



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

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

MATTER OF O-O-H-M-C-

DATE: SEPT. 21, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner is a church that seeks to employ the Beneficiary as an ordained deacon. The special immigrant religious worker 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. *See* Immigration and Nationality Act (the Act) section 203(b)(4), 8 U.S.C. § 1153(b)(4).

The Director of the California Service Center denied the petition, concluding that the Petitioner did not establish it was a bona fide non-profit religious organization or how it would compensate the Beneficiary.

The matter is now before us on appeal. The Petitioner states that it has a current, valid letter from the Internal Revenue Service (IRS). It also explains that its bishops, ministers, and deacons are not paid a salary, but rather, support themselves on their farms and receive financial assistance from the congregation, if needed. It submits additional evidence on appeal.

Upon *de novo* review, we will dismiss 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 regulation at 8 C.F.R. § 204.5(m) states that in order to be eligible for classification as a special immigrant religious worker, the Beneficiary 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. . . .

II. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

The Petitioner filed a religious worker petition on June 29, 2015. In Part 8, questions 6 through 12 of the petition, the Petitioner checked “no” to indicate that: it is not a bona fide non-profit religious organization that is tax exempt as described in section 501(c)(3) of the Internal Revenue Code; it will not compensate the Beneficiary so that he and any dependents will not become a public charge; it does not have the funds to pay the Beneficiary’s compensation not including monies obtained from the Beneficiary; the Beneficiary will engage in secular employment; the proffered position is not full-time; the Beneficiary has not been a religious worker for at least the two years immediately before the petition was filed; and the Beneficiary has not been a member of the denomination for at least two years before the petition was filed.

The Director issued a request for evidence (RFE). She explained that in order to qualify for special immigrant religious worker classification, the Beneficiary must have been 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 date the petition was filed. She described that the Beneficiary must be seeking to enter the United States in order to work in a full-time, compensated position, averaging at least 35 hours per week as a minister, in a religious vocation, or in a religious occupation. She clarified that the religious organization must be exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code and must provide a currently valid determination letter from the IRS as evidence. In addition, the Director stated that the Beneficiary must have been a member in the religious denomination or organization for at least the two-year period immediately preceding the filing of the petition and noted that there was no documentation to show that the Beneficiary actively belongs to a religious organization or is currently a religious worker. The Director also stated that there was no verifiable documentation addressing how the Petitioner intended to compensate the Beneficiary or showing it was financially capable of supporting him.

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She noted that the Petitioner may not discharge its obligation to compensate the Beneficiary to someone else, such as a church member. Among other things, she requested IRS documentation or an explanation for the absence of such documentation. She also requested additional information regarding the specific duties the Beneficiary will be undertaking, a daily and weekly schedule for the proffered position, a description of the petitioning organization's religious services and ministries, organizational literature, and evidence of the Beneficiary's work history.

The Petitioner responded to the RFE with evidence including, but not limited to: a letter from deacon [REDACTED] copies of IRS Form 4029, Application for Exemption from Tax on Self-Employment Income and Waiver of Benefits; a certificate stating that the Beneficiary "was ordained for the [REDACTED] as deacon" on February 26, 1999; a list of congregants; copies of the Beneficiary's medical bills; a letter from [REDACTED] copies of bank account statements and checks; an expenses and receivables statement; and two statements indicating the Beneficiary is a part owner of land in [REDACTED]

The Director denied the petition. She found that the Petitioner did not establish it is a bona fide non-profit religious organization as described in section 501(c)(3) of the Internal Revenue Code. The Director also concluded that the Petitioner did not establish its ability to compensate the Beneficiary.

On appeal, [REDACTED] contends that it is submitting a currently valid determination letter from the IRS. He also states that the church's bishops, ministers, and deacons are not paid a salary, but rather, support themselves on their farms. [REDACTED] explains that members of the petitioning organization "have an old fashioned way of living" and live as they did 100 years ago. According to [REDACTED] "[o]ne of the pressing needs in the church community in [REDACTED] is that most of the families . . . are closely related," with 80% of the children being first or second cousins. In an effort to not encourage marriage to second cousins, church leaders decided to "encourage some families from [REDACTED] . . . to move to the churches in the U.S. by making it possible for the children to have options for marriage where [they are] not so closely related." [REDACTED] maintains that the Beneficiary is eager to move his family to the United States and that the Petitioner is willing to sponsor him.

It submits additional evidence on appeal, including, but not limited to: a letter from [REDACTED] stating that [REDACTED] provides housing to the Beneficiary at no cost; copies of checks; a copy of an application for an employer identification number (EIN); an IRS letter assigning a provisional EIN; and copies of [REDACTED] income tax returns.

We have reviewed all of the evidence in the record. As explained below, we will dismiss the appeal.

