

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

[Redacted]

D13

Date: **DEC 17 2012** Office: CALIFORNIA SERVICE CENTER FILE: [Redacted]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting 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 seeks to classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as a kindergarten teacher. The director determined that the petitioner had not established that it qualifies as a bona fide nonprofit religious organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code (IRC) and had not established how it intends to compensate the beneficiary.

On appeal, counsel states that the petitioner's "nonprofit religious status has been confirmed by the Maryland State Department of Education and the State of Maryland," and that "because Building Youth Incorporated, is classified as a non-profit religious organization by the IRS" and the petitioner is its subsidiary, the petitioner "through group ruling, is also considered a non-profit religious organization." Counsel also asserts that the petitioner maintains two bank accounts, one of which is separate for payroll and that the petitioner is "financially capable of compensating the beneficiary." 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 first 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 Internal Revenue Service (IRS) establishing that it, or a group it belongs to, is exempt from taxation in accordance with section[] 501(c)(3) of the [IRC].” 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.

With the petition, filed on September 29, 2011, the petitioner submitted a copy of a July 24, 2007 advance ruling letter from the IRS advising Building Youth Incorporated that it was exempt from income tax under section 501(c)(3) of the IRC as a public charity under section 170(b)(1)(A)(vi). The letter states that the advance ruling would end on June 30, 2011. The letter does not indicate

that Building Youth Incorporated applied for or was granted a group exemption for its subordinate units. The petitioner submitted no documentation that Building Youth Incorporated received a permanent exemption from the IRS applicable to its subordinate units or that the petitioner has received a tax-exempt certification from the IRS.

In its September 27, 2011 letter submitted in support of the petition, the petitioner, through its executive director, [REDACTED] stated:

The [petitioner] (“Religious Corporation”) was established in 1995 with the purpose “*to conduct religious, charitable and educational services by proclaiming Christ’s liberating gospel throughout the world by word and deed*”. Through a succession of social awareness and religious campaigns, the Religious Corporation has increasingly expanded its humanitarian operations and was consequentially incorporated in July 2007 under the administrative umbrella of **Building Youth Incorporated** hereinafter the “**Public Charity Corporation**”). The Public Charity Corporation is currently operating charitable, religious, educational, and humanitarian programs through its subsidiary: the [petitioning organization] host of the following religious educational programs ministries: the **God’s Little Angels Learning Center** – enrolling students ages infancy to five years old, the **GLA Academy “School of Excellence”** – a K-8 church exempt school, two after-school programs, and the **Building Youth S.M.A.R.T.** (Science, Math, Art, Reading & Tutoring) Educational Enhancement program – enrolling students ages five to fourteen years old. The Public Charity Corporation is capable to [sic] providing indigent communities across Baltimore, Maryland not just material assistance, but also spiritual, psychological, and educational tools for establishing better, more sustainable lives. [Bold emphasis in the original.]

The petitioner submitted a copy of its articles of incorporation that were filed with the State of Maryland on May 16, 2003. The petitioner also submitted a copy of the unsigned articles of incorporation and reinstatement for Building Youth Incorporated dated June 5, 2005. The petitioner submitted a copy of a certificate from the State of Maryland Department of Assessments and Taxation, dated September 20, 2010, certifying that the petitioner was incorporated in the State of Maryland on May 16, 2003, and a separate certificate also dated September 20, 2010 certifying that Building Youth Incorporated was incorporated on May 16, 2003.

In an October 20, 2011 request for evidence (RFE), the director instructed the petitioner to submit documentation “in the form of a signed letter from the [IRS] showing that the organization is exempt from taxation in accordance with section 501(c)(3) of the [IRC] as it relates to religious organizations.” In its January 11, 2012 response, the petitioner again outlined the history of the church and the incorporation of Building Youth Incorporated. The petitioner also stated that the “Church’s nonprofit religious status has been confirmed by the Maryland State Department of Education and the State of Maryland.”

The petitioner submitted, *inter alia*, (1) a copy of a September 22, 2010 letter from the State of Maryland Department of Labor, Licensing and Regulation recognizing the petitioner as a nonprofit organization and as a church and stating that the petitioner is not liable for contributions under the Maryland Unemployment Insurance Law; (2) documentation indicating that the petitioner's GLA Academy "School of Excellence" is recognized by the Maryland State Department of Education as a church school; (3) information regarding the petitioner's religious activities; and (4) a copy of its handbook. The petitioner, however, submitted no documentation from the IRS recognizing it as a nonprofit religious organization under section 501(c)(3) of the IRC.

On appeal, counsel asserts that the petitioning organization has been recognized as a nonprofit religious organization by the State of Maryland. U.S. immigration laws governing religious workers, however, are not based on recognition by an individual state of an organization as a nonprofit religious organization. Counsel also asserts that the petitioner is recognized as a tax-exempt organization based on the exemption granted to the parent organization. However, there is nothing in the record to indicate that Building Youth Incorporated has been granted a group exemption applicable to its subordinate units. Furthermore, the record does not contain a currently valid determination letter from the IRS showing that Building Youth Incorporated is a tax-exempt organization. The July 24, 2007 letter from the IRS indicates that it is an advance ruling that ended on June 30, 2011.

