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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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Services

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[REDACTED]

SEP 22 2010

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

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.

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 remanded for further action and consideration.

The petitioner is a church. It seeks to extend the beneficiary's status as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as a pastor. The director determined that the petitioner had not established it qualifies and operates as a bona fide nonprofit religious organization.

The petitioner submits a letter and additional documentation on appeal to explain the different addresses used during the petition process.

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 it is a bona fide nonprofit tax-exempt religious organization.

The regulation at 8 C.F.R. § 214.2(r)(3) defines a tax-exempt organization as "an organization that has received a determination letter from the IRS [Internal Revenue Service] establishing that it, or a group it belongs to, is exempt from taxation in accordance with section[] 501(c)(3) of the Internal Revenue Code" (IRC). Additionally, the regulation at 8 C.F.R. § 214.2(r)(9) provides:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

(i) A currently valid determination letter from the IRS showing that the organization is a tax-exempt organization; or

(ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or

(iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3), or subsequent amendment or equivalent sections of prior enactments, of the [IRC], as something other than a religious organization:

(A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as books, articles, brochures, calendars, flyers, and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a statement certifying that the petitioning organization is affiliated with the religious denomination. The statement must be submitted by the petitioner along with the petition.

The petitioner submitted a copy of an October 25, 1996 letter from the IRS addressed to the [REDACTED] granting that organization tax-exempt status under sections 501(c)(3) and 170(b)(1)(A)(i) of the IRC. The letter identified the organization's federal employer identification number (FEIN) as [REDACTED]. Other documentation in the record shows different addresses for the petitioner, including its letterhead, tax documentation, bank statements, and the beneficiary's earnings statements. Most of the documents show an address of [REDACTED]. However, the petitioner has also used the address of [REDACTED] also in [REDACTED]. The Form I-129, Petition for a Nonimmigrant Worker, shows counsel's address in Part 1 instead of that of the petitioner. However, the form shows the petitioner's FEIN as [REDACTED].

The petitioner submitted documentation from the Florida Department of State reflecting that in 2004, [REDACTED], Inc. amended its articles of incorporation with the State to change its name to [REDACTED], and its address from [REDACTED]. In response to the director's April 9, 2009 request for evidence (RFE), the petitioner submitted a copy of a 2003 warranty deed reflecting the post office address for [REDACTED] copies of utility receipts for the [REDACTED] address, and a business license from the [REDACTED] that also reflects the organization's name change.

In denying the petition, the director stated that the IRS letter granted tax-exemption to [REDACTED] in Pompano Beach, Florida and that the petitioner had submitted no documentation to indicate that it was the same entity as that listed in the IRS letter.

On appeal, the petitioner submits a copy of a September 25, 2007 letter from the IRS indicating that the organization had been granted tax exempt status under sections 501(c)(3) and 170(b)(1(A)(i) of the IRC in August 1996. The petitioner also submits additional documentation, including its 1995 Articles of Incorporation, showing the petitioner's address as [REDACTED] which were filed and accepted by the State of Florida with a document number of [REDACTED]. A March 31, 2004 certification from the Florida Secretary of State references the document number as does a December 1, 2005 letter from the Florida Department of State regarding the petitioner's amendments to change its name and location.

Accordingly, the petitioner has submitted sufficient documentation to establish that it is a bona fide nonprofit religious organization.

Nonetheless, the petition may not be approved as the record now stands and is remanded to the director for further action and consideration.

Counsel's letter submitted with the petition outlines the duties and schedule. However, nothing in the record supports counsel's statements. 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 Obaighena*, 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 record reflects inconsistencies in the petitioner's claims and documentation. The petitioner submitted documentation that the beneficiary was present in the United States in an R-1 nonimmigrant religious worker status. According to counsel, the beneficiary served as pastor with the petitioning organization during his prior period of approved R-1 status. However, the petitioner indicated in Part 4 of the Form I-129, Petition for a Nonimmigrant Worker, filed on November 5, 2008, that it had never before filed a petition on behalf of the beneficiary. Additionally, in Part 3 of the Form I-129, the petitioner provided a Charlotte, North Carolina address for the beneficiary. The petitioner submitted a copy of a license indicating that the

beneficiary was ordained and licensed with the [REDACTED] on September [REDACTED]. The petitioner, however, stated on the Form I-129 Supplement submitted in response to the RFE, that the beneficiary was ordained by the [REDACTED] in [REDACTED]. No evidence of this licensure was submitted.

The petitioner provided copies of three check stubs indicating that it paid the beneficiary \$1,800 on September 12, 2008 for the pay period July 23, 2008 through August 22, 2008; \$1,800 on September 19, 2008 for the pay period July 30, 2008 to August 29, 2008, and \$1,800 on October 24, 2008 for the pay period September 4, 2008 to October 3, 2008. The latter stub shows a year-to-date salary of \$5,400. The beneficiary's address on the check stub is the same as that of the petitioner's address of record.

The petitioner also submitted an uncertified, unsigned and undated copy of an IRS Form 990, Return of Organization Exempt from Income Tax. In response to the RFE, the petitioner submitted a list of employees that includes the beneficiary with a salary of \$1,745 per month. The petitioner also submitted documentation from [REDACTED] informing the petitioner that the company had filed the petitioner's IRS Form 941, Employer's Quarterly Federal Tax Return, for the quarters ending December 31, 2007 and all quarters of 2008. We note that the reported wages paid dropped from \$162,904 for the quarter ending December 2007 to \$30,766 for the quarter ending December 2008 and from 30 employees to six for the same period.

Thus, the record is not clear as to the petitioner's financial status, how it intends to compensate the beneficiary and the beneficiary's work during the period preceding the filing of the petition. While 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 and are not within the jurisdiction of the AAO, they do raise questions as to credibility of the documentation submitted by the petitioner. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The regulation at 8 C.F.R. § 214.2(r)(1) provides that the beneficiary must be coming to the United States to work in a qualifying religious work for at least 20 hours per week. Subsection (r)(10) requires the petitioner to submit specific documentation of the beneficiary's qualifications as a minister. Subsection (r)(11) requires the petitioner to submit verifiable documentation to establish how it intends to compensate the beneficiary.

Accordingly, the petition is remanded to the director to determine whether the petitioner has satisfactorily established the duties of the proffered position, whether the beneficiary is qualified for the proffered position, and how the petitioner intends to compensate the beneficiary.

The matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of the petition within a

reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.