



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

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

MATTER OF A-L-C-O-, INC.

DATE: NOV. 18, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a nondenominational church, seeks to classify the Beneficiary as a nonimmigrant religious worker to perform services as an International Relationship and Personal Assistant to the CEO. 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 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) before September 30, 2015, 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, 2015, 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.¹

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.

II. PERTINENT FACTS AND PROCEDURAL HISTORY

On July 24, 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) on August 27, 2014.

The Director found that the Petitioner did not demonstrate that the position met the definition of a religious occupation. Specifically, the Director concluded that the Petitioner did not show that the duties of the occupation relate to a traditional religious function within the denomination. The Director also determined that the Petitioner did not establish its intent to compensate the Beneficiary and denied the petition. On appeal, the Petitioner submits a statement with additional documentary evidence.

¹ Continuing Appropriations Act, 2016, Pub. L. No. 114-53, §§ 106(3), 132, 129 Stat. 502 (2015) extended the applicable date of September 30, 2015 to December 11, 2015.

III. ANALYSIS

A. Position Qualifies as a Religious Occupation or as a Minister

1. Regulatory Authority

At issue is whether the Petitioner has established that the Beneficiary will be working as a minister. 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.

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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.

2. Analysis

Within the petition, the Petitioner indicated that the Beneficiary's duties as an International Relationship and Personal Assistant to the CEO would consist of training and equipping the church with knowledge of international culture and expectations. The Petitioner also specified that the Beneficiary would assist the CEO with all communication and administration of church duties. Within her RFE, the Director requested a detailed description of the work to be done, including specific job duties, and the number of hours per week to be spent performing each duty. The Petitioner responded listing the following duties:

- Educate the church about different cultures in other nations as the church has ministries in four countries;
- Help oversee prayer meetings Monday through Friday from 6:00 am to 8:00 am;
- Coordinate the daily functions of the local church worship, communion, and prayer meetings on weekly scheduled service on Sundays 8:00 am to 1:00 pm and Wednesdays 6 pm to 9 pm;

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- Personal assistant to the Senior Pastor to assist in spiritual guidance for members to include payer, counseling, and visiting the sick;
- Establish an evangelistic team to share locally and internationally, the gospel of Jesus Christ; and
- Train new believers in the doctrine to become members of the local church body.

The above list does not demonstrate how many hours the Beneficiary would work beyond the 18 hours overseeing prayer meetings and coordinating scheduled services. Further, the list is attached to a letter on [REDACTED] letterhead, which gives the office hours of the center and indicated that the Beneficiary “may be called to work at various other times during the week for special church services held at [REDACTED]. While the record shows that [REDACTED] uses the same address as the Petitioner and that they share a pastor, they have two different Federal Employer Identification Numbers (FEINs) and, thus, are two separate entities. The minutes of a July 20, 2014, [REDACTED] Board of Directors Meeting discuss the Beneficiary and another individual who is an ordained pastor. The minutes reflect that the [REDACTED] pastor took the Beneficiary and the other individual “to the [REDACTED]. He said people there were very impressed with them and thinks they may get different ministry opportunities on the outside.”

The Director found that the position did not relate to a traditional religious function of the church. The Director stated the Beneficiary would be primarily involved in secular rather than religious activities. The Director also indicated that the Beneficiary’s core duties could be performed by a secular employee and that the position did not relate to any straightforward traditional religious function. Finally, the Director specified that the duties of the occupation do not have religious significance and do not embody the tenets of the denomination.

On appeal, the Petitioner suggests that as a minister of God, the Beneficiary will perform the following duties, which serve as a prospective occupation, relating to the traditional religious functions of the denomination:

- Local Evangelism Team leader in the Community;
- Life Group Co-coordinator;
- Bible Study Coordinator;
- Holy Communion Service Administrator;
- Marriage Counselor;
- Officiating Minister in Marriage Ceremonies
- Child Dedication Administrator;
- Water Baptism Coordinator;
- Serving in the Cana School of Disciple as a Spiritual Counselor; and
- Sunday School Coordinator.

