



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

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

In Re: 25920548

Date: MAR. 21, 2023

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (Religious Worker – R-1)

The Petitioner, a church, seeks to classify the Beneficiary as a nonimmigrant religious worker to perform services as a grounds caretaker and construction operator. Immigration and Nationality Act (the Act) section 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R). This nonimmigrant classification allows non-profit religious organizations, or their affiliates, to temporarily employ foreign nationals as ministers, in religious vocations, or in other religious occupations in the United States.

The Director of the California Service Center denied the petition, concluding that the record did not establish that the offered position qualifies as a religious occupation, religious vocation, or as a minister per 8 C.F.R. § 214.2(r)(3). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Non-profit religious organizations may petition for noncitizens to work in the United States for up to five years solely to perform religious work for an average of at least 20 hours per week as ministers, in religious vocations, or in religious occupations. The petitioning organization must establish, among other requirements, that the noncitizen 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 C.F.R. § 214.2(r).

A religious worker is one engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation or as a minister. A religious occupation is one in which the duties:

- Primarily relate to a traditional religious function and is recognized as a religious occupation within the denomination;
- Primarily relate, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination; and

- Do not include positions which are primarily administrative or support, such as janitors, maintenance workers, clerical employee, fund raisers, and similar positions, but limited administrative duties that are only incidental to religious functions are permissible.

In addition, while a religious worker may pursue study or training incident to status, religious study or training does not constitute a religious occupation. 8 C.F.R. § 214.2(r)(3).

II. ANALYSIS

The Petitioner seeks to employ the Beneficiary as a grounds caretaker and construction operator, and initially described the duties of this position as follows:

Plan, coordinate, budget and supervise building repairs, renovations and landscaping.
Monitor and report progress to President. Collaborate with other interested parties to ensure steady progress and seamless workflow.

The initial filing also included the minutes of the Petitioner's board meeting in which it was stated that the Beneficiary would receive ministerial training for five years in exchange for his services.

In responding to the Director's request for evidence (RFE), the Petitioner indicated that in addition to these duties, the Beneficiary would "be directly involved in the work of the ministry, which is religious functions of daily preaching and teaching, preparation for all ministerial functions and activities, including Bible study, ministry to the sick and serving of sacrament." The Director determined that these additional duties constituted an impermissible material change to the petition, and noted that religious training does not constitute a religious occupation. She also concluded that as the initial position description consisted of duties which primarily involved maintenance and administration, it did not qualify as a religious occupation.

On appeal, the Petitioner first asserts that the additional description of the Beneficiary's proposed duties provided in its response was not a material change to the petition but a clarification of the initial description. Specifically, the Petitioner points to the letter submitted by its president which states that the church's "form of doctrine requires that anyone being trained for or currently working in ministry also work in property management, building maintenance or administration," and that helpers and administrators are critical to the function of the church.

However, this explanation does not address the fact that the initial job description included duties related only to the supervision of maintenance and landscaping work. Only after the Petitioner was informed by the Director in her RFE that the initial evidence was insufficient did it include a reference to additional functions such as preaching, Bible study and ministry to the sick. This constitutes an impermissible material change made in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Assoc. Comm'r 1998) (noting that USCIS "cannot consider facts that come into being only subsequent of the filing of a petition); *see also Kungys v. United States*, 485 U.S. 759, 770-72 (1988) (explaining that a change in fact is material if the changed circumstances would have a natural tendency to influence or are predictably capable of affecting the decision). We will therefore not consider the reference to new ministerial duties within these proceedings.

In addition, the Petitioner's explanation also does not establish that the position of grounds caretaker and construction operator qualifies as a religious occupation. As noted above, the regulation states that positions which are primarily administrative or support in nature, such as maintenance workers and others, are not considered to be religious occupations. On appeal, the Petitioner also refers to its president's quotation of the Bible to support his statement that individuals are called to serve in roles in "helps" and administration, and that they are critical to the function of the church. The Petitioner may freely choose its religious worker's job title or duties within a religious organization; however, determining whether the religious worker is qualified to receive benefits under the U.S. immigration laws rests with the U.S. Citizenship and Immigration Services (USCIS). Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

Further, to the extent that the Beneficiary would undergo religious training, whether as compensation for or part of his proposed duties, the regulation at 8 C.F.R. § 214(r)(3) states that religious training does not constitute a religious occupation. Although a religious worker may participate in religious study or training incident to their status, here the Petitioner has not shown that the Beneficiary's duties qualify as a religious occupation. Therefore, neither the Beneficiary's proposed duties as a grounds caretaker and construction operator alone, nor the combination of those duties with the proposed religious training, are sufficient to qualify him as a religious worker.

III. CONCLUSION

The Petitioner has not met its burden of proof to establish that the offered position is a religious occupation. The petition will therefore remain denied.

ORDER: The appeal is dismissed.