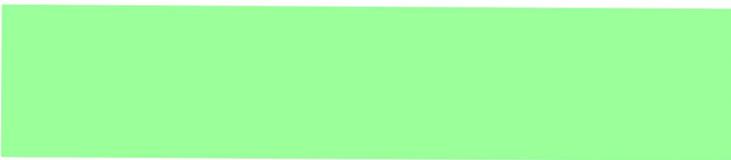




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: FEB 10 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,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. On appeal, the Administrative Appeals Office (AAO) withdrew the director's decision and remanded the petition for further consideration. The director again denied the petition and, based on our instructions, certified the decision to us for review. We will withdraw the director's decision and approve the petition.

The petitioner is an Islamic organization. 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 philosophy and religious teacher. The director determined that the petitioner failed to establish that the beneficiary will be employed in a qualifying position.

On certification, the petitioner submits a statement from the beneficiary and copies of documents already in the record.

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.

I. QUALIFYING POSITION

A. Law

The 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 regulation at 8 C.F.R. § 214.2(r)(10) requires the petitioner to submit the following documentation if the alien will work as a minister:

(i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and

(ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological education is accredited by the denomination, or

(iii) For denominations that do not require a prescribed theological education, evidence of:

(A) The denomination's requirements for ordination to minister;

(B) The duties allowed to be performed by virtue of ordination;

(C) The denomination's levels of ordination, if any; and

(D) The alien's completion of the denomination's requirements for ordination.

B. Analysis

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on October 9, 2012. The petition and supporting documentation identified the petitioner as an Islamic organization affiliated with the denomination "[REDACTED]." In the Employer Attestation portion of the Form I-129 petition, the petitioner stated that the beneficiary will be working as a "Philosophy and Religious Teacher" at [REDACTED] and described the proposed duties as:

His [sic] responsibilities include leading five time obligatory daily prayers and deliver Friday Sermon, Nikah (wedding) Sermon, to lead funeral prayer, teaching Holy [sic] QURAN and Islamic education, to elaborate problems related to purity, prayer, fasting, etc. guide the Muslim community about different Sharia Issues, lead the Traveeh prayer in Ramadan.

In a May 13, 2011 job offer letter accompanying the petition, the petitioner provided the following list of the beneficiary's proposed responsibilities:

Recite the compelling NAAT [holy poetry] after every prayer in the Holy month of Ramadan

Teach children recitation, memorization and understanding of the Holy Qur'an in a classroom environment on a daily basis

Edify children about the history, concepts and specifics of Islam

Weekly lecture on Islamic education to female attendees

Develop and execute programs designed to improve the quality of life amongst the Muslims living in this country and to provide social services to our community

Devise and Implement Islamic programs, activities, objectives and strategies assuring they are timely carried out effectively and efficiently

Develop appealing strategies, ensuring [REDACTED] can bring more Muslims to participate in daily prayers and social community activities

Carry out, arrange and participate in annual [REDACTED] festivities, monthly [REDACTED] and other Islamic events.

Upon further expansion of [REDACTED] you will train NAAT recitation to other potentially talented individuals (female)

Organize frequent NAAT competition amongst your trainees to evaluate their capabilities so you can get the best out of them

Development of Islamic campaigns to accommodate the goals of [REDACTED] and further consolidate its position in all Islamic communities around the country

On the petition, the petitioner described the beneficiary's qualifications for the position offered as follows:

[The beneficiary] graduated from [REDACTED] in B.S.C. In 89-90, and certificates courses are attached from Islamic College and institutes.

The petitioner submitted a "Summary Report For: 21-2021.00 Directors, Religious Activities and Education," from O-NET OnLine. The petitioner also submitted copies of the beneficiary's secondary school and university diplomas, as well as certificates and awards from various Naat (recitation of holy poetry) competitions. The petitioner submitted an undated letter from [REDACTED] For Women, stating that the beneficiary worked as a Naat Teacher from 2006 to 2008, and letters from [REDACTED] and [REDACTED] confirming the beneficiary's Naat recitation for their organizations for the "last 10 years." Additionally, the petitioner submitted a letter from [REDACTED], Pakistan, stating that the beneficiary worked as a teacher from April 23, 2001, to December 19, 2002.

In response to a January 17, 2013 Request for Evidence (RFE) from the director, the petitioner submitted an additional letter from [REDACTED] stating that the beneficiary worked "as a 'Qariah' (Tajweed + Qirat) Teacher" from 2006 to 2008. The petitioner also submitted an "Introduction" to the petitioning organization and the beneficiary, which included the following statements about the petitioner's denomination:

[REDACTED] is operating Universities, colleges, schools and Islamic Centers in Pakistan and in several other countries. Thousands of students are being taught and graduated from the institutes under the flag of [REDACTED]. The great teachers in the institutes creating new philosophers and scholars of Islam, who are committed to teach the community a lesson of peace and harmony.

On January 10, 2014, we found that the petitioner overcame the ground for denial stated in the director's May 2, 2013 decision, but that it had not submitted sufficient evidence to establish that the beneficiary will be employed in a qualifying position. We therefore remanded the matter to the director. Based on our instructions, the director issued an RFE on February 13, 2013, instructing the petitioner to clarify whether the beneficiary would be working as a minister or in a religious occupation,

and requesting additional evidence to establish that the proffered position meets the corresponding definition and requirements.

In an undated letter responding to the RFE, the petitioner stated in part:

As described above [REDACTED] has its academic [sic] that educates the philosophy of peace, interfaith harmony, civilization, true meanings of religion, and the teachings of the holy Quran. To fulfill the growing demand of teachers, preachers and ministers, the organizations needs [sic] to hire, transfer, accommodate, and find appropriate people as well as creating new dynamic scholars in its schools.

On July 25, 2014, the director found that the petitioner failed to establish that the beneficiary will be employed in a qualifying position. The director stated that the petitioner failed to clarify whether the proffered position is a ministerial position or a religious occupation, and failed to establish that it qualifies as either type of position under the regulations. The director denied the petition and, based on our instructions, certified the case to us for review.

In addition to previously submitted documentation, the petitioner submitted a statement from the beneficiary, which states in part, "Being a life member and volunteer of [REDACTED] I used to perform/serve as a religious teacher, Naat Khwan, and Qariya, in several branches of [REDACTED] including the [REDACTED]"

The petitioner has submitted sufficient evidence to establish that the proffered position meets the definition of a religious occupation. The record reflects that the beneficiary has held teaching positions at other organizations within the denomination, which operates various institutions with the purpose of religious education. The petitioner has sufficiently established that its denomination recognizes the position of teacher as a religious occupation. Further, the proposed duties are primarily religious in nature and clearly involve carrying out the denomination's creed and beliefs. We will therefore withdraw the director's findings on this issue.

III. CONCLUSION

As discussed above, the petitioner has overcome the stated basis for the denial 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). The petitioner has met that burden. Accordingly, we will withdraw the director's denial decision and approve the petition.

ORDER: The director's decision is withdrawn and the petition is approved.