The Pastor’s assertions that these duties are associated with the position of an International Relationship and Personal Assistant to the CEO are not sufficient without corroboration from the church or the denomination itself. Such confirmation should be in the form of bylaws or a similar

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type of documentation. Going on record without support is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Moreover, these duties are not the same duties the Petitioner originally provided or clarified in response to the RFE. The Petitioner must resolve the inconsistencies with independent, objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Finally, as discussed above, the response to the RFE suggested that the Beneficiary will actually work for [REDACTED] not the Petitioner, and might also work for unspecified ministries "on the outside." As such, we agree with the Director that the Petitioner has not established the duties of an International Relationship and Personal Assistant to the Petitioner's CEO, the job specified on the original Form I-129, within the petitioning church.

Alternatively, [REDACTED] indicates on appeal that the Beneficiary is an ordained minister and would serve as such within the church, administering Holy Communion, performing baptisms, and officiating at weddings. Material changes to a petition in an effort to correct a deficient petition do not generally resolve eligibility concerns. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). The regulation at 8 C.F.R. § 214.2(r)(3) lays out the requirements for a minister within a religious denomination or church. The Petitioner submitted its response to the Internal Revenue Service (IRS) Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code. According to this document, the following are its minimum requirements for ministers at the church:

- One must recognize a call to the five-fold ministry of an apostle, prophet, evangelist, pastor or teacher;
- One must be a member of [the Petitioner] (be born again and attend a sufficient number of services);
- One must be faithful in attendance as well as in tithing to [the Petitioner];
- One must successfully complete an education course specifically designed to teach those in the Body of Christ to become effective ministers of the Gospel; and
- One must be approved by the Pastor and the Board after an extensive interview.

The record lacks documentation of compliance with any of these requirements. Additionally, the regulation listed above at 8 C.F.R. § 214.2(r)(10) provides additional requirements if the Beneficiary will serve as a minister. Although the Petitioner provided the Beneficiary's ordination certificate, the certificate relates to him being ordained into the office of pastor at the [REDACTED]. The Petitioner did not provide information that the nondenominational petitioning entity recognizes ordinations from the [REDACTED]. Therefore, the record lacks evidence "reflecting acceptance of the alien's qualifications as a minister in the religious denomination" in accordance with 8 C.F.R. § 214.2(r)(10)(i).

For the reasons discussed above, the submitted documentation does not establish that the Beneficiary will be employed in a position that meets the regulatory requirements for a minister or for a religious occupation.

B. Compensation

1. Regulatory Authority

At issue is whether the Petitioner has submitted sufficient evidence to demonstrate how it intends to compensate the Beneficiary. The regulation at 8 C.F.R. § 214.2(r)(11) provides:

Evidence relating to compensation. Initial evidence must state how the petitioner intends to compensate the alien, including specific monetary or in-kind compensation, or whether the alien intends to be self-supporting. In either case, the petitioner must submit verifiable evidence explaining how the petitioner will compensate the alien or how the alien will be self-supporting. Compensation may include:

(i) *Salaried or non-salaried compensation.* Evidence of compensation may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS [U.S. Citizenship and Immigration Services]. IRS [Internal Revenue Service] documentation, such as IRS Form W-2 [Wage and Tax Statement] or certified tax returns, must be submitted, if available. If IRS documentation is unavailable, the petitioner must submit an explanation for the absence of IRS documentation, along with comparable, verifiable documentation.

(ii) *Self support.*

(A) If the alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.

(B) An established program for temporary, uncompensated work is defined to be a missionary program in which:

(1) Foreign workers, whether compensated or uncompensated, have previously participated in R-1 status;

(2) Missionary workers are traditionally uncompensated;

(3) The organization provides formal training for missionaries; and

(4) Participation in such missionary work is an established element of religious development in that denomination.

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(C) The petitioner must submit evidence demonstrating:

- (1) That the organization has an established program for temporary, uncompensated missionary work;
- (2) That the denomination maintains missionary programs both in the United States and abroad;
- (3) The religious worker's acceptance into the missionary program;
- (4) The religious duties and responsibilities associated with the traditionally uncompensated missionary work; and
- (5) Copies of the alien's bank records, budgets documenting the sources of self-support (including personal or family savings, room and board with host families in the United States, donations from the denomination's churches), or other verifiable evidence acceptable to USCIS.

