U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-H-O-D-G-C-, INC.

DATE: APR. 28, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner, a church, seeks to classify the Beneficiary as a special immigrant religious worker to perform services as a director of music. *See* Immigration and Nationality Act (the Act) § 203(b)(4), 8 U.S.C. § 1153(b)(4). This classification allows non-profit religious organizations, or their affiliates, to employ foreign nationals as ministers or in other religious occupations or vocations in the United States.

The Director, California Service Center, denied the petition. The Director concluded that the Petitioner did not document that it qualifies as a bona fide religious organization as defined in the regulation. On appeal, we found that the record lacked evidence showing that the Petitioner, a new entity created in 2004, has a valid Internal Revenue Service (IRS) determination letter designating it as a tax-exempt organization.

The matter is now before us on a motion to reopen and a motion to reconsider. In its motions, the filing party submits additional evidence and argues that it qualifies as a bona fide non-profit religious organization in the United States.

We will deny the motions.

I. LAW

Non-profit religious organizations may petition for foreign nationals to immigrate to the United States to perform full-time, compensated religious work. The petitioning organizations, and the foreign nationals who are the beneficiaries of this employment-based visa, must meet certain eligibility criteria. Foreign nationals may also self-petition for this classification.

A motion to reopen must state the new facts to be provided and to be supported by affidavits or other documentation. 8 C.F.R. § 103.5(a)(2). However, any new facts must relate to eligibility at the time the Petitioner filed the petition. *See* 8 C.F.R. § 103.2(b)(1), (12); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A motion to reconsider must offer the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS)

policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider is based on the existing record and the Petitioner may not introduce new facts or new evidence relative to his or her arguments. A motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new materials. *Compare* 8 C.F.R. § 103.5(a)(3) *and* 8 C.F.R. § 103.5(a)(2).

II. ANALYSIS

At issue is whether the entity that filed the petition was a bona fide non-profit religious organization in the United States as defined in the regulation. The Director served the first request for evidence (RFE) seeking proof relating to compensation, the position, and the Beneficiary's work history. Subsequently, the Director issued a second RFE requesting items relating to the petitioning organization's non-profit status. The response to the second RFE did not include an IRS determination letter showing such status.

On appeal, the Petitioner indicated that within 30 days it would provide corporate documentation it filed with the state and the IRS relating to a corporate name change. However, we received nothing further. Now on motion, it furnishes the articles of amendment of a corporate name change from the North Carolina Department of the Secretary of State (Secretary of State).

There are two corporate entities involved in this proceeding consisting of three corporate names. The two original entities are: and Both entities have gone by the name, Below is a timeline of events relating to the relevant organizations and this petition:

- – was created and registered with the Secretary of State;
- December 21, 2000 – the IRS issued a 501(c)(3) tax exemption letter to
- – was created and registered with the Secretary of State;
- July 25, 2013 – filed the Form I-360 with USCIS;
- November 28, 2014 – the Director denied the Form I-360;
- – registered a change of its name with the Secretary of State, officially changing the name to
- - registered a change of its name with the Secretary of State, officially changing it to
- – registered its articles of dissolution with the Secretary of State.[1]

[1] While the Petitioner did not supply the Articles of Dissolution for that it referenced on appeal, we have confirmed with the Secretary of State that this corporation is dissolved. *See*

As the entity that filed the petition, dissolved after the name change to the petitioning entity no longer exists. While changed its name to , that name change does not make it the petitioning entity. For this reason alone the petition may not be approved.

In the alternative, the Petitioner's position on motion that the tax exempt letter issued to is in fact the tax exempt letter for the entity that filed the petition is not persuasive. The petition filer must establish whether it qualifies as a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination. The regulation at 8 C.F.R. § 204.5(m)(5) defines a bona fide non-profit religious organization as one that possesses a currently valid determination letter from the IRS. *See also* 8 C.F.R § 204.5(m)(8)(describing the evidence to show tax-exempt status as a currently valid determination letter from the IRS).

The record reflects that filed the petition on July 25, 2013. However, the record does not contain proof that , a legal entity separate from , was in possession of the regulatory required IRS determination letter. The Director requested such evidence within the second RFE dated April 3, 2014. The only tax exempt letter within the record from the IRS bears the name of the the entity that changed its name to after the Director denied the petition. This letter contains the Federal Employer Identification Number (FEIN) belonging to which is not the petitioning entity. The filing party explains that it inadvertently created the entity named when it was attempting to change the official name of the To date, an IRS determination letter for the original petitioning entity has not been offered for the record. as it existed on the date the petition was filed, has not submitted any documentation confirming that it had the same FEIN as the as indicated.

On motion the filing party surmises that the "issue is whether the employer [now and formerly , qualifies as a bona fide non- profit [*sic*] religious organization in the United States and does it have tax-exempt status under section 501(c)(3) of the IRS Code." The matter to be resolved, however, is whether, on the petition's priority date, the entity that filed the petition was an organization that was a tax-exempt organization as defined in the regulation at 8 C.F.R. § 204.5(m)(5). That the tax-exempt church changed its name to the name of the petitioning entity does not result in the petitioning entity becoming a bona fide non-profit religious organization in the United States. As noted in our appellate decision:

> Nonetheless, the IRS has held that, when a new legal entity is created, each new entity must establish its own exemption. Rev. Rul. 67-390, 1967-2 C.B. 179 (1967).

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accessed April 21, 2016, and incorporated into the record of proceedings.

> A subsequent Tax Court decision, *American New Covenant Church v. Commissioner*, 74 T.C. 293 (T.C. 1980), cited the 1967 revenue ruling and reaffirmed the core principle that each legal entity requires a separate determination by the IRS. The [P]etitioner does not contend, and the record does not show, that the [P]etitioner, the new entity, has a valid IRS determination letter designating it as a tax-exempt organization.

Additionally, the Petitioner has not offered evidence that the entity that began in merged or acquired such that is a successor-in-interest. As the record lacks proof of an IRS determination letter for , which became and is now dissolved, it cannot meet the definition of a bona fide non-profit religious organization in the United States under 8 C.F.R. § 204.5(m)(5).

III. CONCLUSION

For the reasons discussed above, the motion is moot as the Petitioner is dissolved. In the alternative, it has not established that the entity named at the time of filing was a bona fide non-profit religious organization in the United States.

The motion will be denied for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the filing party has not met that burden. Accordingly, we will deny the motions.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of P-H-O-D-G-C-, Inc.*, ID# 16218 (AAO Apr. 28, 2016)