



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

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

MATTER OF T-W-F-

DATE: JUNE 7, 2016

CERTIFICATION OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a foundation, seeks to classify the Beneficiary as a nonimmigrant religious worker to perform services as a religious translator. *See* Immigration and Nationality Act (the Act) section 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 concluded that the Petitioner was not operating as a bona fide non-profit religious organization at the time of an onsite inspection. On appeal, we remanded the petition for further action and consideration. The Director subsequently denied the petition. The Director found that the Petitioner did not establish that the proffered position was a religious occupation, that the Beneficiary was a member of a religious denomination for at least two years prior to the filing of the petition, and that the Beneficiary would work at least part time.

The matter is now before us on certification from the Director. The Petitioner has submitted a letter stating that the decision is unreasonable, discriminatory, and misleading.

Upon *de novo* review, we will deny the petition.

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).

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, a foreign national 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) provides, in pertinent part, the following definitions:

Bona fide non-profit religious organization in the United States means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the Internal Revenue Service (IRS) confirming such exemption.

....

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:

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- (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.

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.

II. PERTINENT FACTS AND PROCEDURAL HISTORY

On the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner indicated it would employ the Beneficiary as a religious translator to “translate incoming emails, foreign documents, communications, articles, religious training books.” It stated that the Beneficiary “has been a valuable member of this organization . . . for many years” and has translated teaching materials, books, and conferences since 2011. It identified its type of business as “religious teaching and training ministry” and indicated it was established in 2009. In addition, the petitioning organization submitted a religious denomination certificate attesting that it is affiliated with [REDACTED]

[REDACTED] This certificate was signed by [REDACTED] who is identified as the President of [REDACTED] the attesting organization.

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The Director of the petitioning organization, [REDACTED] submitted a supplement to the petition. He stated that with respect to "Item Number 5: Minimum 2 years of membership or affiliation with [REDACTED] the Beneficiary has been a member of the petitioning organization since May of 2011. He also stated that the Beneficiary "will be gainfully employed in a 'religious occupation' of a Religious Translator." He submitted a book that the Beneficiary translated and stated that she has been a religious translator for "large Religious Organizations such as [REDACTED]

In response to a request for evidence (RFE) and notice of intent to deny the petition (NOID), the Petitioner submitted, among other things, additional statements from [REDACTED] a copy of the foundation's income tax return, minutes from a meeting, a letter from a pastor in Ecuador, and a sample translation from the Beneficiary. The Director denied the petition on November 22, 2014, because the Petitioner failed a site inspection.

The Petitioner submitted numerous documents in support of its appeal, contending that the Director ignored most of the evidence in the record. We agreed with the Petitioner to the extent that the Director's decision contained some errors and remanded the matter for further consideration. We instructed the Director to determine whether the Petitioner established its own bona fides as a religious organization or whether it was affiliated with one, and whether the record showed the Beneficiary had been a member of its denomination for two years prior to the filing of the petition. In addition, we instructed the Director to determine if the Petitioner established that the proffered position qualifies as a religious occupation, specifying the requirements under 8 C.F.R. § 214.2(r)(3).

In response to our decision remanding the matter to the Director, the Petitioner submitted a letter from [REDACTED] dated September 18, 2015. [REDACTED] re-submitted for the record seven documents with his letter. The Director issued a new RFE in response to our remand. [REDACTED] responded with a letter, undated, indicating that the RFE "asks all of the questions that [he] just answered and dealt with" in his previous letter sent in response to our remand.

The Director again denied the petition on January 14, 2016.¹ First, the Director found that the duties of a religious translator are more secular than religious in nature and that there was insufficient evidence showing that the [REDACTED] recognizes the position as a religious occupation within the denomination. Therefore, the Director concluded the proffered position does not qualify as a religious occupation. Second, the Director found that there was insufficient evidence to establish that the [REDACTED] is a religious denomination and, as such, it was unclear what religious denomination the Beneficiary had been a member of for the two-year period immediately preceding the date the petition was filed. Third, the Director concluded that the

¹ As the Director denied the petition on different grounds, for purpose of certification, the January 14, 2016. decision is considered the Director's initial decision.