2. Analysis

Within section 5.d of the Form I-129, the Petitioner indicated that the Beneficiary will receive \$10 per hour, and listed housing, food, and transportation as other compensation. The Petitioner clarified in that section that the Beneficiary would receive housing and food from a church member. The regulation at 8 C.F.R. § 214.2(r)(11) states that "the petitioner must submit verifiable evidence explaining how the petitioner will compensate the alien or how the alien will be self-supporting." In this case, the housing and food cannot be factored into the calculations of the Beneficiary's compensation as these forms of non-salaried compensation are not from the Petitioner, and the Petitioner has not demonstrated that it will reimburse the church members.

The Director's RFE listed the evidentiary requirements contained in 8 C.F.R. § 214.2(r)(11)(i). In response the Petitioner provided a 2013 IRS Form W-2, Wage and Tax Statement and a pay stub for another employee, both of which list [REDACTED] as the employer. As discussed, [REDACTED] has a different FEIN and is therefore a separate entity. On the petition, the Petitioner indicated its net annual income was "\$50000" and employed eight individuals. The Director noted this information and concluded that the Petitioner did not demonstrate it could afford to compensate the Beneficiary at the offered wage and meet its operating expenses. On appeal, the Petitioner revises the figure to \$500,000. The regulation requires verifiable proof of how the Petitioner will compensate the Beneficiary. The Petitioner, however, does not offer any evidence in which we may verify its assertions of the church's net annual income.² Statements from a petitioner that are not corroborated by probative

² The record contains the Petitioner's proposed financial data for the years ending April 30, 2000, 2001, and 2002 as part of the Form 1023, Attachment 6. This data shows net support over expenditures of \$1,450, \$4,300, and \$2,750

documentation will not meet a petitioner's burden in these proceedings. *Soffici*, 22 I&N Dec. at 165. The Petitioner also did not submit an IRS Form W-2 that it had issued, its own certified tax returns, or an explanation for their absence if not available, which is required by 8 C.F.R. § 214.2(r)(11)(i). For the reasons discussed above, the evidence does not confirm how the Petitioner intends to compensate the Beneficiary.

C. Denominational Membership

1. Regulatory Authority

The Petitioner must establish the Beneficiary's denominational membership during the two years immediately preceding the filing of the petition in the same type of religious denomination as the petitioning organization. The regulation at 8 C.F.R. § 214.2(r)(3) provides the following definitions:

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.

2. Analysis

Within the petition and in the accompanying evidence, the Petitioner identified itself as a church that is not associated with any denomination. The Petitioner left the space blank under the employer attestation at section 1.4 where instructed to describe the relationship between the Petitioner and the

respectively, but do not contain any more recent data.

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organization abroad where the Beneficiary was a member. The Petitioner also answered “No” to the question at section 1.11 when asked if the Beneficiary has been a member of the Petitioner’s denomination for at least two years immediately before filing the petition, and if the Beneficiary was otherwise qualified to perform the duties of the offered position. In explanation, the Petitioner indicated: “The [B]eneficiary is under the [REDACTED] but connected with [the Petitioner] to assist the international delegate, assist the CEO with all duties locally and internationally.” The record contains a letter from [REDACTED] Pastor-In-Charge of the [REDACTED] in [REDACTED] confirming the Beneficiary’s experience as a minister there, but does not contain any other information about the denomination of this church.

The Director did not address these responses. As the Beneficiary was not a member of the Petitioner’s church for the two year period before it filed this petition, it must show the commonalities between the governing structure of the entity in which the Beneficiary attained the two years of membership, the [REDACTED] and its own governing structure. The governing structure may include, but is not limited to, the religious organizational structure and decision making process of the church. After demonstrating these commonalities between the two churches, the Petitioner must also submit proof confirming the two churches share one or more of the criteria listed at 8 C.F.R. § 214.2(r)(3)(A) – (F) under the definition of a religious denomination. The record does not contain such evidence. As a result, the record does not establish that the Beneficiary was a member of the same type of religious denomination as the petitioning organization during the two years immediately preceding the filing of the petition.

IV. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated that the offered position qualifies as a religious occupation or as a minister, how it intends to compensate the Beneficiary, or that the Beneficiary possessed the membership within the same type of denomination as the Petitioner’s denomination or church for two years before it filed the present petition.

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 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, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of A-L-C-O-, Inc.*, ID# 14535 (AAO Nov. 18, 2015)