



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

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

MATTER OF N-C-C-O-F-E-

DATE: JUNE 28, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner is a church headquartered in Wisconsin with affiliated mission centers in other areas of the United States as well as in other countries. In December 2000, it established a vocational order in response to members who wanted to “congregate in a sacred environment for the purpose of full-time and life-long dedication to God and a ‘full endeavor’ devotion to His Will.” The Petitioner instituted vows “taken by novitiates of the Order, whereupon they enter into a devotional, meditative life with a minimum emphasis on material needs and worldly goods.” The Petitioner seeks to classify the Beneficiary as a nonimmigrant religious worker to perform services as a member of this order. *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, initially granted the petition, but subsequently revoked its approval after conducting a post-adjudicative site visit and finding that the Beneficiary was not performing her job duties. In addition, the Director found that the Petitioner did not satisfactorily explain the Beneficiary’s “expedited nun-hood (or brotherhood in this instant petition)” in violation of its own handbook.

The matter is now before us on appeal. The Petitioner explains that the Beneficiary had temporarily returned to Argentina to visit her ill mother and has since returned to the United States to resume her job duties. It contends the Beneficiary is qualified for the proffered position and submits additional evidence on appeal.

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 for up to five years to perform religious work as ministers, in religious vocations, or in other religious occupations. The petitioning organization must establish that the foreign national beneficiary has been a member of a religious denomination for at least the two-year period before the date the petition is filed. *See generally* section 101(a)(15)(R) of the Act, 8 U.S.C. § 1101(a)(15)(R).

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The regulation at 8 C.F.R. § 214.2(r)(16) states:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

II. PERTINENT FACTS AND PROCEDURAL HISTORY

In June 2013, the Petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking to employ the Beneficiary from August 1, 2013, to January 31, 2016. The Petitioner indicated that the Beneficiary has been a member of the church since 2008. In support of the petition, the Petitioner submitted, among other things: a letter from the petitioning organization's president, [REDACTED] a list of centers affiliated with the Petitioner; pamphlets, brochures, and other documents describing the petitioning organization's mission and activities; a copy of the Petitioner's handbook; a copy of a Recognition of Dedication from the Petitioner to the Beneficiary; a copy of the Beneficiary's final vows; and the Beneficiary's religious participation and employment history.

The Director issued a request for evidence (RFE) seeking additional documentation addressing, in part, the religious denomination and the proffered position. In response to the RFE, the Petitioner submitted additional documentation including, but not limited to: a statement from the Beneficiary; flyers, brochures, emails, and photographs of religious programs in Argentina; a statement of affiliation from [REDACTED] letters of support for the Beneficiary; financial documents; a list of church members; a job description for the proffered position; a description of the Petitioner's ministries; and printouts from the Petitioner's website.

The petition was approved on April 17, 2014, granting the Beneficiary R-1 status from April 17, 2014, until January 31, 2016.

In August 2014, the Director issued a notice of intent to revoke (NOIR) the petition. The Director stated that in May of 2014, the Beneficiary "departed the United States for Argentina, reportedly to visit her ailing mother. On or around the same time, a post-adjudicative site visit was conducted" According to the Director, on June 2, 2014, the Department of State refused to issue the Beneficiary an R-1 visa to return to the United States because she "does not qualify as a religious worker" as she "was not able to tell the investigators the 'core teaching' of the bible or discuss 'biblical verses.'" The Director concluded that the Beneficiary was no longer working in the position for which she was

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approved and was not receiving a salary. Furthermore, the Director found that the Petitioner did not submit any documentary evidence authenticating its contention that the Beneficiary had been a member of its sister-church in Argentina since 2008. The Director additionally questioned whether the Beneficiary was qualified for a religious vocation because she became a fully ordained member of the Order faster than the Petitioner's handbook permitted.

In response to the NOIR, the Petitioner argued that the Director's conclusions were not justified. It indicated that the Beneficiary's mother passed away on [REDACTED] 2014, and that it was always understood that the Beneficiary would return to the United States to perform her job duties as soon as possible. In addition, the Petitioner reiterated that the Beneficiary has been a member of the church starting in July of 2008 in Argentina. It disagreed with the Director's interpretation of its handbook and asserted that the Beneficiary is qualified for the position.

The Director revoked the petition, finding that the Petitioner did not overcome the basis for the NOIR and concluding that inconsistencies in the record undermined the Petitioner's credibility. Relying on a page in the Petitioner's handbook, the Director concluded that the petitioning organization did not satisfactorily explain why the Beneficiary was "quickly elevated to a fully ordained member of the Order." The Director also found that the Petitioner did not disagree that the site inspector was unable to verify several things during the site visit, such as the Beneficiary's job duties, compensation, and membership in the church.

