



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF Y-O-N-J-

DATE: JULY 14, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

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

The California Service Center Director denied the petition, finding that the Petitioner did not establish that it is a bona fide non-profit religious organization or a bona fide organization that is affiliated with the denomination. The Director also found that the petitioner did not establish that the Beneficiary will be employed in a qualifying full-time position. The matter is now before us on appeal. In its appeal, the Petitioner submits a brief and additional evidence.

Upon *de novo* review, we will sustain the appeal.

I. LAW

Non-profit religious organizations may petition for foreign nationals to immigrate to the United States to perform full-time, compensated religious work as ministers, in religious vocations, or in other religious occupations. The petitioning organizations must establish that the foreign national beneficiary meets certain eligibility criteria, including membership in a religious denomination and continuous religious work experience for at least the two-year period before the petition filing date. Foreign nationals may self-petition for this classification. *See generally* section 203(b)(4) of the Act (providing classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)).

The implementing regulation at 8 C.F.R. § 204.5(m) provides that in order to be eligible for classification as a special immigrant religious worker, a foreign national must:

- (1) For at least the two years immediately preceding the filing of the petition have been a member of a religious denomination that has a bona fide non-profit religious organization in the United States.

- (2) Be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position in one of the following occupations as they are defined in paragraph (m)(5) of this section:
 - (i) Solely in the vocation of a minister of that religious denomination;
 - (ii) A religious vocation either in a professional or nonprofessional capacity; or
 - (iii) A religious occupation either in a professional or nonprofessional capacity.
- (3) Be coming to work for a bona fide non-profit religious organization in the United States, or a bona fide organization which is affiliated with the religious denomination in the United States.
- (4) Have been working in one of the positions described in paragraph (m)(2) of this section . . . after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition.

The regulation at 8 C.F.R. § 204.5(m)(3) provides that, in order to be eligible for classification as a special immigrant religious worker, a beneficiary must be coming to work for a bona fide non-profit religious organization in the United States, or a bona fide organization which is affiliated with the religious denomination in the United States. The regulation at 8 C.F.R. § 204.5(m)(5) provides the following definitions:

Bona fide non-profit religious organization in the United States means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the IRS [Internal Revenue Service] confirming such exemption.

Bona fide organization which is affiliated with the religious denomination means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code and possessing a currently valid determination letter from the IRS confirming such exemption.

....

Tax-exempt organization means an organization that has received a determination letter from the IRS establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the Internal Revenue Code . . .

Regarding evidence of the Petitioner's tax-exempt status, the regulation at 8 C.F.R. § 204.5(m)(8) requires the following:

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 Internal Revenue Service (IRS) establishing 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) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, 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 religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

(b)(6)

Matter of Y-O-N-J-

II. ANALYSIS

The issues within this appeal relate to the Petitioner's non-profit status, and the full-time nature of the offered position. In denying the petition, the Director found that the Petitioner did not submit the required evidence to establish that it qualifies as a bona fide non-profit religious organization or a bona fide organization that is affiliated with the denomination. The Director also concluded that the Petitioner did not demonstrate that the Beneficiary will work in a full-time religious position because she "will only be performing religious work for 26 hours and 20 minutes per week." The Director stated that the Beneficiary's teaching of reading and writing to students in the afternoons appeared to be secular in nature.

For the reasons discussed below, we find the Petitioner has established eligibility for the benefit sought.

A. Bona-fide Non-profit Religious Organization

As stated above, a bona fide non-profit religious organization must possess an IRS determination letter confirming its tax-exemption under section 501(1)(c)(3) of the Internal Revenue Code (IRC). The Petitioner initially submitted a letter from Rabbi [REDACTED] explaining that the school was originally established as the [REDACTED] and then changed its name to [REDACTED] in 1945. He further stated that it changed its name again in 1984 to its current name, [REDACTED]. He claimed that the school obtained tax-exempt status in 1947 and has held it continuously to date.

As evidence of this status, the record includes two letters from the IRS. In its letter dated August 21, 1968, the IRS confirmed that [REDACTED] was granted tax-exempt status in 1947 as an educational organization. A letter dated December 5, 2000, from the IRS confirmed that after reviewing the school's Amended Articles of Incorporation indicating a name change from [REDACTED] to [REDACTED] the Petitioner's tax-exempt status is still in effect. This letter specified that the organization is classified under sections 509(a)(1) and 170(b)(1)(A)(ii) of the IRC.

Nonetheless, the Director found that the Petitioner did not meet the requirements of 8 C.F.R. § 204.5(m)(8)(i) or (ii) because it was classified under section 170(b)(1)(A)(ii) of the IRC as an educational organization, rather than section 170(b)(1)(A)(i) of the IRC as a church or related organization. The Director further found that the Petitioner did not meet the requirements under 8 C.F.R. § 204.5(m)(8)(iii) because, although the Petitioner established subparts (A), (B), and (C) of the regulation, it did not meet subpart (D). Specifically, the Director found that the religious denomination certificate submitted was erroneously signed by the petitioning organization rather than the religious organization with whom the Petitioner is purportedly affiliated.

