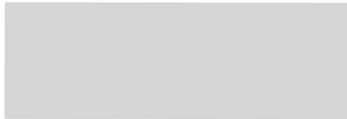


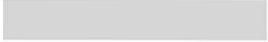


**U.S. Citizenship
and Immigration
Services**

(b)(6)



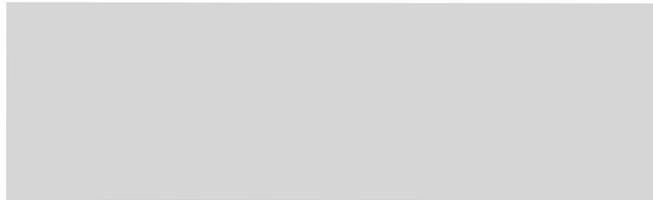
DATE: **APR 27 2015**

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)

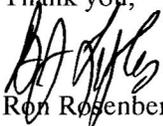
ON BEHALF OF PETITIONER:



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,


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. The appeal will be sustained.

The petitioner is a temple that 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 Lead Hebrew Instructor. The director determined that the petitioner failed to establish that the position qualifies as a religious occupation and that the beneficiary would perform at least twenty hours of religious work each week. The director also found that the beneficiary engaged in unauthorized employment. On appeal, the petitioner submits a brief and additional evidence.

APPLICABLE LAW

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

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.

FACTS AND PROCEDURAL HISTORY

The petitioner filed its first Petition for a Nonimmigrant Worker (Form I-129), on September 23, 2011, which was approved on April 5, 2012, granting the beneficiary status as an R-1 temporary, nonimmigrant religious worker until January 1, 2014. On December 6, 2013, the petitioner filed the instant Form I-129 seeking to extend the same beneficiary's status. In Part 2.2 of the Form I-129, the

petitioner indicated that the basis for classification was to continue previously approved employment without change with the same employer. On March 12, 2014, the director issued a Request for Evidence (RFE), requesting, among other things, information about the job duties of the proffered position and evidence of the beneficiary's previous employment as a religious worker. The petitioner submitted a brief and additional evidence in response to the RFE, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition for failing to establish that the proffered position qualifies as a religious occupation for which the beneficiary will perform at least twenty hours of religious work each week. The director also found that the beneficiary engaged in unauthorized employment. On appeal, the petitioner contends that nothing has changed from its initial petition and that it seeks only to reclassify the same beneficiary in the same position, with the same duties and responsibilities that were previously approved.

ANALYSIS

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 (3^d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n.9 (2^d Cir. 1989). Upon a full review of the record, we find that the petitioner has overcome the director's grounds for denial. The appeal will be sustained for the following reasons.

I. Religious Occupation

The petitioner has submitted sufficient evidence to establish that the proffered position is a religious occupation. The record includes several letters from Rabbi [REDACTED], as well as other evidence that was submitted below and on appeal, showing that the duties of the proposed occupation, Lead Hebrew Instructor, is a religious occupation, as that term is defined in the regulations.

Rabbi [REDACTED] April 30, 2014, letter provided a detailed description of the job duties of the proposed position, including, but not limited to: teaching Hebrew, Israeli history, and Israeli culture to youth on Sunday mornings, Sunday afternoons, and Wednesday afternoons, and to adults on Sunday afternoons; and tutoring students as they prepare for their Bar and Bat Mitzvah preparations. She specified that these duties amount to twenty hours of work per week in the temple. In addition, Rabbi [REDACTED] explained that the position also includes being a liaison, ambassador, and representative of the congregation with the larger [REDACTED], Ohio, community, which consists of an additional eighteen hours of work per week.

A letter from Rabbi [REDACTED] described the important role the beneficiary has played at the temple as an Instructor, teaching Sunday School to youth and Adult Education to adults, tutoring students with their B'nai Mitzvah preparations, serving as an ambassador with the wider Jewish community, and as the leader of their Hebrew language program. A letter from [REDACTED] of the [REDACTED] Jewish Community Center described the beneficiary's implementation of a Jewish curriculum and teaching biblical lessons and Jewish traditions during summer camp. In addition, an interview with the beneficiary published in a copy of [REDACTED] newsletter described his duties as teaching youth about Israel and Judaism, leading Hebrew prayers for services, and teaching Hebrew school.

