



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

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

MATTER OF N-H-A-T-H,C-O-T-N-

DATE: OCT. 5, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a Nazarene church, seeks to classify the Beneficiary as a nonimmigrant religious worker to perform services as a minister. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(R), 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 sustained.

The Director determined that the Petitioner had not submitted the required documentation to establish that the offered position met the regulatory definition of a religious occupation. The Director also included within her decision a determination related to the Beneficiary's status as it pertains to its request to extend that status. As we discuss below, that issue is not within our jurisdiction. On July 8, 2015, we issued a request for evidence (RFE), to which the Petitioner responded. As the Petitioner has resolved the Director's concerns relating to the petition, we will sustain the appeal.

I. 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) 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 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.

## II. ANALYSIS

### A. Qualifying Position

The issue, as clarified by the Petitioner's response to our RFE, is whether the Petitioner has established that the Beneficiary will be working as a minister. Initially, the Petitioner included an attachment characterizing the offered job as follows: "Internship Position Title: Associate Pastor for Discipleship/Deacon Track," and provided the corresponding duties. The Director issued an RFE questioning whether the offered position was a religious occupation, a religious vocation, or was that

(b)(6)

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of a minister. In response, the Petitioner offered an August 25, 2014, letter from [REDACTED] Lead Pastor at [REDACTED], indicating the Petitioner offered the Beneficiary the position of associate pastor under the Deacon track of the Church of the Nazarene. A second letter described a new job and its associated duties that the Beneficiary will perform as the Lead Pastor of [REDACTED] under the parent affiliated congregation. The new duties included serving as a Deacon Bible Teacher, Lead Pastor for the daughter church [REDACTED] Church of the Nazarene at [REDACTED] and Associate Pastor for Discipleship for [REDACTED].

In our July 2015 RFE, we sought a more detailed description of the functions the Beneficiary will perform in his position. In response, the Petitioner provides a more comprehensive account of the duties the Beneficiary's performs. These duties include conducting worship services, overseeing the Discipleship Program for the Petitioner, administering the sacraments, and appointing teachers for Bible study. The new evidence establishes the Beneficiary's duties are in accord with the definition of a minister within the regulation at 8 C.F.R. § 214.2(r)(3).

The second question within our RFE related to whether, if the Beneficiary will work as a minister, the Petitioner had demonstrated that the proffered position meets the requirements found at 8 C.F.R. § 214.2(r)(10). In response, the Petitioner offers the Beneficiary's license certifying him as a local minister, and the Church of the Nazarene Manual, 2013-2017: History, Constitution, Government, Ritual. This manual, Chapter IV.A.529, provides: "A local minister is a lay member of the Church of the Nazarene whom the local church board has licensed for ministry, under the pastor's direction." Additional evidence on appeal reflects that the Beneficiary meets the requirements to perform duties normally reserved to the church's clergy. For example, the letter from [REDACTED] District Superintendent of the [REDACTED] District Church of the Nazarene, indicates that the Beneficiary is a licensed minister and "was issued a Local Minister's License after finishing required courses at [REDACTED]" The record contains the Beneficiary's Local Minister's Licenses, including one that predates the filing of the petition. Such information confirms the Beneficiary meets the regulatory requirements of a minister at 8 C.F.R. § 214.2(r)(3) and (10).

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 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). For the reasons discussed above, the submitted evidence shows that the Beneficiary will be employed in a qualifying position, thus establishing the Beneficiary's eligibility and overcoming the Director's determination.

An additional ground for denial the Director cited is related to the Beneficiary's prior employment. Under the USCIS regulation at 8 C.F.R. § 248.1(a), a foreign national must maintain status in order to qualify for change of nonimmigrant status. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status. 8 C.F.R. § 214.1(e). This issue, however, lies outside our appellate jurisdiction, because it is a change of status issue rather than a petition issue. See 8 C.F.R. § 248.3(g).

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**ORDER:** The appeal is sustained.

Cite as *Matter of N-H-A-T-H, C-O-T-N-*, ID# 12970 (AAO Oct. 5, 2015)