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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

D13

[redacted]

DATE: NOV 04 2011 OFFICE: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, with a fee of $630. 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 AAO will dismiss the appeal.

The petitioner is a [redacted] It seeks to classify the beneficiary 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 an abbot. The director determined that the petitioner had not submitted required documentation of its tax-exempt status.

On appeal, the petitioner requests an extension in order to obtain the required evidence.

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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(1) states that, to be approved for temporary admission to the United States, or extension and maintenance of status, for the purpose of conducting the activities of a religious worker for a period not to exceed five years, an alien must:

> (i) Be a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least two years immediately preceding the time of application for admission;

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

(iii) Be coming solely as a minister or to perform a religious vocation or occupation as defined in paragraph (r)(3) of this section (in either a professional or nonprofessional capacity);

(iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and

(v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

The USCIS regulation at 8 C.F.R. § 214.2(r)(9) requires the petitioner to submit a copy of a currently valid determination letter from the Internal Revenue Service (IRS) showing that the organization is a tax-exempt organization, or that a parent organization holds a group exemption.

The petitioner filed the Form I-129 petition on January 18, 2011. The instructions to the petition form advised the petitioner of the requirement to submit an IRS determination letter showing individual or group tax exemption.

The petitioner's initial submission did not include the required IRS documentation. Therefore, on March 17, 2011, the director issued a request for evidence, instructing the petitioner to submit the required IRS determination letter.

In response, the petitioner submitted a statement from [redacted], president of the petitioning entity. [redacted] stated that the petitioner "qualifies under IRS rules as a non-profit organization even though it has not submitted an application for recognition from IRS. (Note: IRS records show that [the petitioner] has never applied for recognition.)." [redacted] observed that the instructions to IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, specify that churches "may be considered tax exempt under section 501(c)(3) even if they do not file Form 1023."

The AAO does not dispute the IRS's interpretation of its own requirements, but in this proceeding, the petitioner seeks a benefit not from the IRS, but from USCIS. The USCIS regulation at 8 C.F.R. § 214.2(r)(9) clearly requires the petitioner to submit an IRS determination letter. When USCIS published this regulation, accompanying supplementary information explained USCIS's reasoning:

Several commenters objected to the proposed requirement that petitioners must file a determination letter from the IRS of tax-exempt status under IRC section 501(c)(3), 26 U.S.C. 501(c)(3), with every petition. Commenters pointed out that the IRS does not require churches to request a determination letter to qualify for tax-exempt status. A designation that an organization is a ''church'' is sufficient to qualify for tax-

> exempt status. Although some churches choose to request a formal IRC section 501(c)(3) determination, they are not required to do so. . . .
>
> USCIS recognizes that the IRS does not require all churches to apply for a tax-exempt status determination letter, but has nevertheless retained that requirement in this final rule. *See* Internal Revenue Service, *Tax Guide for Churches and Religious Organizations: Benefits and Responsibilities under the Federal Tax Law* (IRS pub. no. 1828, Rev. Sept. 2006). A requirement that petitioning churches submit a tax determination letter is a valuable fraud deterrent. An IRS determination letter represents verifiable documentation that the petitioner is a bona fide tax-exempt organization or part of a group exemption. Whether an organization qualifies for exemption from federal income taxation provides a simplified test of that organization's non-profit status.
>
> Requiring submission of a determination letter will also benefit petitioning religious organizations. A determination letter provides a petitioning organization with the opportunity to submit exceptionally clear evidence that it is a bona fide organization.

73 Fed. Reg. 72276, 72279-80 (Nov. 26, 2008). This regulatory requirement was already in effect when the petitioner filed the petition in January 2011.

The director denied the petition on June 17, 2011, because the petitioner did not submit the required IRS determination letter.

On appeal, [redacted] states: "At this time, we are submitting to the Internal Revenue Service (IRS) a Form 1023, Application for Recognition of Exemption to obtain the recognition from IRS that the [petitioner] is a tax exempt religious entity." The petitioner requests a nine-month extension while the IRS processes the application.

The AAO will not grant the requested extension, because it would serve no purpose in this proceeding. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that shows eligibility for the benefit sought as of the petition's filing date. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, the director has allowed the petitioner an opportunity to address a deficiency in its evidence, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.*

The issue before the AAO on appeal is not whether the petitioner is a tax exempt organization, but whether it submitted the required evidence of tax exemption when the director requested it. The petitioner does not claim to have submitted the evidence upon request. Instead, the petitioner acknowledged that it had not applied for recognition of tax exemption.

The petitioner's initial submission lacked the required IRS determination letter. When the director gave the petitioner an opportunity to submit that required evidence, the petitioner failed to do so. The director therefore correctly found that the petitioner had failed to submit the required evidence. The AAO will affirm the director's decision.

Review of the record reveals another ground for denial. The AAO may identify additional grounds for denial beyond what the Service Center identified 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 USCIS regulation at 8 C.F.R. § 214.2(r)(8) requires an authorized official of the prospective employer of an R-1 nonimmigrant to complete, sign and date an attestation prescribed by USCIS and submit it along with the petition. The record contains an attestation, but no authorized official of the prospective employer signed the document. Instead, the beneficiary signed it. The USCIS regulation at 8 C.F.R. § 204.5(m)(2) permits a self-petitioning alien to sign his or her own attestation for a Form I-360 petition for a special immigrant religious worker, but that provision is conspicuously absent from the parallel nonimmigrant provision at 8 C.F.R. § 214.2(r)(8). The AAO cannot accept the employer attestation in the record, because the employer did not execute it and there is no provision in the regulations to allow USCIS to accept it. It is relevant that an alien may not self-petition for classification as a nonimmigrant religious worker. Instead, the employer must file the petition. See 8 C.F.R. § 214.2(r)(7).

The absence of a properly executed employer attestation is another, separate ground for denial of the petition and dismissal of the appeal.

The AAO will dismiss the appeal 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. The petitioner has not met that burden.

ORDER: The appeal is dismissed.