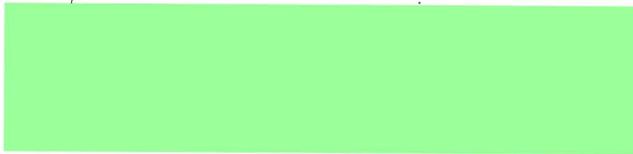


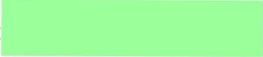


U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAR 22 2013** 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 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 with the field office or service center that originally decided your case by filing a 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 classification of the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as a "religious missionary-sister." 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).

The petitioner states on appeal:

The operations of the petitioner . . . are limited to the island of Puerto Rico, which is governed by the Constitution of the Commonwealth. The Commonwealth of Puerto Rico is an agreement established in 1954 between the governments of the United States of America and Puerto Rico. Under the Constitution of Puerto Rico there is a tax agreement with the United States which excludes from federal taxation citizens and corporations in Puerto Rico that do not receive funds from the U.S. Government.

The petitioner asks for additional time in which to submit "confirmation" from the "State Department of Puerto Rico" and the Internal Revenue Service (IRS) that the petitioner "is not required to apply for tax exemption under Section 501(c)(3)" The petitioner indicated on the Form I-290B, Notice of Appeal or Motion, filed on October 31, 2012, that it would submit a brief and/or additional documentation to the AAO within 30 days.

By letter dated October 19, 2012 to the AAO, the petitioner requested "additional time to submit additional written evidence to support our appeal." As the petitioner had not yet filed its appeal, the AAO believed that the petitioner was requesting additional time in which to submit its appeal and therefore denied the request in a letter dated November 2, 2012. In supplemental documentation dated November 10, 2012 submitted following the AAO's letter, the petitioner stated that it had not requested additional time in which to submit the appeal but rather more time in which to submit additional documentation. However, as of the date of this decision, more than three months after the appeal was filed, the petitioner has submitted no additional documentation regarding its qualification as a bona fide nonprofit religious organization as defined by the regulation. Furthermore, as discussed further below, even if the petitioner submits additional documentation on appeal, it would not meet the requirements of the regulation.

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 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.

The petition was filed on July 16, 2012. With the petition, the petitioner submitted a March 3, 2011 "Certificate of Existence" from the Government of Puerto Rico Department of State, a June 12, 2002 letter from the IRS confirming the petitioner's employer identification number, a copy of its certificate of incorporation, and a June 6, 2011 "Certificate for a Nonprofit Organization" issued by the Tax Assistance and Specialized Consultings Bureau of Commonwealth of Puerto Rico Treasury Department. The certificate was valid until December 31, 2011.

In a September 4, 2012 Notice of Intent to Deny (NOID) the petition, the director noted that the petitioner had provided evidence that it was exempt from taxation in the Commonwealth of Puerto Rico and instructed the petitioner to submit documentation in accordance with the above-cited regulation to establish that it is a bona fide nonprofit religious organization under section 501(c)(3) of the IRC.

In response, the petitioner again provided documentation that includes a copy of its November 17, 1995 registration as a nonprofit under laws of the Commonwealth of Puerto Rico, its certificate of incorporation, a copy of its bylaws, and a "Certificate of Existence" issued by the Commonwealth of Puerto Rico on September 12, 2012, indicating the petitioner was a nonprofit corporation "exempt from filing annual reports to the Department of State." The petitioner also submitted a copy of a December 1, 2011 Certificate for a Nonprofit Organization" that was valid until December 31, 2011. The director denied the petition, finding that the petitioner had not provided the documentation required by the regulation at 8 C.F.R. § 214.2(r)(9).

As discussed previously, on appeal, the petitioner requests additional time in which to submit documentation from the Commonwealth of Puerto Rico and the IRS confirming that it is not required to file for recognition as a nonprofit organization under section 501(c)(3) of the IRC.

However, while the IRS may not require a church to file for official determination of its exempt status with the IRS, no such exception exists under USCIS regulations for this nonimmigrant visa classification. The regulations governing immigration under the purview of USCIS and those governing federal taxation under the purview of the IRS serve two different purposes. 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. However, a petitioner must establish that its tax-exemption is based on its religious nature. While a currently valid letter from the IRS recognizing an organization as a church is required under USCIS regulation, the IRS automatic exemption of a church as nonprofit is unrelated to the USCIS requirements that the organization establish itself as both a religious organization and as a nonprofit organization for immigration purposes.

Additionally, even if the petition were to submit a currently valid determination letter on appeal, the petitioner would have failed to meet the requirements of the regulation. A petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978). There is nothing in the record to reflect that the petitioner had a valid determination letter from the IRS at the time it filed the petition or at the time it responded to the RFE.

The petitioner has therefore failed to establish that it is a bona fide nonprofit religious organization as defined by the regulation 8 C.F.R. § 214.2(r)(3).

Beyond the director's decision, the petitioner has also failed to establish how it will 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 [Internal Revenue Service] 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 the beneficiary “will receive full cover of living expenses, transportation, and other general expenses. She will not receive wages because she has poverty vows.” The petitioner submitted documentation indicating that it purchased property in Bayamón, Puerto Rico in 2006. However, the record does not establish that the property is used to provide the beneficiary with her housing needs. The petitioner also submitted copies of its unaudited financial statements for 2011 and 2012. The petitioner submitted no documentation, such as bank statements or similar financial documentation as verification of the figures used in its financial statements. The financial statements are therefore based on the petitioner’s representations; there is nothing in the record to indicate that they fairly present the financial position of the petitioning organization. In light of this, limited reliance can be placed on the validity of the facts presented in the unaudited financial statements that have been submitted. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

The petitioner also submitted an “expense budget” for fiscal year 2012-2013. The petitioner submitted what appear to be deposits to its accounts in 2005 and 2006 but provided no documentation of its current income. The petitioner also submitted copies of checks that were written and processed in May, June, July and August 2012 that it states are for “mortgage payments, groceries, utilities, car, medical insurance, others.” These checks are for a four-month period and provide insufficient verifiable documentation of the petitioner’s ability to compensate the beneficiary.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial 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 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.