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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
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: OCT 15 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:

[REDACTED]

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
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 a religious counselor. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation and that the beneficiary seeks to enter the United States to work for at least 20 hours per week.

On appeal, the petitioner submits a statement in which it claims that the duties of the proffered position meet the regulatory definition of religious worker. The petitioner also asserts that the beneficiary works 14 hours in the church but goes "to the different homes as necessary to accomplish her work."

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 first issue 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 a July 21, 2009 letter, the petitioner stated:

[The beneficiary] is an instructor in the [REDACTED] Seminary. Specifically, she organizes and supervises the Student Ministry Department and gears her work towards the younger members of the parish who may be subject to unique issues such as drug and alcohol abuse, peer pressure, marital trouble and being unwed mothers.

The petitioner submitted photographs and flyers with the beneficiary's name. However, none of the photographs are identified and the flyers are not accompanied by English translations. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

On September 30, 2009, the director notified the petitioner of her intent to deny the petition and requested 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.**

Traditional Religious Function: Provide the following evidence to establish that the proffered position is recognized as a religious occupation related to a traditional function in this religious denomination or organization.

Submit the following: **Constitution, by-laws and a letter from a Superior** or Principal of the religious denomination or organization in the United States explaining how the position offered qualifies as a traditional religious function.

Clearly indicate who has been performing this function in the past.

Proffered Position: What is the beneficiary's job title? Provide a **detailed description** of the work to be done, specific job duties, level of responsibility, number of hours per week performing the work duties and the minimum education, training, and experience necessary to do the job. Further, explain how the duties of the position relate to a traditional religious function. [Emphasis in the original.]

In an October 30, 2009 letter explaining the job offer, the petitioner certified that the beneficiary was employed "to aid our Bible Training Seminary," which it stated was "a teaching and training ministry" of the church. The petitioner further stated:

[The beneficiary] will have many responsibilities as one of [our] instructors; organize and supervise the Student Ministry Department; counseling and leading the "unwed mothers – support group[.]"

With the growing Hispanic population, [the beneficiary] will help us in ministering to our Hispanic students. Also she will be able to help our pastoral staff in ministering and training people in their own language.

Her responsibility will be full time task, and the salary will be [REDACTED] per year.

In another letter dated October 30, 2009, the petitioner stated:

[The beneficiary] has certification of studies as a counselor and is continuously doing courses and attending seminars to be updated in Religious strategies for counseling "unwed mothers" and to implement these with the student ministry department in their own language. [She] also provide[s] different levels of meeting, seminars for over [sic] members and the community, with the objectives of restoring family relationships using the word of God, organizing seminars, individual appointments, visiting homes, providing educational materials and

resources, teaches and trains in the bible seminars of our church. . . . Most counseling is done by appointments, [she] has a schedule of Mondays 10:00 am – 2:00 pm. Wednesdays 10:00am -2:00 pm and 7:00 pm -9:00pm and Sundays 10:00am – 2:00 pm and the rest of her time is made up of counseling appointments outside the church and schooling; which she is currently enrolled at Christ Center.

In denying the petition, the director concluded that the duties of the position are administrative in nature and that the evidence “does not demonstrate that the proposed duties of the position are sufficiently specialized in a theological doctrine so as to constitute a religious occupation.” On appeal, the petitioner states that none of the beneficiary’s duties are administrative. It states that “[a]ll counseling is being done with the aim of leading the troubled person to know the Bible, the Christian faith and ultimately conversion to Christianity.” The petitioner asserts that its bylaws “specify that the purpose of the Church is to preach the gospel and fellowship together as members of the community” and that the beneficiary carries out the duties of the church by counseling people “in order to help them with their particular problem.” The petitioner, however, did not provide a copy of its bylaws as instructed by the director in her Notice of Intent to Deny (NOID) the petition. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

While we do not concur with the director that the duties of the proposed position are administrative in nature or that the petitioner must demonstrate these duties “are sufficiently specialized in a theological doctrine so as to constitute a religious occupation,” the petitioner submitted no documentation from its denomination to establish that the proffered position is recognized as a religious occupation within its denomination as required by the regulation. Additionally, although specifically instructed to do so in the NOID, the petitioner provided no documentation that the position existed in the petitioning organization prior to the offer to the beneficiary. The petitioner submitted insufficient documentation to establish that the duties of the position primarily relate to a traditional religious function, and primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

Accordingly, the petitioner has failed to establish that the proffered position is a religious occupation as defined by the regulation at 8 C.F.R. § 214.2(r)(3).

The second issue is whether the petitioner has established that the beneficiary seeks to enter the United States to work for at least 20 hours per week.

The regulation at 8 C.F.R. § 214.2(r)(1) provides:

- (ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week).

In its October 30, 2009 describing the offer of employment, the petitioner stated that the beneficiary's responsibilities were a "full time task." In its letter outlining the beneficiary's schedule, the petitioner specified 14 hours on Mondays, Wednesdays and Sundays during which the beneficiary was scheduled to work and stated that "the rest of her time is made up of counseling appointments outside the church and schooling; which she is currently enrolled."

In denying the petition, the director did not address the petitioner's statement that the beneficiary would also be engaged with counseling appointments. The director concluded that the beneficiary would only work 14 hours per week.

On appeal, the petitioner states:

[T]he beneficiary is only working 14 hours in the church, but on Tuesday, Thursday, and Friday's[,] she is working per appointments going to the different homes as necessary to accomplish her work. [She] splits the rest of her 6 hours during those days and if necessary she works additional time.

The petitioner did not provide any documentation of counseling performed by the beneficiary outside of the hours she is expected to work in the church and submitted no documentation of her schooling. Therefore, the record is not clear as to when the beneficiary actually attends class and when she has time in her schedule for counseling appointments. Further, the petitioner suggests that the beneficiary will work only 20 hours per week; however, in its employment offer letter, it indicated that the beneficiary's duties were a "full time task."

The documentation is insufficient to establish that the beneficiary will work at least 20 hours per week.

Beyond the decision of the director, the petitioner has failed to establish how it intends to compensate the beneficiary. The regulation at 8 C.F.R. § 214.2(r)(11) provides:

Evidence relating to compensation. Initial evidence must state how the petitioner intends to compensate the alien, including specific monetary or in-kind compensation, or whether the alien intends to be self-supporting. In either case, the petitioner must submit verifiable evidence explaining how the petitioner will compensate the alien or how the alien will be self-supporting. Compensation may include:

(i) Salaried or non-salaried compensation. Evidence of compensation may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. IRS documentation, such as IRS Form W-2 or certified tax returns, must be submitted, if available. If IRS documentation is unavailable, the petitioner must submit an explanation for the absence of IRS documentation, along with comparable, verifiable documentation.

The petitioner stated that the beneficiary would be compensated at the annual rate of [REDACTED] plus food and lodging. The petitioner submitted no documentation with the petition to establish how it intends to compensate the beneficiary. In response to the NOID, the petitioner submitted copies of its IRS Form W-3, Transmittal of Wage and Tax Statements, for 2006 through 2008; however, it did not submit any documentation to establish that any of the Forms W-2 transmitted were those of the beneficiary.

The petitioner also submitted unaudited copies of its balance sheet and income statement for the period ending December 31, 2008. Neither of these documents indicates that the petitioner compensated the beneficiary or a similar position during the year. Further, the income statement shows a negative balance for the year and the amount of [REDACTED] indicated for "salaries and wages" is significantly below the [REDACTED] reflected on the 2008 IRS Form W-3. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner has provided insufficient documentation to establish how it intends to compensate the beneficiary.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.