



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

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

MATTER OF R-

DATE: APR. 25, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a religious education institution, seeks to classify the Beneficiary as a nonimmigrant religious worker to perform services as its Director of Education. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R). This classification allows non-profit religious organizations, or their affiliates, to temporarily employ foreign nationals as ministers or in other religious occupations or vocations in the United States.

The Director, California Service Center, denied the petition. The Director noted that the Beneficiary would continue to live in Canada and stay in the United States only intermittently and concluded that the Petitioner was not in compliance with 8 C.F.R. § 214.2(r)(1)(iv), which requires that a beneficiary come to or remain in the United States to work for the Petitioner.

The matter is now before us on appeal. On appeal, the Petitioner argues that 8 C.F.R. § 214.2(r)(6) specifically allows for intermittent work in the United States.

Upon *de novo* review, we will sustain the appeal.

#### I. RELEVANT LAW AND REGULATIONS

Non-profit religious organizations may petition for foreign nationals to work in the United States temporarily to perform religious work. The petitioning organizations, and the foreign nationals who are the beneficiaries of this nonimmigrant visa, must meet certain eligibility criteria.

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).

*Matter of R-*

According to subclause (I), (II), or (III) of paragraph (27)(C)(ii), a nonimmigrant may seek 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) governs nonimmigrant religious workers and states:

- (1) 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)(6) provides:

*Limitation on total stay.* An alien who has spent five years in the United States in R-1 status may not be readmitted to or receive an extension of stay in the United States under the R visa classification unless the alien has resided abroad and has been physically present outside the United States for the immediate prior year. The limitations in this paragraph shall not apply to R-1 aliens who did not reside

(b)(6)

*Matter of R-*

continually in the United States and whose employment in the United States was seasonal or intermittent or was for an aggregate of six months or less per year. In addition, the limitations shall not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. . . .

## II. PERTINENT FACTS AND PROCEDURAL HISTORY

On the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner described itself as a religious education institution. According to its Director of Administration, [REDACTED], the Petitioner operates an institute, a two-year online program dedicated to spiritual formation. [REDACTED] stated that students participate mostly on a virtual basis, but also attend retreats four times per year. She explained that the Petitioner's employees live throughout the United States and that the Beneficiary would work full time from Canada, but would need to travel to the United States on an intermittent basis, including to oversee the retreats.

The Director denied the petition, concluding that the Petitioner was not in compliance with 8 C.F.R. § 214.2(r)(1)(iv) because the Beneficiary “will *not be coming to or remaining in the United States* during the requested two and a half year [sic] of temporary full-time employment.” (Emphasis in original).

Currently, on appeal, the Petitioner quotes 8 C.F.R. § 214.2(r)(6) for its proposition that intermittent work in the United States is permissible.<sup>1</sup>

## III. ANALYSIS

We find that the Petitioner has established its eligibility. The record includes, among other things, the Petitioner's articles of incorporation and bylaws, a job description of the proffered position, documents describing the institute's program, brochures, the Beneficiary's résumé, and other evidence of her qualifications. We find that the evidence establishes that the Beneficiary will “[b]e coming to . . . the United States at the request of the petitioner to work for the petitioner,” as required by 8 C.F.R. § 214.2(r)(1)(iv).

To the extent the Director's decision could be interpreted as requiring beneficiaries to reside in the United States during the duration of their R-1 status, we withdraw this finding. There is no such requirement in the regulations. As the Petitioner points out, 8 C.F.R. § 214.2(r)(6) expressly accounts for nonimmigrants in R-1 status who do not continuously reside in the United States and whose employment in the United States is intermittent. Furthermore, USCIS issued a policy memorandum in 2012 to clarify that nonimmigrants may recapture time spent outside of the United States while in R-1 status. See USCIS Policy Memorandum PM-602-0057, *Procedures for Calculating the Maximum Period of Stay for R-1 Nonimmigrants (AFM Update AD12-03)* 1 (Mar. 8, 2012), [https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2012/March/R-1\\_Recapture\\_%20](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2012/March/R-1_Recapture_%20)

---

<sup>1</sup> The Petitioner erroneously cited 8 C.F.R. § 214.2(r)(5) rather than 8 C.F.R. § 214.2(r)(6).

*Matter of R-*

AFM\_Update\_3-8-12.pdf. The policy memorandum explicitly allows for R-1 nonimmigrants “to leave the United States during the period of stay reflected on the approved petition for personal or professional purposes,” and to not have this time counted towards the five-year maximum stay. *Id.* at 3. Furthermore, the policy memorandum revised the Adjudicator’s Field Manual to address R-1 nonimmigrants who may be eligible for a “seasonal or intermittent employment exception,” which includes beneficiaries who may reside abroad and regularly commute to the United States to engage in religious work. *Id.* at 5.

Considering the record in its entirety, we find that the Petitioner has established that the Beneficiary will be coming to or remaining in the United States to work for the petitioning organization at its request, as required by 8 C.F.R. § 214.2(r)(1)(iv). The Director’s decision to the contrary is withdrawn.

#### IV. CONCLUSION

The Petitioner has established that the Beneficiary will be coming to or remaining in the United States to work for the petitioning organization at its request.

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 met that burden. Accordingly, we will sustain the appeal.

**ORDER:** The appeal is sustained.

Cite as *Matter of R-*, ID# 17698 (AAO Apr. 25, 2016)