



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

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF C-L-P-, INC.

DATE: DEC. 22, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a Mennonite educational materials vendor, seeks to classify the Beneficiary as a nonimmigrant religious worker to perform services as an English as a second language (ESL) research and development specialist. *See* section 101(a)(15)(R) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R). The Director, California Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

**I. RELEVANT LAW AND REGULATIONS**

Section 101(a)(15)(R) of the Act pertains to a foreign national 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) before September 30, 2016, 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) before September 30, 2016, 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, a foreign national 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.

## II. PERTINENT FACTS AND PROCEDURAL HISTORY

On September 26, 2014, the Petitioner filed a Form I-129, Petition for a Nonimmigrant Worker seeking to classify the Beneficiary as a nonimmigrant religious worker. The classification the Petitioner seeks on behalf of the Beneficiary makes visas available to foreign national ministers and non-ministers in religious vocations and occupations seeking to temporarily perform religious work in the United States in a compensated position. The Director issued a request for additional evidence (RFE) October 20, 2014.

The Director found that the Petitioner did not submit evidence demonstrating the position offered to the Beneficiary constitutes a qualifying religious occupation. The Director denied the petition accordingly. On appeal, the Petitioner offers a brief and additional exhibits.

## III. ANALYSIS

### A. Qualifying Position

#### 1. Legal Authority

The Petitioner must establish that the Beneficiary will be working in a religious occupation. 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.

## 2. Analysis

Regarding the offered position, the Petitioner must establish:

1. The duties primarily relate to a traditional religious function;
2. The duties are recognized as a religious occupation within the Mennonite denomination;  
and
3. The duties are primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the Mennonite denomination.

Initially, the Petitioner provided a description of the duties the Beneficiary would perform consisting of developing an ESL curriculum consisting of five levels, varying from those who are completely illiterate to those with an advanced comprehension. A review of the five levels reveals a focus on literacy with no mention of the Mennonite beliefs or of Christianity. The Beneficiary was also to assist in creating additional learning tools associated with the ESL curriculum. The Petitioner asserted that the ESL course development position is a traditional religious function within the denomination as religious teaching has been an important part of the denomination's tradition for more than 400 years and that private denominational schools have been implementing their own educational learning since the early 1900s. While the development of a religious or religion-infused

curriculum, or teaching such a curriculum, may qualify as a religious occupation, we review each position on a case-by-case basis. According to the duties the Petitioner listed, the ESL curriculum that the Beneficiary will develop does not contain a religious component. Regarding the duties of the offered position, it is the Petitioner's burden to submit proof that such duties meet items 1 and 2 listed above. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). In the Petitioner's RFE response, it listed the same duties and offered a bulleted list of the position's minimum requirements, which included teaching, research, and language skills in addition to experience developing curriculum used in Anabaptist Mennonite ESL schools.

The Director's adverse determination rested partly on the fact that the offered position did not require any special religious training and that it includes activities that appear to be more administrative, educational, and social in nature. On appeal, the Petitioner cites to *Wisconsin v. Yoder*, 406 U.S. 205, 211 (1972), for the proposition that Anabaptist "views of formal education are 'firmly grounded in [their] central religious concepts.'"<sup>1</sup> The primary issue in that case was the state's compulsory education requirements after the eighth grade. The court, looking primarily at Amish views limiting education after eighth grade to occupational training, does not suggest that all curricula in Mennonite or Anabaptist schools are religious in nature or that the Mennonite denomination recognizes every curriculum developer as a religious occupation.

The Petitioner notes the centrality of its publishing work to its mission within the appeal. While relevant, at issue is whether the Mennonite denomination recognizes the position as a religious occupation, and whether the Beneficiary's specific proposed duties primarily relate to a traditional religious function. As part of this discussion, the Petitioner indicates that everything the Petitioner publishes is "imbued" with a Christian world view. The Petitioner also cites from its curriculum: "Our goal is to look at each subject from God's perspective. [The Petitioner's] curriculum emphasizes wholesome morals, godly character, family values, modesty, simplicity and thrift. A creationist worldview leads students to marvel at the wonder of God's work."

