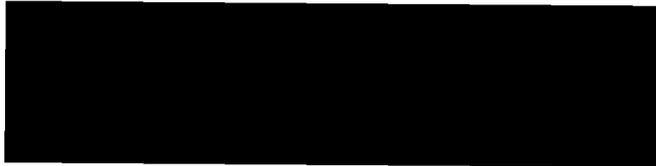


**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY**

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**



513

Date: **FEB 27 2012** Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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:

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,

2 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 classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act. 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 that the beneficiary had been a member of the petitioner's denomination for two full years immediately preceding the filing of the visa petition.

The petitioner states on appeal that "all information requested was provided and therefore we request that you take a second look at everything and decide that we are a legitimate, non-profit church" that has clear ties to the beneficiary's church in England. The petitioner submits 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 on appeal 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].” 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 August 2, 2010, the petitioner submitted a copy of its August 17, 2006 certificate of incorporation from the Secretary of State for the State of Washington, a copy of its State of Washington business license, and a copy of an October 4, 2006 letter from the IRS assigning the petitioner an employer identification number. In a request for evidence (RFE) dated February 16, 2011, the director instructed the petitioner to submit documentation in accordance with the above-cited regulation to establish that it is a bona fide nonprofit religious organization

In response, the petitioner stated that it was “related” [REDACTED] in Missouri. The petitioner also submitted a March 12, 2011 letter from [REDACTED] administrator and

apostolic team member for Newfrontiers USA, who stated that the petitioner is one of its church plants, and submitted a copy of a September 6, 1996 letter from the IRS granting [REDACTED] International-USA tax-exempt status under sections 501(c)(3) and 170(b)(1)(A)(i) of the IRC. The IRS letter does not indicate that the tax-exempt status extends to the organization's subordinate units. The petitioner also submitted a copy of its articles of incorporation.

The director determined that the petitioner had not established it is a bona fide nonprofit religious organization or that it was covered under a group exemption granted to its parent organization.

On appeal, the petitioner submits additional documentation about Newfrontiers, including the organization's bylaws, articles of incorporation, and a July 1, 2011 letter from the IRS confirming the tax-exempt status of [REDACTED]. In a July 22, 2011 letter, [REDACTED], the secretary and treasurer of Newfrontiers, stated that the petitioner is a member of [REDACTED] "which is recognized by the IRS as an exempt religious organization under section 501(c)(3) of the [IRC]." Nonetheless, neither the petitioner nor [REDACTED] provided evidence that the IRS determination includes the subordinate units of Newfrontiers in its tax-exempt status.

The petitioner also states on appeal that the reason it did not have "the federal recognition is we were told that it was not necessary." The petitioner did not state who advised it that the IRS documentation was not needed as the regulation clearly outlines the criteria to establish a petitioner's bona fides as a tax-exempt nonprofit religious organization. On appeal, the petitioner submits information from IRS Publication 1828, *Tax Guide for Churches and Religious Organizations*, and the IRS website which state that churches do not have to file for official determination of its exempt status with the IRS.

The regulations governing immigration under the purview of the United States Citizenship and Immigration Services (USCIS) and those governing federal taxation under the purview of the IRS serve two different purposes. While the IRS regulations may automatically exempt churches as nonprofit organizations for the purpose of determining whether such an organization is required to file a federal tax return and pay taxes, the USCIS regulation offers no such exemption for those organizations who seek benefits under immigration laws. IRS Publication 1828 provides the following advice to churches:

Although there is no requirement to do so, many churches seek recognition of tax-exempt status from the IRS because such recognition assures church leaders, members, and contributors that the church is recognized as exempt and qualifies for related tax benefits.