On appeal, Rabbi [REDACTED] submitted an additional letter that provides detailed and probative information about how the specific duties of Lead Hebrew Instructor primarily relate to and involve the inculcation of the Jewish religion. Citing from websites such as the National Resources Center for Accurate Jewish Content in Schools, she explained the importance of the Hebrew language and its significance to “the entire Jewish faith” and “theological significance in every aspect of synagogue and home life.” See, e.g., [REDACTED] (available at: [REDACTED]); see also [REDACTED] (available at: [REDACTED]). She explained that Jewish sacred texts and prayers are all written and studied in Hebrew, and that students spend seven years learning Hebrew in order to prepare for their coming of age ceremony called the Bar or Bat Mitzvah, and reading from the Torah, which is written in Hebrew. Furthermore, she explained that ambassadors of the Jewish faith perform community outreach to the larger community and “establish relationships with Jewish children who may then attend and become members of [the] congregation” which is essential to their religious work. She clarified that the proposed position includes representing the temple to the community at large, including teaching and running programs at [REDACTED], [REDACTED] Jewish Day School, and the Jewish Community Center, which are duties of the temple’s employees rather than separate jobs. She stated that all Jewish religious workers perform these additional duties as part of their job and specified that she as well as her assistant Rabbi also lead, teach, and run programs at the [REDACTED] and [REDACTED] Jewish Federation as part of their duties as employees of the temple.

As described by Rabbi [REDACTED] and supported by the websites cited, the record shows that the duties of the proffered position of Lead Hebrew Instructor involves duties primarily related to the inculcation of the Jewish faith to youth and adults both within the temple as well as among the larger Jewish community. The job duties described do not involve administrative duties, but rather, are primarily related to the Jewish religion. As such, the director’s finding that the duties described “are clearly not traditional religious functions or traditional religious occupations [and] are universally secular,” is withdrawn. To the extent the director stated that the beneficiary “has never had a religion-related job in his career which includes being a soldier, sports and physical fitness instructor, and a certified Shiatzu and Chinese medicinal therapist,” the record shows that the beneficiary was employed as an instructor at [REDACTED] for six years, first as a volunteer, then as a religious worker pursuant to his prior-approved Form I-129. Consequently, the petitioner has established that the proposed position is a religious occupation as required by Section 101(a)(27)(C)(ii)(II) of the Act and as defined in 8 C.F.R. § 214.2(r)(3).

II. At Least Part-Time Work

The petitioner has also shown that the beneficiary will work at least part-time in a religious occupation. The regulation at 8 C.F.R. § 214.2(r)(1)(ii) states that the beneficiary must work at least twenty hours per week in a religious occupation. Because the director found that the proposed position was not a religious occupation and that almost all of the job duties were secular in nature, she concluded that the petitioner did not establish that the beneficiary would perform at least twenty hours of religious work each week. As explained above, the record shows the proposed position is a religious occupation. According to Rabbi [REDACTED] April 30, 2014, letter, the beneficiary will work approximately 20 hours per week at the temple and 18 hours per week at the [REDACTED] Day

School and local Jewish Community Center. Similarly, Rabbi [REDACTED] October 14, 2013, letter specified that the beneficiary will work approximately 20 hours per week teaching and preparing for religious school and adult education, approximately 10 hours per week working to expand their Hebrew language program, and approximately 5 hours per week as the liaison to the greater [REDACTED] Ohio, Jewish community. Therefore, the petitioner has shown that the beneficiary will work in a qualifying position, averaging at least 20 hours per of religious work pursuant to 8 C.F.R. § 214.2(r)(1)(ii).

CONCLUSION

On appeal, the petitioner has established that the proffered position is a religious occupation and that the beneficiary will work at least an average of 20 hours per week in the religious occupation. The petitioner has established eligibility to classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R) of the Act.

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 been met.¹

ORDER: The appeal is sustained. The petition is approved.

¹ Our decision is limited to whether the petitioner established eligibility to classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R) of the Act. To the extent the director concluded that the beneficiary had previously engaged in unauthorized employment, whether the beneficiary properly maintained his R-1 status is significant only insofar as it relates to the application to extend that status. An application for extension is concurrent with, but separate from, a nonimmigrant petition. While we have jurisdiction to review 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). Therefore, because the beneficiary's maintenance of status is an extension issue, rather than an issue related to eligibility for the petition, we lack the authority to review whether the beneficiary previously engaged in unauthorized employment in violation of his R-1 status.