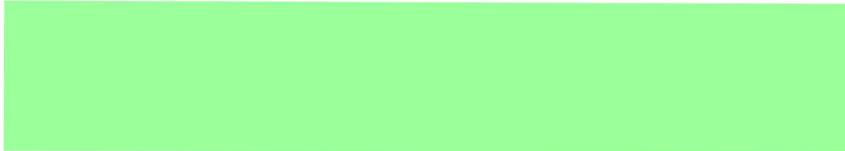


(b)(6)

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: SEP 22 2014

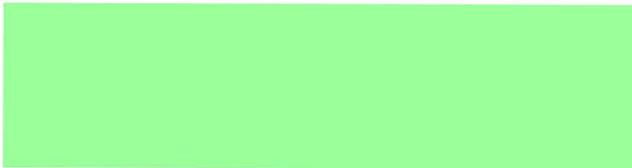
OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

for 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. Because the record, as it now stands, does not support approval of the petition, the petition will be remanded for further action and consideration.

The petitioner is a church. 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 an assistant director for its children's ministry program (CMP). The director determined that the petitioner failed to establish that the beneficiary will be employed in a qualifying position.

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 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 submitted, in support of the Form I-129, Petition for a Nonimmigrant Worker, a July 6, 2013 letter from Reverend [REDACTED] the petitioner's senior pastor. In that letter, Reverend [REDACTED] states that the position of assistant director to the CMP is a traditional religious function of the church and has

religious significance. According to the pastor, the purpose of the CMP is to provide specific service opportunities to the youth of the church with a focus on helping children become people who will continue to live a lifestyle of service to Jesus Christ. Reverend [REDACTED] states that the CMP “meets in age appropriate classes that use Bible teaching, music, crafts, and activities to lay a solid foundation for spiritual growth.” The petitioner states that it is the duty of the assistant director of the CMP to build God’s church in its children and lead its CMP and family ministry with full understanding of the ministries’ goals.

Reverend [REDACTED] listed the beneficiary’s duties as follows:

- Oversee programs related to childhood ministry of the [petitioning organization];
- Identify, recruit, guide and train teachers for childhood ministry groups, and collaborate with teachers to plan educational programs and activities following the [REDACTED] guideline[s];
- Develop or direct study courses for the childhood ministry program offered by [the petitioner], including the religious education programs for the childhood and church-run Korean school;
- Develop caring and supportive relationships with individual children and their parents;
- Support the petitioner’s pastor and plan weekly, monthly and yearly ministry schedules in accord with congregational goals;
- Develop and submit educational curricula to the Church Education Board and Sunday School staff for approval, and other needed materials, scheduling speakers, reserving space, or handling other administrative details;
- Administer training programs for teachers in Sunday School, Vacation Bible School, and Weekday Church School as requested;
- Schedule special events such as camps, conferences, meetings, seminars, or retreats;
- Locate outside resource people for various educational programs and organize fundraising events for the ministry;
- Promote intergenerational events which bring together all ages, and monitor church programs to ensure that these programs are supportive of family relationships; and
- Have regular association and collaboration with the childhood ministry committee and advisors, education board, Sunday School and weekday church school teaching staffs, and pastoral and office staffs.

With the petition, the petitioner submitted a copy of a July 1, 2013 job offer letter to the beneficiary wherein her duties were detailed as set forth above. A copy of a July 5, 2013 job offer memorandum to the beneficiary was also submitted by the petitioner which set forth the beneficiary's weekly duty schedule:

- Tuesday
 - Evaluate Sunday school units and lessons 1 Hour
 - Review Sunday School attendance and report 1 Hour
 - Contact absent children 1 Hour
 - Send postcards to visiting children 1 Hour
 - Attend weekly church staff meetings 2 Hours

- Wednesday
 - Review and select curriculum materials and educational tools for the CMP 3 Hours
 - Send birthday cards weekly to kids and teachers 1 Hour
 - Oversee CMP education programs 2 Hours

- Thursday
 - Maintain accurate inventory of equipment and supplies, and order/purchase supplies as needed 3 Hours
 - Research and order curriculum materials and other educational resources 2 Hours
 - Meet weekly with teachers for prayer 2 Hours

- Friday
 - Planning for outreach into the community 2 Hours
 - Planning/implementing follow-up strategies for both visitors and members 2 Hours
 - Setting goals for improvement and evaluating progress 2 Hours

- Saturday
 - Enlisting/training new teachers 2 Hours
 - Training current teachers 2 Hours
 - Organizing and setting up classrooms 1 Hour
 - Participate in prayer meeting 1 Hour

- Sunday

Assist the children’s pastor with the necessary steps to provide organized children’s church services	3 Hours
Lead the teachers team in Sunday School preparation	2 Hours
Lead Sunday School programs	2 Hours
 Total Hours	 38 Hours ¹

Additional duties listed on the memorandum, but not included in the detailed schedule set forth above include:

- Attend ongoing children’s ministry training and meetings when necessary;
- Attend seminars or conferences about children’s ministry;
- Visit children and parents when they are hospitalized; and
- Prepare the annual CMP camp schedule.