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Petitioner did not establish that the Beneficiary would be working at least part time to perform duties that were religious in nature. Per our instructions, the Director certified the decision to us for our review.

█ has submitted a letter on certification contending that the petitioning organization is in good standing with the IRS. He argues that U.S. Citizenship and Immigration Services (USCIS) has manufactured new and endless reasons to deny its simple request to permit the Beneficiary, a highly educated and trained woman, to enter the United States. According to █ the job duties of the position “are specifically Religious in nature as without translation [they] will not be able to communicate or coordinate [their] meetings, events and services.” With respect to evidence demonstrating that the position is recognized as a religious occupation within the denomination, █ states that the question is ridiculous and ignores “Religious history and tradition all the way back to the original translation of the Holy Bible by King James.” He contends that it is discriminatory to think that making the Bible understandable to Spanish speakers is unimportant or secular.

As part of our *de novo* authority, we have reviewed the entire record of proceedings before us. For the reasons discussed below, the petition remains denied.

III. ANALYSIS

The issues within this certification relate to whether the Petitioner established that: a) the petitioning organization is a bona fide non-profit religious organization; b) the Beneficiary was a member of a religious denomination for at least two years prior to the filing of the petition; and c) the proffered position is a religious occupation in which the Beneficiary would work at least part time. As discussed below, we find that the Petitioner established its bona fides as a religious organization. However, the Petitioner has not shown by a preponderance of the evidence that the Beneficiary was a member of any religious denomination for the requisite two-year time period or that the proffered position meets the regulatory definition of a religious occupation in which the Beneficiary will work at least part time.

A. Bona Fide Non-Profit Religious Organization

The record includes an IRS determination letter, dated April 30, 2010, indicating that the Petitioner is a tax-exempt organization as a public charity under section 501(c)(3) of the Internal Revenue Code. The record also includes a Texas Certificate of Formation Nonprofit Corporation for the Petitioner. This certificate states that the Petitioner’s sole purpose is “to promote Kingdom principals via Bible Reading to assist Christian children organizations and to promote the gospel of Jesus Christ.” In addition, according to the Petitioner’s 2013 IRS Form 990, Return of Organization Exempt from Income Tax, the Petitioner’s stated mission is “[t]o spread the message of the good news of the Gospel of our Lord Jesus Christ. To spread the message of the Gospel of our Lord Jesus Chris via ministry, conferences and supporting like-minded ministries in the US and South America.” The tax return indicates that the Petitioner awarded over \$228,000 in grants to various churches and ministries.

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Furthermore, the record includes copies of the minutes from the Petitioner's Board of Director meetings on December 1, 2011, September 18, 2013, and June 11, 2014. The minutes show, in part, that the Petitioner agreed to: provide greater support to a Christian children's ministry in Ecuador; provide 1,000 pairs of plastic boots in order to "attract the attention of the Ritual Fathers who will then be open to our Gospel of Jesus Christ"; purchase land in Ecuador "with the intent to grow and distribute certain agricultural products, the sale of which shall be donated to various Christian Children's ministries"; and to expand its ministry in Ecuador and South America "in order to undertake our Mission as set forth by Jesus Christ." Therefore, the minutes show the religious nature of the organization.

Moreover, the record includes a letter from a senior pastor at [REDACTED] thanking the Petitioner for its donation of \$15,000 and for help in recruiting missionaries. Similarly, a letter from [REDACTED] acknowledged its partnership with the petitioning organization as they "continue to work very hard to reach every village along the South Sudan border with the good news of Jesus Christ." Copies of [REDACTED] brochures show that 11 individuals were "sponsored by: [REDACTED] A letter from [REDACTED] also acknowledged the Petitioner's ongoing financial support and its dedication to the organization. The record further contains numerous statements from [REDACTED] describing the religious nature and purpose of the organization.

Considering the record in its totality, we find the Petitioner has sufficiently established its bona fides as a religious organization. The record shows that it was created as a foundation to provide support to Christian ministries. The Texas Certificate of Formation Nonprofit Corporation and the Petitioner's Form 990 confirm its religious nature and purpose. In addition, the record includes three letters from ministries that have received support from the petitioning organization. We therefore find that the Petitioner has established by a preponderance of the evidence that it is a bona fide non-profit religious organization in the United States as that term is defined in 8 C.F.R. § 214.2(r)(3).

