational Church and Congregation whose main mission is expanding the work of God in order to transform the lives of our community. We truly believe in the authority of the Work of God and the grace of our Lord Jesus Christ that makes our families strong and united." [REDACTED] ates that he has served with

the beneficiary for ten years and details her work with his church and her educational background. The beneficiary's resume states that she has been a member of [REDACTED] "since 1995." The record in general and the referenced letter in particular do not establish that the beneficiary's church or denomination in Guatemala is the same type of religious denomination as the petitioning entity in the United States. The petitioner did not submit evidence to establish that the beneficiary's church in Guatemala is a community of believers that is governed or administered under a common type of ecclesiastical government as the petitioning church that includes one or more of the common characteristics listed in the definition of a religious denomination at 8 C.F.R. 214.2(r)(3).

Thus, the record does not establish that, during at least the two-year period immediately preceding the filing date of the petition, the beneficiary was a member of the same type of religious denomination as the United States religious organization where the alien will work. For this reason, the petition may not be approved. The AAO will remand the petition in order for the director to determine whether the petitioner has satisfied the regulatory requirements at 8 C.F.R. 214.2(r)(3) as discussed above.

Additionally, 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 record does not contain evidence of a compliance review, onsite inspection or other verification of this petitioner's claims. 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). Here, that burden has not been met.

(b)(6)

NON-PRECEDENT DECISION

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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