Thus, the IRS recognizes that there may be reasons why a church may want to obtain official IRS recognition as a tax-exempt organization although under IRS regulations, the church is not required to do so. The IRS provides detailed guidance on how to obtain a determination letter that applies equally to churches as to other religious organizations. *Id.*

Further, while the Act and its implementing regulations do not require an organization to establish that it is a church to qualify as a bona fide nonprofit religious organization, it must establish that its tax-exemption is based on its religious nature. As discussed earlier, the IRS and USCIS regulations serve different purposes. The IRS automatic exemption of a church as nonprofit entity is unrelated to the USCIS regulatory requirement at 8 C.F.R. § 214.2(r)(9) that the organization establish itself as both a religious organization and as a nonprofit organization for immigration purposes.

The petitioner has failed to submit a letter from the IRS establishing that it is tax-exempt under section 501(c)(3) of the IRC as a religious organization. Further, the petitioner has failed to establish that it is covered under a group exemption granted to its parent organization. Accordingly, the petitioner has failed to meet the evidentiary requirements at 8 C.F.R. § 214.(r)(9). On this basis alone, the petition may not be approved.

The second issue presented is whether the petitioner has established that the beneficiary was a member of its religious denomination for two full years immediately preceding the filing of the visa petition.

The 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.

As previously stated, the petition was filed on August 2, 2010. Therefore, the petitioner must establish that the beneficiary was a member of its denomination for at least the two years immediately preceding that date. The regulation at 8 C.F.R. § 214.2(r)(3), states in pertinent part:

Religious denomination means a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes one or more of the following:

- (A) A recognized common creed or statement of faith shared among the denomination's members;
- (B) A common form of worship;
- (C) A common formal code of doctrine and discipline;
- (D) Common religious services and ceremonies;

- (E) Common establish places of religious worship or religious congregations;
or
- (F) Comparable indicia of a bona fide religious denomination

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner stated that the beneficiary is a member of the [REDACTED] which, like the petitioning organization, is a member of Newfrontiers. In a July 27, 2010 letter submitted in support of the petition, the petitioner stated that the beneficiary had been a member of [REDACTED] for 13 years. The petitioner submitted no other documentation to establish that the beneficiary had been a member of its denomination for the two years immediately prior to the filing of the visa petition.

In response to the RFE, Robert "Bo" Noonan, the petitioner's senior pastor stated that it "is a non-denominational church that is a part of an organization of other non-denominational churches called [REDACTED]. In his March 12, 2011 letter, [REDACTED] stated that the petitioning organization was one of its church plants. The petitioner submitted no other documentation to establish a relationship between [REDACTED] and Newfrontiers and no documentation to establish that the beneficiary had been a member of [REDACTED] at any time during the two-year qualifying period.

In denying the petition, the director determined:

The evidence show[s] that while [the petitioner and [REDACTED] may share similar doctrinal beliefs they are of separate denominations with no documentary evidence to establish that a connection exists between them. The petitioner has not established that there is an institutional relationship or a common governing body shared by the petitioner and the beneficiary's previous church as required.

On appeal, the petitioner submits a July 22, 2011 letter from [REDACTED] confirming that the beneficiary had been a member of the church since June 2000. In a July 25, 2011 letter [REDACTED] [REDACTED] stated that the organization "is a fellowship of currently 840 independent self-governing Christian churches in 64 nations who subscribe to [a shared] Vision and Values" He further states:

The churches are bound together by the relationships between church leadership (pastors and elders) who share common Vision and Values This relationship is out-worked [sic] in many joint activities such as leadership training programmes, conferences, mission and outreach activities.

[REDACTED] submitted a list of churches associated with [REDACTED] including the petitioner and [REDACTED] and magazines and other brochures showing the joint activities of the various churches. The documentation presented indicate that the petitioner's denomination and that of the beneficiary's church in England share a common value and vision, cooperate in training, missions and outreach, and join together in conference. The petitioner has submitted sufficient comparable indicia of a bona fide religious denomination and sufficient documentation that the beneficiary has

been a member of its denomination for two full years immediately preceding the filing of the petition. The director's determination to the contrary is therefore withdrawn.

Nonetheless, as the petitioner has not met the evidentiary requirements at 8 CFR 214.2(r)(9), the petition may not be approved.

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.