B. Membership in a Religious Denomination

The Act and implementing regulations require that the Beneficiary must have been "a member of a religious denomination having a bona fide nonprofit, religious organization in the United States" for at least two years immediately before the filing of the petition. *See* § 101(a)(15)(R) of the Act; 8 C.F.R. § 214.2(r)(1)(i). The regulation at 8 C.F.R. § 214.2(r)(3) defines a religious denomination as "*a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes . . . indicia of a bona fide religious denomination.*" (Emphasis added).

The Petitioner, a foundation, argues first that it is itself a religious denomination. It also claims, however, to be affiliated with a religious denomination identified as [REDACTED]. The Petitioner has not established either of these contentions.

1. The Foundation

In his supplemental statement to the Form I-129, [REDACTED] stated that the Beneficiary has been a

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member of the foundation since May 22, 2011. According to the minutes from the foundation's December 1, 2011, meeting, the Board of Directors nominated and approved the Beneficiary to be a non-voting member of the foundation.

Although the Petitioner has established that the Beneficiary has been a member of its foundation since 2011, the Petitioner has not shown that the foundation itself is a religious denomination. As [REDACTED] noted in his response to the RFE, "many of these questions [about the Petitioner's eligibility] do not apply as the [REDACTED] is not a church." The petitioning organization is not a church and has no congregation. There is simply no "religious group" or "community of believers" as required by the definition of religious denomination under 8 C.F.R. § 214.2(r)(3). Rather, the Petitioner is a foundation that consists of three Board members and the Beneficiary.

Even if we considered the Board members and the Beneficiary to be a religious group or community of believers, the record does not show that the foundation is governed or administered under a type of ecclesiastical government or have other indicia of being a religious denomination as required by 8 C.F.R. § 214.2(r)(3). Instead, as [REDACTED] stated in his letter dated June 11, 2014, in response to the RFE:

1. The 'form of ecclesiastical government' is a corporate format.
2. Our 'creed or statement of faith' is noted in Article 5 of the enclosed certificate of formation nonprofit corporation.²
3. The 'form of worship utilized: and/or the formal or informal code of doctrine and discipline' . . . we praise and worship the Jehovah God and his son Jesus Christ in the matter dictated and specif[i]ed in both the old and the new testament of the holy Bible. . . .

We recognize the foundation's religious purpose. Nonetheless, the preponderance of the evidence does not establish that the foundation is, in and of itself, a religious denomination as that term is defined in the regulations. As [REDACTED] states, the foundation is not governed in an ecclesiastical or religious manner, but instead, in a "corporate format." The foundation does not have a form of worship, its own religious services or ceremonies, a place of worship, or any other indicia of a religious denomination. Therefore, the Petitioner itself is not a religious denomination as defined by 8 C.F.R. § 214.2(r)(3).

2. [REDACTED]

The Petitioner submitted a religious denomination certificate with the Form I-129, certifying that it is affiliated with the religious denomination "[REDACTED]". The certificate was signed by [REDACTED] the President of [REDACTED]. Aside from a letter from [REDACTED] acknowledging the Petitioner's ongoing financial support as described above, there is no evidence in the record

² Article 5 of the certificate consists of a single sentence ("to promote Kingdom principals via Bible Reading to assist Christian children organizations and to promote the gospel of Jesus Christ"), as discussed *supra* in subsection A.

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addressing [REDACTED] as a religious denomination. There are no documents in the record establishing that the petitioning organization and [REDACTED] recognize a common creed or statement of faith among members, have a common form of worship, formal code of doctrine and discipline, or religious services and ceremonies, as required by 8 C.F.R. § 214.2(r)(3).