The regulation sets forth specific documentation that the petitioner must present in order to establish that it is a bona fide nonprofit religious organization for the purpose of this visa classification. The petitioner has submitted none of the documentation required by the regulation at 8 C.F.R. § 214.2(r)(9). The petitioner has therefore failed to establish that it is a bona fide nonprofit religious organization exempt as defined by the regulation.

The director also determined that the petitioner had 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 [Wage

and Tax Statement] 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 indicated on the Form I-129, Petition for Nonimmigrant Worker, that it would pay the beneficiary \$375 per week for a 25-hour workweek. The petitioner did not indicate any gross or net income, merely indicating in Part 5 questions 14 and 15 that it is “nonprofit.” In its September 27, 2011 letter, the petitioner stated that it would pay the beneficiary \$15 per hour for an average 20-hour workweek. With the petition, the petitioner submitted an unaudited copy of its financial statement dated February 1, 2011. Although the statement contains a line item for salaries and wages, the category does not contain an entry. Additionally, the budget contains no projection for income. The petitioner also submitted an uncertified copy of its unsigned and undated Form 1120S, U.S. Income Tax Return for an S Corporation, for 2010. The petitioner identified its business activity as “educational services” and “child care” and that it paid \$121,559 in salaries and wages. The petitioner also indicates that it had a net loss of \$193,829 for the year.

The petitioner also submitted copies of its monthly bank statements for the period February 2011 through August 2011, showing ending balances ranging from negative \$92.40 to positive \$4,205.67. The petitioner also submitted an unsigned and undated IRS Form 990-Return of Organization from Income Tax, for Building Youth, Inc., for the year 2010.

In its January 11, 2012 response to the director’s RFE, the petitioner resubmitted the copies of the monthly bank statements previously submitted stating they show “significant deposits, totaling over \$65,862 in only month.” Despite the deposits, the petitioner also experienced significant expenditures causing the petitioner at times to have a negative balance. The petitioner stated:

Additionally, enclosed herewith . . . are copies of the Church’s budget plans which specifically allot financial funds to employees. Further enclosed herewith . . . are copies of [REDACTED] W-2 Wage Report, confirming that the Church has had the ability to compensate an individual in a similar capacity as the proffered position. Enclosed herewith . . . are copies of the discharge from the United States Bankruptcy Court. The documentation clearly shows that the Church has the financial ability to compensate the beneficiary the proffered wage.

The petitioner resubmitted the February 1, 2011 budget plan with additional annotations that now include a projected income of \$923,721 and projected expenses of apparently \$837,297. While the petitioner budgets for employee incentives, payroll taxes, Form 1099 income, it again failed to include any entry for salaries or wages. Furthermore, as its response was after the end of its fiscal year, as indicated by its IRS Form 1120S, the petitioner did not indicate its actual expenses for the year 2011. The IRS Form W-2 for [REDACTED] indicates the petitioner paid her \$21,000 in wages in 2010. However, the petitioner did not indicate that the beneficiary was replacing Ms.

Fowlkes in the position. The petitioner submitted a copy of a January 21, 2010 order from the United States Bankruptcy Court discharging the debts of [REDACTED] and [REDACTED] under Title 7 of the U.S. Bankruptcy Code. The petitioner is not mentioned in the order, and it is unclear how, under any circumstances, this order would provide evidence of how the petitioner would compensate the beneficiary.

On appeal, in addition to the previously submitted documentation, the petitioner submits copies of its monthly bank statements for September through November 2011, which show ending balances ranging from \$443.33 to \$4,943.87. Additionally, for the first time, the petitioner submits copies of monthly bank statements for a second account, which indicates it is the petitioner's payroll account. The statements, which are for the period June 2011 through December 2011, reflect ending balances ranging from \$551.86 in October 2011 to \$8,453.96 in December 2011. The petitioner does not explain why it did not submit these documents previously. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

The petitioner also submits a copy of its "5 year projection" of revenue and expenses, which projects total income rising from \$1,315,916 in 2011 to \$1,737,690.50 in 2015 with expenditures from \$1,336,880 in 2011 to \$1,653,538 in 2015. The AAO notes that although this document was submitted to the AAO in May 2012, the petitioner does not provide any evidence of its actual income and expenditures for 2011. The AAO also notes that the document is partially illegible and the "Totals" line ending the document cannot be read. However, a review of the amounts reflects that the petitioner would have experienced a loss in 2011 and will experience a loss in 2012. The petitioner has submitted no evidence to indicate that the projected income is based on realistic expectations. The petitioner also submits copies of pay stubs indicating that it has paid its other teachers in the past. As the petitioner does not allege, however, that the beneficiary will be replacing any of these individuals, its ability to compensate them is not evidence of its ability to pay the beneficiary the proffered wage.

The petitioner has failed to submit verifiable documentation of how it will compensate the beneficiary.

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.