On appeal, the Petitioner states that the Beneficiary has been re-admitted to the United States pursuant to her R-1 visa. According to the Petitioner, after the Beneficiary was initially denied a visa, she was interviewed again and was re-admitted to the United States prior to the Director's decision. The Petitioner submits a copy of the Beneficiary's visa, indicating she returned to the United States on November 18, 2014, pursuant to her R-1 visa. The Petitioner notes that individuals in R-1 status are permitted to depart the United States and have that time recaptured. The Petitioner also argues that it had concluded that the Beneficiary's "dedication to the Church's work in Argentina for a period of more than 3 years would justify an allowance for the beneficiary to immediately take Final Vows." It reiterates that its handbook does not set forth regulations, but rather, "only provide[s] a framework for the . . . internal religious structure, organization and operation of the Church."

III. ANALYSIS

We find that the Petitioner has overcome the credibility issues raised by the Director and the basis for the failed site visit. A copy of the Beneficiary's visa shows that she was re-admitted to the United States on November 18, 2014, pursuant to her valid R-1 visa. Therefore, any suggestion that the Department of State had concluded the Beneficiary was unqualified to be a religious worker has been upended.

In addition, the record sufficiently demonstrates that the Beneficiary has been a member of the denomination for at least the two-year period before the petition's filing date and is qualified for the proffered position. The Director relied upon page 14 of the Petitioner's handbook, asserting that it "unequivocally" and "clearly" states that each applicant into the Order must have two years of

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continuous affiliation and study at seminary, and six months of a probationary period for a “total duration of . . . a ‘full five [*sic*] curriculum.’” Based on this language, the Director concluded the Petitioner failed to comply with its own rules. However, a complete review of the handbook shows that these requirements are guidelines, not steadfast rules. According to page 12 of the handbook:

The Ministerial Training Program of the Church culminates after five years in formal ordination in the [REDACTED]. Listed below is a general overview of the curriculum. The timeline, however, is individual, dependent on the academic background and life experience with which the individual enters [REDACTED].

Other documentation in the record also describes the ministerial training process as being more flexible than the Director’s interpretation. For instance, a Description of [REDACTED] describes the five-year seminary program for ministerial and vocational training, stating that “generally a minimum of five years of commitment is required before permission to take final vows is given.” Similarly, twice on the Petitioner’s website – addressing the ministerial training program and the process of dedication to a religious vocation – the Petitioner states that the program is individually designed and “generally requires a minimum of five years of commitment before permission to take final vows is made.” The documentation does not indicate there is an absolute requirement that an individual must complete the full five-year program.

The Petitioner states on appeal that the church determined that the Beneficiary’s work in Argentina for more than three years justified allowing her to take final vows prior to her completion of the full five years of the ministerial training program. In his initial statement submitted with the petition, [REDACTED] explained that the Petitioner is a church that is headquartered in Wisconsin and has several affiliated mission centers in the United States and around the world. He stated that the Beneficiary has been a member of the church since July of 2008 and that in September of 2008, she co-founded the church’s affiliated mission center in [REDACTED] Argentina. In another letter, [REDACTED] specified that the church has two mission centers in Argentina and that “[a]ll of these satellite centers share the creed, form of worship, discipline and mission of the Church, which is to spread the message of Jesus, as given to us in [REDACTED]. . . .”

The record contains documentation to corroborate that the Beneficiary has been a member of the denomination since 2008, was a founding member of the church’s affiliated mission center in [REDACTED], and subsequently lived and worked with her fellow church brothers at the mission center in [REDACTED]. In addition to a statement from the Beneficiary describing her involvement with the church, events bulletins, flyers, photographs, and emails in the record document the first retreat the Beneficiary organized in 2009, called ‘[REDACTED]’. The record shows that the Beneficiary organized similar events at the centers in Argentina in 2010 and 2011. Letters from current and former staff members [REDACTED] credit the Beneficiary with founding the mission center in Tucumán and her subsequent involvement with the center in [REDACTED].

Similarly, numerous letters of support from individuals in Argentina also confirm the Beneficiary’s membership in the denomination and her significant role in organizing activities and retreats. These

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letters contend the Beneficiary lived with other brothers at the center in [REDACTED] where, among other things, she taught daily sessions in person, online, and on the radio. She also participated in daily meditations, translated the master teacher's videos, and worked on other projects. She was responsible for all marketing and for counseling new individuals upon their arrival at the centers.

Considering the record in its entirety, we find that the Petitioner has sufficiently explained any inconsistencies in the record. Specifically, we find that the preponderance of the evidence shows that the Beneficiary has been a member of the denomination for more than two years prior to the filing of the petition on June 28, 2013, and is qualified for the proffered position. The Petitioner has, therefore, overcome the Director's stated reason for failing the post-adjudication site inspection. Accordingly, we withdraw the Director's revocation.

IV. CONCLUSION

The Petitioner has established by a preponderance of the evidence that the Beneficiary is eligible for the benefit sought. The Director's revocation is withdrawn.

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, that burden has been met.

ORDER: The appeal is sustained.

Cite as *Matter of N-C-C-O-F-E-*, ID# 16791 (AAO June 28, 2016)