



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

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

MATTER OF A-M-U-P-S-

DATE: JAN. 6, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a school, seeks to classify the Beneficiary as a nonimmigrant religious worker to perform the services of a teacher's aide in special education. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R). The Director, California Service Center, determined that the Petitioner did not establish that the Beneficiary would be employed in a qualifying position, or that the Beneficiary was qualified to perform the duties of the proffered position, and accordingly denied the petition. The matter is now before us on appeal. The appeal will be sustained.

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:

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.

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Form I-129, Petition for a Nonimmigrant Worker, was filed on June 25, 2014. Article IV of the Petitioner's Articles of Incorporation states that the Petitioner is "an independent Roman Catholic institution dedicated to the primary educational needs of middle school and high school age children." The school's goal is to "integrate intellectual, spiritual, moral, and social development in young children in accordance with the teachings of the Roman Catholic Church."

The Petitioner seeks to employ the Beneficiary as a teacher's assistant working 20 hours per week with students (ages 6 - 10) that have special learning needs. The duties of the position were described on the Form I-129 as follows:

Responsibilities:

1. work one-on-one with students who need extra assistance
2. help supervise play time
3. assist in preparation of sensory materials for lessons
4. work with small groups in faith formation of students through Bible stories

The Petitioner submitted evidence that the Beneficiary is qualified to serve as a teacher assistant under Florida state requirements, which include a high school diploma and two years of study in any field at a post-secondary institution. The Petitioner stated in an undated letter supporting the petition that the Beneficiary is qualified for the proffered position by virtue of meeting the state requirements and possessing two years of experience working with Catholic Youth Groups in a "Life Teen" program.

The Director issued a request for evidence (RFE) on July 21, 2014, asking, in part, that the Petitioner submit evidence of: the specific duties the Beneficiary would perform and the hours spent performing those duties; the education and/or experience required to perform the duties of the position; the Beneficiary's qualifications for the position; an explanation of how the duties of the position relate to a traditional religious function of the organization; and documentary evidence showing that the proffered position is recognized by the Petitioner's denomination as a religious occupation.

In response to the RFE, the Petitioner stated that it observes "all the beliefs and tenets of the Catholic Church of Rome," and that religious studies incorporating Christian values are imbedded in the teaching of all subjects. Its mission statement provides that one of its primary goals is to "strengthen belief in a providing God" while challenging the potential of each student within the framework of religious standards. A submitted "Schedule for [the Beneficiary's] Christian Guidance classes" included four daily 40 minute Christian Guidance classes in addition to a planning period and an art class, each also 40 minutes. The Petitioner also provided a September 8, 2014, sample lesson plan demonstrating the Beneficiary's use of religious teachings in her classroom setting.

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The Petitioner indicated that it is operated by the [REDACTED] a “community of sisters” whose mission is “to serve students and families of persons with disabilities.” Included in the RFE response were printouts from the [REDACTED] website, which cited scriptural doctrine regarding the care of individuals with disabilities. The Petitioner stated that the Beneficiary is “presently in formation as a novice in [REDACTED]”

The Director denied the petition on June 6, 2015, finding that the Petitioner did not establish the Beneficiary’s qualifications for the proffered position. The decision stated that the Petitioner did not provide evidence demonstrating that the Beneficiary’s education is relevant to the position or submit documentation regarding the Beneficiary’s experience at “Life Teen.” The Director also found that the Petitioner had not shown the position to be a qualifying religious occupation and stated that the submitted work schedule indicated less than 20 hours per week of “verified” religious activity because art class is a “non-religious activity/function.”

On appeal, the Petitioner submits excerpts from a Life Teen handbook to demonstrate religious training the Beneficiary received working with teenage children, and samples of course work completed by the Beneficiary to equip her to work with teens with disabilities. The Petitioner also indicates that during the coming year the Beneficiary will be teaching students six out of seven periods a day, totaling 25 hours a week.

III. ANALYSIS

As stated above, the Director found that the Beneficiary’s instruction of a daily art class was a “non-religious” activity and could not be counted toward the minimum hourly requirements of 8 C.F.R. § 214.2(r)(1)(ii). The Petitioner has stated, however, that religious studies are incorporated into the teaching of all subjects, and the record supports that assertion. Moreover, the Director concluded the religious duties that will be performed by the Beneficiary will constitute approximately two-thirds of her work. The regulation requires that the duties of the proffered position must “primarily” relate to a traditional religious function and must “primarily” relate to carrying out the religious creed and beliefs of the denomination.

The Petitioner has established that the duties of the proffered position primarily relate to a traditional religious function of the denomination and are recognized as a religious occupation within the denomination. The record, which includes documentation about the beliefs and doctrine of the Petitioner and its administrating organization, reflects that the Beneficiary’s teaching duties primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination. Accordingly, we find that the Petitioner has established that the proffered position qualifies as a religious occupation and the Director’s finding to the contrary is withdrawn.

Regarding the Beneficiary’s qualifications to perform the duties of the proffered position the regulations do not dictate what, if any, religious training an individual must have. Instead, the definition of a “religious worker” at 8 C.F.R. § 214.2(r)(3) provides that the religious worker must meet the denominations standards for the occupation. *See* 8 C.F.R. § 214.2(r)(3). In this instance, the

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Petitioner finds that the Beneficiary is qualified by virtue of her college education and religious training. We find the Petitioner has established the Beneficiary's qualifications for the position and we withdraw the director's finding on this issue.

IV. CONCLUSION

As discussed above, the Petitioner has overcome the Director's findings and established eligibility for the benefit sought.

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 appeal is sustained.

Cite as *Matter of A-M-U-P-S-*, ID# 15150 (AAO Jan. 6, 2016)