We find that the Director's interpretation of the regulations is not supported by the plain language. The regulation at 8 C.F.R. § 204.5(m)(5) defines "bona fide non-profit religious organization in the United

States” as a “religious organization” that is tax-exempt under section 501(c)(3) of the IRC. The regulation at 8 C.F.R. § 204.5(m)(8) describes the evidence related to the petitioning organization. While an IRS determination letter indicating classification under section 170(b)(1)(A)(i) of the IRC would provide the most direct evidence of eligibility as a bona fide non-profit, religious organization, the regulations neither require that particular classification nor disqualify organizations described in other sections of the IRC.

Furthermore, the regulation at 8 C.F.R. § 204.5(m)(8) requires a petitioner to submit only one of the three listed categories of evidence. While 8 C.F.R. § 204.5(m)(8)(iii) specifies that it applies to organizations granted 501(c)(3) tax-exempt status “as something other than a religious organization,” 8 C.F.R. § 204.5(m)(8)(i) is not limited to organizations granted tax-exempt status under a particular classification. Instead, that section requires only “[a] currently valid determination letter from the [IRS] establishing that the organization is a tax-exempt organization.” As the Petitioner offered valid IRS letters verifying its tax-exempt status under section 501(c)(3) of the IRC, it satisfied the plain language of 8 C.F.R. § 204.5(m)(8)(i) and is not required to submit evidence under 8 C.F.R. § 204.5(m)(8)(iii).

Regarding the religious nature and purpose of the organization and its activities, the Petitioner submitted its mission statement describing itself as “an Orthodox Jewish school dedicated to continuing the chain of Jewish heritage by nurturing the joy and pursuit of a Torah way of life, in an environment that promotes Torah scholarship and academic excellence” The Petitioner’s constitution states that the purpose of the organization is to have a school that gives “comprehensive religious and secular training to children of the Jewish faith,” and specifies that the religious training must be in strict accordance with the Orthodox Jewish faith.

Thus, the Petitioner has submitted valid IRS letters in addition to separate evidence to demonstrate its religious nature, purpose, and activities. Therefore, the Petitioner established it is a religious organization and that it is tax-exempt under section 501(c)(3) of the IRC, meeting the definition of a bona fide non-profit, religious organization under 8 C.F.R. § 204.5(m)(5), and satisfying the evidentiary requirements of 8 C.F.R. § 204.5(m)(8)(i). The Director’s finding to the contrary is withdrawn.

B. Position’s Full-time Religious Nature

The Director found that the Petitioner will be performing religious work for 26 hours and 20 minutes per week and denied the petition because “the [P]etitioner has not established that the Beneficiary will be performing at least 35 hours of religious work per week.” We find that this analysis conflates the requirement that the Petitioner offer full-time employment of at least an average of 35 hours weekly (8 C.F.R. § 204.5(m)(2)(iii)), with the definition of “religious occupation,” which requires that the offered position be “primarily” religious in nature (8 C.F.R. § 204.5(m)(5)).

As described above, the record establishes that the Petitioner has been operating as an Orthodox Jewish school for over sixty years. The evidence shows that the offered position as “Religious Educator – resource room” is a full-time, compensated position. The school’s marketing materials reflect that there are over 1,000 students in the school and its 2014 handbook indicates that it has an extensive resource

(b)(6)

Matter of Y-O-N-J-

room program to help students who need additional support for Judaic or general studies. The handbook lists twenty staff members in the resource room and, according to the staff directory, the resource room includes thirteen teachers as well as support staff and a reading specialist.

In addition, a letter from Rabbi [REDACTED] specifies that the staff positions in the resource room are full-time positions and that the offered position provides remedial instruction in Jewish sacred texts, Jewish Orthodox laws and customs, and prayer. A letter from Rabbi [REDACTED] describes that the entire school day involves Jewish themes and values, and instruction may be in Hebrew or English depending on the curriculum. Moreover, the Petitioner provides a detailed daily schedule for the offered position, showing that the Beneficiary will teach prayer studies, bible studies, Hebrew language skills, reading, writing, and Jewish laws and customs to students in second through seventh grade. According to this schedule, the Beneficiary will work 35 hours per week.

We find that the offered position involves duties primarily related to a traditional religious function and involves carrying out the religious beliefs of the Jewish faith. In addition, the record shows that being a teacher in the resource room of the school is recognized as a religious occupation within the denomination. The duties of the position primarily relate to, and clearly involve, inculcating or carrying out the beliefs of the Jewish religion. Accordingly, the Petitioner has established that the offered position is a religious occupation as defined in 8 C.F.R. § 204.5(m)(5).

Moreover, we find that the offered position is a full-time position averaging at least 35 hours per week. Even assuming, as the Director found, that the position involves performing religious work for only 26 hours and 20 minutes per week, as stated above, the position nonetheless qualifies as a religious occupation because it is “primarily” religious in nature, meeting the requirements of 8 C.F.R. § 204.5(m)(5). The Petitioner has established that the Beneficiary will be working full time in a religious occupation pursuant to section 101(a)(27)(C)(ii)(III) of the Act and 8 C.F.R. § 204.5(m)(2)(iii), and as defined in 8 C.F.R. § 204.5(m)(5).

III. CONCLUSION

For the reasons discussed above, the Petitioner has established it meets the definition of a bona fide non-profit religious organization and that it will employ the Beneficiary in a qualifying full-time religious occupation.

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 Petitioner has met that burden. Accordingly, we will sustain the appeal.

ORDER: The appeal is sustained.

Cite as *Matter of Y-O-N-J-*, ID# 12533 (AAO July 14, 2016)