III. ANALYSIS

A. Bona Fide Non-Profit Organization

The Petitioner must establish it is a bona fide non-profit, religious organization. See section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C). The regulation at 8 C.F.R. § 204.5(m)(5) provides, in pertinent part, 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.

.....

Tax-exempt organization means 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 sections 501(c)(3) of the Internal Revenue Code of 1986 or subsequent amendments or equivalent sections of prior enactments of the Internal Revenue Code.

The regulation at 8 C.F.R. §204.5(m)(8) addresses the evidentiary requirements and states:

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

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- (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.

In this case, the Petitioner has submitted a letter from [REDACTED] the President of [REDACTED]. According to [REDACTED] he has prepared individual tax returns for approximately 100 families that are members of the petitioning church. He states that many of these members have received approvals of their IRS Form 4029, Application for Exemption from Tax on Self-Employment Income and Waiver of Benefits, which entails the Social Security Administration verifying that a religious group has been in existence continuously since December 31, 1950. [REDACTED] contends that these approvals demonstrate that the Petitioner is a recognized non-profit religious group. The record includes copies of two approved IRS Forms 4029. On appeal, the Petitioner claims that it is submitting a currently valid IRS determination letter "confirming [the petitioning organization] to be a known church entity." Citing IRS Publication 557, [REDACTED] contends that the church does not need to file IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, because the church is automatically exempt from taxation. The Petitioner submits a copy of an application for an employer identification number (EIN) and a letter from the IRS assigning a provisional EIN.

Under the controlling regulations, the issue is not whether the IRS would automatically regard the Petitioner as tax-exempt, but whether the Petitioner has provided the IRS determination letter as required under 8 C.F.R. §204.5(m)(8). 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.

Additionally, 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. 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.

Finally, none of the documents the Petitioner submitted suffice in establishing that the Petitioner is exempt from federal income taxes. The IRS Forms 4029 are for individuals, not the petitioning church.¹ The application for an EIN does not list the petitioning organization's name or address. The

¹ The record includes the IRS Forms 4029 for [REDACTED] and [REDACTED]. The forms request exemption from paying self-employment taxes, certifying that the individuals oppose paying towards the costs of medical care and waive their rights to any Social Security payments or benefits.

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IRS letter assigning a provisional EIN is only one page and does not indicate to whom or what entity the letter was addressed. The Petitioner has not submitted its own tax-exemption determination letter from the IRS or evidence it is covered under a group exemption. Therefore, the Petitioner has not established by a preponderance of the evidence that it is a bona fide non-profit religious organization as defined under 8 § 204.5(m)(5) or that it has satisfied the evidentiary requirements of 8 C.F.R. § 204.5(m)(8).

B. Full-Time, Compensated Position

The regulation at 8 C.F.R. § 204.5(m)(2) requires that the Petitioner establish that the Beneficiary will be coming to the United States to work in a full time (average of at least 35 hours per week), compensated position. The regulation at 8 C.F.R. § 204.5(m)(7) specifies that the prospective employer must specifically attest to the following:

- (vi) The title of the position offered to the alien, the complete package of salaried or non-salaried compensation being offered, and a detailed description of the alien's proposed daily duties;
- (vii) That the alien will be employed at least 35 hours per week;
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- (xi) That ... any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer; and
- (xii) That the prospective employer has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges, and that funds to pay the alien's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization.

Here, the Petitioner indicated on the petition that it would not provide salaried or non-salaried compensation, would not compensate the Beneficiary at a level that he and his dependents would not become a public charge, and would not pay him without including any monies obtained from the Beneficiary. In addition, [redacted] elaborates that "the church work is often only part time and is voluntary. The Bishops, Ministers and Deacons are all self employed with their own farm or workshop." He explains that the Beneficiary will "rais[e] his own crops to sell to provide for his own expenses."

We acknowledge [redacted] description on appeal that the church functions much the same way it did 100 years ago. We also recognize his previously submitted statement that the church has an Alms fund which allows members to help each other in times of need. The record also includes letters from [redacted] and [redacted] respectively, contending that the Petitioner is financially stable and that the Beneficiary receives free housing. Nonetheless, the Petitioner, by its own terms, does not claim

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that the Beneficiary will be coming to the United States to work in a full time (average of at least 35 hours per week), compensated position, as required. *See* 8 C.F.R. § 204.5(m)(2); *see also* 8 C.F.R. § 204.5(m)(10) (addressing the evidentiary requirements for compensation).

IV. CONCLUSION

Considering the record in its entirety, we find that the Petitioner has not established by a preponderance of the evidence that it is a bona fide non-profit religious organization or that the Beneficiary will be coming to the United States to work in a full time, compensated position.

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, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of O-O-H-M-C-*, ID# 127677 (AAO Sept. 21, 2016)