The Petitioner submitted its 2015-2016 School Catalog, which, as noted by the Petitioner, reveals that the reading curriculum is designed to teach skills to make decisions based on the truth of God's Word, that Language Arts enable "clear, godly communication," that mathematics teach an "understanding of the created world," that science "is never complete without recognition of the awesome Creator who designed it all," and that the social studies curriculum "presents students with a Biblical view of God's dealings with mankind since the beginning of time." Nevertheless, the record does not establish that ESL curriculum must be similarly intertwined with religion. The catalog also offers texts for electives, including auto upkeep, carpentry, computer services, home repair, keeping financial records, and residential wiring. The record does not confirm that these texts are infused with religious elements. Accordingly, the Petitioner has not shown that every text or curriculum it offers must be religious in nature. The Petitioner also did not provide examples of other Mennonite ESL curricula to demonstrate that this subject is typically infused with religious

---

<sup>1</sup> The full quote from the court's decision explains that the Amish's objection to education beyond eighth grade is grounded in their religious concepts. *Yoder*, 406 at 210-11.

elements. As stated above, the duties the Petitioner listed initially discuss at length the requirements for ESL curriculum, and do not contain a religious element.

While the Petitioner's educational materials obviously incorporate its Christian beliefs, it has not established that the ESL course in the present petition would also be imbued at the same level with the same type of religious beliefs. The burden continues to rest with the Petitioner to demonstrate all regulatory requirements are satisfied. Section 291 of the Act, 8 U.S.C. § 1361; *Otiende*, 26 I&N Dec. at 128.

Within the appeal, the Petitioner also quotes from the Director's decision relating to paid positions and training for religious occupations, asserting that the position offered to the Beneficiary is compensated and that the Beneficiary's religious, educational, and employment background qualify him for the position. We agree with the Petitioner that the Director must provide an adequate explanation for her determinations, and that the Director also must apply the regulation as written. While the Director included characteristics expected to be associated with a religious occupation, the Petitioner must meet the requirements in the regulation.

The Petitioner also states that USCIS is required to give deference to a determination by a bona fide religious organization as to what constitutes a religious occupation. The regulation, however, provides that the entity that makes the determination of whether the position is recognized as a religious occupation is the denomination. Therefore, the Petitioner must submit proof that the Mennonite denomination recognizes a developer of ESL curricula as a religious occupation. However, the Petitioner in this case is not the denomination and the Petitioner did not include information from the denomination pertaining to ESL curricula development.

While the Petitioner is correct that USCIS is required to give deference to what a denomination requires as training for some positions, at issue is whether the material the Petitioner offers demonstrates that the religious denomination itself recognizes the position as a religious occupation, and whether the submitted documents meet the remaining regulatory requirements. The determination of whether the evidence meets the regulatory requirements lies with USCIS. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988); see also *Matter of Hall*, 18 I&N, Dec. 203, 207 (BIA 1982) (finding that the determination of whether an individual or organization is qualifying for status or benefits under the immigration laws lies not with any ecclesiastical body, but with the secular authorities that administer the law); also see *Matter of Rhee*, 16 I&N Dec. 607, 608 n.2 (BIA 1978). The Petitioner has not shown that the religious denomination recognizes the offered position as a religious occupation in accordance with subparagraph (A) under the definition of religious occupation. 8 C.F.R. § 214.2(r)(3). Nor, given the lack of sample ESL curricula for Anabaptist schools, has the Petitioner demonstrated compliance with subparagraph (B) of this same definition to demonstrate that the duties are primarily related to inculcating or carrying out the religious creed and beliefs of the denomination.

#### IV. CONCLUSION

For the reasons discussed above, the Petitioner has not established the offered position meets the regulatory definition of a religious occupation, or that the Beneficiary meets the definition of a religious worker.

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 demonstrate eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Otiende*, 26 I&N Dec. at 128. Here, the Petitioner has not met that burden.

**ORDER:** The appeal is dismissed.

Cite as *Matter of C-L-P-, Inc.*, ID# 14884 (AAO Dec. 22, 2015)