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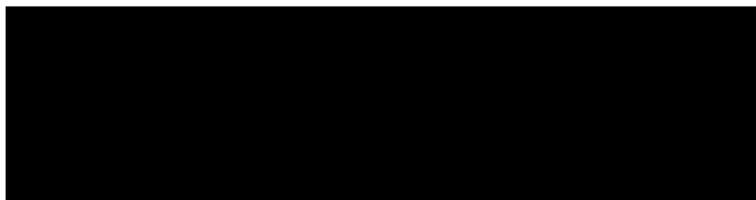
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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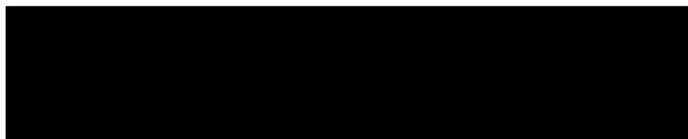


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: OCT 13 2010

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to extend the beneficiary's status as a nonimmigrant religious worker under section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1), to perform services as director of young people and arts. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation.

The director also determined that the petitioner had not provided documentary evidence of the beneficiary's compensation during her previous R-1 employment. The issue of the beneficiary's past compensation is relevant only insofar as it reflects on how the petitioner intends to compensate the beneficiary. However, the regulation at 8 C.F.R. § 214.2(r)(12) requires that any request for an extension of stay as an R-1 must include initial evidence of the previous R-1 employment (including Internal Revenue Service documentation if available). Under 8 C.F.R. § 214.2(r)(5), extension of status is available only to aliens who maintain R-1 status.

The issues of the beneficiary's prior employment and maintenance of R-1 status are significant only insofar as they relate to the application to extend that status. An application for extension is concurrent with, but separate from, the nonimmigrant petition. There is no appeal from the denial of an application for extension of stay filed on Form I-129, Petition for a Nonimmigrant Worker. 8 C.F.R. § 214.1(c)(5). Because the beneficiary's past employment and maintenance of status are extension issues, rather than petition issues, the AAO lacks authority to decide those questions, and we will not discuss them in detail here.

On appeal, counsel asserts that the duties of the position "are clearly within the scope of a religious occupation and relate to the church's traditional religious function." Counsel submits a brief and additional documentation in support of the appeal.

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 issue presented is whether the petitioner has established that the proffered position qualifies as that of a religious occupation or vocation.

The regulation at 8 C.F.R. § 214.2(r)(3) provides:

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.

In part 5 of the Form I-129, the petitioner stated that the proffered position was that of “drumming and liturgical dance instructor.” In section 2 of the Form I-129 supplement, the petitioner stated that the position was that of ‘[REDACTED]’ The petitioner also stated:

The position . . . involves a multi-faceted work with [REDACTED] in the area of [REDACTED] development. Have the overall responsibility for developing the [REDACTED]. Develop new and innovative ways for the ministry to complement the Worship & praise experience.

In a request for evidence (RFE) dated July 2, 2009, the director instructed the petitioner to submit additional documentation regarding the proffered position, including:

Requirements for the Position: Provide a detailed explanation as to the requirements for the position offered, and how the beneficiary meets those requirements. Submit the religious denomination's or organization's by-laws, manuals, brochures, or guidebooks establishing the requirements for the position. Provide detailed evidence that the beneficiary meets the denomination[']s [or] organization's requirements

Proffered Position: What is the beneficiary's job title? Provide a **detailed description** of the work to be done Further, explain how the duties of the position relate to a traditional religious function. [Emphasis in the original.]

In response, the petitioner submitted an updated Form I-129 Supplement, in which it stated that the proffered position was that of director of young people and arts. The petitioner further described the duties of the position as:

Develop liturgical dance and the accompanying dance team; recruit and train new drummers and liturgical dancers; provide quality percussion worship and drumming music during services; provide leadership in helping the youth develop spiritually through managing weekly youth activities, meetings, retreats using marketing and promotion skills to attract youth to the church and implement marketing campaigns for the Church.

The petitioner submitted a copy of the 2008 Journal of the 25th Annual Session of the [REDACTED] [REDACTED] However, the document does not contain information to establish that the proffered position is recognized as a religious occupation within the denomination. The petitioner submitted no other documentation regarding the proffered position.

In denying the petition, the director found that the petitioner had failed to provide evidence of the minimum requirements for the proffered position and "failed to establish that the proffered position qualifies as a religious occupation to show that he/she has been authorized to perform services such as marriages and funerals."

On appeal, counsel states: "[REDACTED] such as worship services. Just as a cantor is a religious worker promoting the Jewish faith, a [REDACTED]" Counsel points to the examples set forth in the summary to the final rule implementing the new U.S. Citizenship and Immigration Services (USCIS) regulation for religious workers in November 2008 and guidance provided by the U.S. Department of State regarding nonimmigrant religious workers, which indicate that such examples of religious workers include liturgical workers, religious instructors and cantors.

However, merely because a position carries the title of “liturgical worker,” “cantor” or “minister” does not mean the position automatically qualifies as that of a religious worker. One must look at the duties of the position and, as per the regulation, whether the stated duties primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination and whether the position is recognized as a religious occupation within the denomination.

The petitioner submitted no documentation from its religious denomination to establish that the position of director of young people and arts or the position of drumming and liturgical dance instructor is a recognized religious occupation within the [REDACTED]. Further, although counsel alleges that “a [REDACTED]” nothing in the record supports counsel’s statement. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner has submitted insufficient documentation to establish that the position is a religious occupation as defined by the regulation.¹

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ As the petition is denied for the reason stated above, we do not reach the additional issue of how the petitioner intends to compensate the beneficiary. We also make no determination on an issue not raised by the director but which would have needed a determination if the petitioner had otherwise demonstrated the beneficiary’s eligibility. Specifically, the issue is whether an authorized official of the petitioner signed the petition and authorized representation on appeal.