On September 26, 2013, the director issued a Request for Evidence (RFE) asking, in part, that the petitioner submit evidence to establish that the proffered position qualifies as a religious occupation. In response to the RFE, the petitioner submitted the following evidence:

- A December 11, 2013 letter from Reverend [REDACTED] in which he stated that the proffered position is a traditional religious profession within the petitioner’s church, and that the assistant director of the CMP serves the education of Christian faith in the petitioning church. He further noted that Christian educators are recognized by the [REDACTED] as “one of [the] Christian church’s form[s] of government.” Reverend [REDACTED] further stated that according to the [REDACTED] “Christian Educators are persons called by God to a ministry of education who demonstrate their faith in and love for Jesus Christ, are dedicated to the life of faith and are serious in purpose with skills and training in biblical interpretation, Reformed theology, human development, religious education theory and practice, and the polity, programs and mission of the [REDACTED]” The petitioner’s pastor states that as a Christian educator, the assistant of the its CMP is primarily related to the traditional Christian function of Christian faith education, is recognized as a Christian occupation within the [REDACTED] and the duties primarily relate to the carrying on of the religious creed and beliefs of the Christian faith.
- A partial copy of Part II of the Book of Order, The Constitution of the [REDACTED] – The petitioner specifically references section G-2.1103 of that document which notes that “[c]ertified Christian educators are persons certified and called to service in the ministry of education in congregations or councils. They have skills and training in biblical interpretation, Reformed theology, worship and sacraments, human development, faith development, religious educational theory and practice, and the polity, programs, and mission of the [REDACTED]” The document notes that the presbytery shall establish

¹ The hours listed on the memorandum total 38 hours, not 39 hours as stated on the memorandum.

minimum requirements for compensation and benefits of Certified Christian Educators and Certified Associate Christian Educators.

The director denied the petition,² stating that the petitioner failed to establish that the beneficiary will be employed in a qualifying position.

On appeal, the petitioner submits a letter dated February 18, 2014 from the petitioner's associate pastor, Reverend [REDACTED]. Reverend [REDACTED] states that the director erred in determining that the majority of the duties of the proffered position were secular and not religious in nature. Reverend [REDACTED] states that the purpose of the CMP is to: "share good news about Jesus and the free gift of forgiveness of sin He offers people; teach [the] Bible to build [a] foundation for [children] to feed themselves spiritually, and grow as lifelong followers of Christ; and [to] teach about missions and participate in praying for others." The reverend states that the duties of the position should have been viewed in reference to the purpose of the position in the petitioner's church and other Christian churches. Reverend [REDACTED] further states that the CMP is an integral part of the petitioner's ministry and that the petitioner provides age appropriate classes that use Bible teaching, music, crafts, and activities to provide for children's spiritual growth and that of church families as a whole. According to Reverend [REDACTED] the petitioner requires the directorship of the CMP to be held by an ordained pastor and provides an assistant director to lead the CMP and to provide professional services for the ministry in accomplishing the goals of the church. Reverend [REDACTED] states that the position of assistant director of the CMP has religious significance and serves a traditional religious function of the church. Finally, Reverend [REDACTED] states that the position is a Christian educator which is determined by the [REDACTED] to be a position that provides traditional religious services for the church as set forth in the [REDACTED] constitution.

The petitioner further submitted, on appeal, copies of a job description for "Directors, Religious Activities and Education" as defined by the United States Department of Labor, O*Net Code Connector -21-2021.00. The excerpt provided details similar work activities and tasks to those associated with this position.

The petitioner describes the CMP as an integral part of the church's total mission and ministry and that the CMP is designed with a focus on helping children become people who will live out a lifestyle of servanthood. According to the petitioner, the CMP meets in age appropriate classes that use Bible teachings, music, crafts and activities to promote the spiritual growth of the child and the child's family. We find that the majority of the duties of the offered position, as described in the initial evidence submitted with the petition, in response to the director's RFE, and on appeal, are primarily related to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the petitioner's denomination. As the duties are consistently set forth by the petitioner, the beneficiary would evaluate Sunday School units and lessons; review and select curriculum materials and educational tools for the CMP; oversee CMP education programs; research and order curriculum materials and other educational materials for the CMP; attend weekly church staff meetings; meet weekly with teachers for prayer; enlist/train new teachers; and train current teachers. The [REDACTED] of which the petitioner is a member, recognizes Christian educators in its constitution as serving a traditional religious function of its

² The date stamped on the director's decision, January 22, 2013, is incorrect. According to USCIS records, the date of the decision is January 22, 2014.

denomination. The duties set forth for the position by the petitioner, and the hours per week assigned to those duties, demonstrate that the majority of the beneficiary's activities and time devoted to those activities primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination. As such, the director's decision to the contrary must be withdrawn.

The above finding indicates that the petitioner has overcome the only stated basis for denial of the petition. However, review of the record shows an additional ground of eligibility that has 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.

USCIS last verified the petitioner's operations in 2007. 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 new 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.