Furthermore, even though the definition of “denominational membership” in 8 C.F.R. § 214.2(r)(3) broadly allows for the Beneficiary to have two years of “membership . . . in the same *type* of religious denomination as the United States religious organization where the alien will work,” the Petitioner has not addressed the Beneficiary’s religious beliefs. Therefore, we find that the Petitioner has not established that it is a religious denomination or that [REDACTED] is a religious denomination. Further, we find that the Petitioner has not met its burden of establishing by a preponderance of the evidence that the Beneficiary has been a member of the same type of religious denomination as the Petitioner for at least two years immediately before the filing of the petition, as required by section 101(a)(15)(R) of the Act and 8 C.F.R. § 214.2(r)(1)(i), and as defined by 8 C.F.R. § 214.2(r)(3).

C. Religious Occupation

In his letter dated June 14, 2014, [REDACTED] argues that he, as the President of the foundation, certifies that the proffered position of religious translator is “the very definition of a Religious Occupation as without this important position and traditional function, the church as a whole could simply not communicate with the world.” According to his most recent letter, dated January 26, 2016, the question of whether a religious translator is a religious occupation:

is simply ridiculous and ignores Religious history and tradition all the way back to the original translation of the Holy Bible by King James. It is incredible and discriminatory to even think that making the Bible and our message of the Bible understandable to the Spanish speaking culture is somehow not important or secular.

We do not question the importance of translating religious materials. However, the term “religious occupation” is not a colloquial term, but rather, a legal term that is defined by regulation. The regulation at 8 C.F.R. § 214.2(r)(3) defines religious occupation and sets forth several requirements, including that the job duties must primarily relate to a traditional religious function and must clearly involve inculcating or carrying out the religious creed and beliefs of the denomination. In addition, the proffered position must be recognized as a religious occupation within the denomination.

In this case, as discussed in subsection B, the Petitioner has not sufficiently identified or established a religious denomination. Therefore, the Petitioner cannot establish that the job duties of the proffered position clearly involve inculcating or carrying out the religious creed and beliefs of the denomination. Moreover, the Petitioner has not specifically addressed how the proffered position of religious translator involves, for instance, indoctrinating, interpreting, expounding, instructing, or instilling the religious beliefs of the organization rather than merely relaying words from one language into another.

Even if the Petitioner was a religious denomination or affiliated with a religious denomination, the

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record indicates that the position of religious translator is a new position, not one that has been recognized by the denomination as a religious occupation. For instance, in response to the RFE, [REDACTED] stated that in the past, the foundation had used “staff” for translation services but . . . as [the] ministry has grown in South America and especially Ecuador the Board has felt the need to respond with a ‘full time’ person such as [the Beneficiary] . . .” Similarly, the petitioning organization’s minutes for its June 11, 2014, Board of Directors meeting state that the position of religious translator is a new position. As such, the record does not show that the proffered position of religious translator is recognized as a religious occupation within the denomination. Accordingly, we find that the Petitioner has not established by a preponderance of the evidence that the proffered position meets the regulatory definition of a religious occupation as defined in 8 C.F.R. § 214.2(r)(3).

We also find that the Petitioner has not established that the Beneficiary will be entering the United States for the purpose of conducting the activities of a religious worker at least part time, averaging at least 20 hours per week, as required by 8 C.F.R. § 214.2(r)(1)(ii). According to Part VII of the Petitioner’s Form 990, all three Board members combined worked an average of six hours per week in total for the foundation in 2013.³ This tax return also shows that the Beneficiary was paid a total of \$400 for “translation ser[vices]” during 2013. Considering the tax return shows a minimal number of work hours and only \$400 worth of translation services during the entire year, the record does not support the contention that the Petitioner will employ the Beneficiary at least 20 hours per week as a religious worker as claimed.

IV. CONCLUSION

The Petitioner has established that it is a bona fide non-profit religious organization. However, the Petitioner has not established that the Beneficiary has been a member of the same denomination as the petitioning organization for the required two-year period before the petition was filed, that the proffered position is a religious occupation, or that the Beneficiary would perform religious work for at least 20 hours per week.

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. Accordingly, we will affirm the Director’s decision.

ORDER: The initial decision of the Director, California Service Center, is affirmed, and the petition is denied.

Cite as *Matter of T-W-F-*, ID# 17039 (AAO June 7, 2016)

³ The Form 990 shows that [REDACTED] works an average of two hours per week, [REDACTED] works an average of three hours per week, and [REDACTED] works an average of one hour per week for the foundation.