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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: WAC 08 195 51466 Office: CALIFORNIA SERVICE CENTER Date: **OCT 28 2009**

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

U. Deadrack
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 AAO will withdraw the director's decision. Because the petition cannot yet be approved, the AAO will remand the petition to the California Service Center for further consideration and action.

The petitioner is identified as a Baptist church. It seeks to classify the beneficiary as a nonimmigrant religious worker under to section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1), to perform services as an associate pastor from July 4, 2008 to July 3, 2010. The director determined that the petitioner had failed to establish the required tax-exempt status.

If the petitioner claims to be a religious organization (as opposed to an organization affiliated with a religious organization), the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(9) requires the petitioner to submit either:

- (i) A currently valid determination letter from the IRS [Internal Revenue Service] 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.

The petitioner filed the petition on July 3, 2008. In an introductory letter dated May 22, 2008, the petitioner's [REDACTED], stated:

Our Church is a non-profit corporation having federal tax-exempt status as a charitable religious organization under Section 501(c)(3) of the Internal Revenue Code. Our Church is also exempt from Texas franchise tax. **Schedule 4** hereto contains . . . copies of the Texas franchise tax exemption letter for religious organizations, and a letter from the Baptist General Convention of Texas confirming our tax exempt status as a religious organization under IRS Code, Section 501(c)(3).

(Emphasis in original.) The group of exhibits jointly labeled "Schedule 4" includes a copy of an IRS letter, dated September 3, 1991, confirming that the Baptist General Convention of Texas (BGCT) has held a group exemption, Group Ruling Number [REDACTED], since 1964. The petitioner also submitted a copy of an October 20, 2005 letter from a BGCT official, stating that the petitioner "is affiliated with the Baptist Convention of Texas and as such is subject to Group Ruling [REDACTED]". Schedule 4 also included documentation of the petitioner's Texas state tax status.

On November 21, 2008, the director issued a request for evidence (RFE), instructing the petitioner to submit (among other things) evidence of its federal tax-exempt status. In response, [REDACTED] repeated that the petitioner is "under the cover of [the] Baptist General Convention of Texas." The petitioner submitted additional copies of previously submitted evidence showing that the petitioner falls under BGCT's group federal tax exemption.

The director denied the petition on February 20, 2009. In the decision, the director claimed that the petitioner's response to the RFE consisted of "an unsigned Texas Sales and Use Tax Exemption Certification."

On appeal, counsel stated that the petitioner "had always assumed correctly until now that the 503 c [sic] exemption of its parent organization, the Southern Baptist Convention [sic], was sufficiently [sic] proof" of tax-exempt status.

Notwithstanding counsel's incorrect references to "503 c" and "the Southern Baptist Convention," we agree with the essence of counsel's argument. The petitioner had repeatedly submitted evidence of its coverage under a federal group tax exemption. This evidence is sufficient under 8 C.F.R. § 214.2(r)(9)(ii). The director, however, did not address this evidence, or even cite any of the regulations directly relating to the evidentiary requirements relating to tax-exempt status. The director simply misidentified the petitioner's evidence. This denial cannot stand, and we hereby withdraw the director's decision.

We acknowledge that the letters from the IRS and the BGCT are several years old (dating from 1991 and 2005, respectively). If the director is concerned about the continued validity of the group exemption and the petitioner's coverage under that exemption, the proper course of action would be to instruct the petitioner to submit new letters from the IRS and the BGCT, to confirm that the group exemption is still valid and still covers the petitioning entity.¹

While the record does not support the only stated ground for denial, the petition cannot be approved without additional information. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Five days after the director issued the RFE, USCIS issued a rule significantly revising the former regulations at 8 C.F.R. § 214.2(r). Supplementary information published with the new rule specified: "All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

¹ We note that the IRS maintains a searchable online version of IRS Publication 78, *Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code of 1986*, at <http://www.irs.gov/app/pub-78/>. This database provides a simple way to verify the ongoing validity of tax exemptions.

The present petition was pending on the rule's effective date, but the director did not request the newly required documentation. Therefore, the petitioner has not had an opportunity to submit those materials. Before rendering a new decision, the director must allow the petitioner a chance to complete the record.

The new regulations include several evidentiary requirements relating to the petitioner and to the beneficiary. The petitioner has already met many of these requirements, but further evidence may be needed in the following areas:

8 C.F.R. § 214.2(r)(8) requires that an authorized official of the prospective employer of an R-1 alien must complete, sign and date an attestation prescribed by USCIS and submit it along with the petition. The prospective employer must specifically attest to all of the following:

- (i) That the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation;
- (ii) That the alien has been a member of the denomination for at least two years and that the alien is otherwise qualified for the position offered;
- (iii) The number of members of the prospective employer's organization;
- (iv) The number of employees who work at the same location where the beneficiary will be employed and a summary of the type of responsibilities of those employees. USCIS may request a list of all employees, their titles, and a brief description of their duties at its discretion;
- (v) The number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past five years by the prospective employer's organization;
- (vi) The number of special immigrant religious worker and nonimmigrant religious worker petitions and applications filed by or on behalf of any aliens for employment by the prospective employer in the past five years;
- (vii) The title of the position offered to the alien and a detailed description of the alien's proposed daily duties;
- (viii) Whether the alien will receive salaried or non-salaried compensation and the details of such compensation;
- (ix) That the alien will be employed at least 20 hours per week;

- (x) The specific location(s) of the proposed employment; and
- (xi) That the alien will not be engaged in secular employment.

The petitioner's prior submissions address some, but not all, of the above issues.

8 C.F.R. § 214.2(r)(10) states that, if the alien is a minister, the petitioner must submit the following:

- (i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and
- (ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological education is accredited by the denomination, or
- (iii) For denominations that do not require a prescribed theological education, evidence of:
 - (A) The denomination's requirements for ordination to minister;
 - (B) The duties allowed to be performed by virtue of ordination;
 - (C) The denomination's levels of ordination, if any; and
 - (D) The alien's completion of the denomination's requirements for ordination.

The petitioner has submitted a copy of the beneficiary's ordination certificate, but further evidence and information may be necessary relating to the qualifications for that ordination.

8 C.F.R. § 214.2(r)(11) requires the petitioner to 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. The petitioner has indicated that the beneficiary will receive a salary. 8 C.F.R. § 214.2(r)(11)(i) states:

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 documentation, such as IRS Form W-2 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.

Finally, 8 C.F.R. § 214.2(r)(12) states that any request for an extension of stay as an R-1 must include initial evidence of the previous R-1 employment. If the beneficiary:

(i) Received salaried compensation, the petitioner must submit IRS documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of filed income tax returns, reflecting such work and compensation for the preceding two years.

(ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available. If IRS documentation is unavailable, an explanation for the absence of IRS documentation must be provided, and the petitioner must provide verifiable evidence of all financial support, including stipends, room and board, or other support for the beneficiary by submitting a description of the location where the beneficiary lived, a lease to establish where the beneficiary lived, or other evidence acceptable to USCIS.

(iii) Received no salary but provided for his or her own support, and that of any dependents, the petitioner must show how support was maintained by submitting with the petition verifiable documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other evidence acceptable to USCIS.

The director must issue a new decision based on the new regulations promulgated on November 26, 2008. The director must, first, afford the petitioner an opportunity to submit all such evidence that the petitioner did not initially submit, or that the director has not previously requested. 8 C.F.R. § 103.2(b)(8). As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The matter is remanded to the director, California Service Center, for the issuance of a request for evidence and a new decision in accordance with the requirements of the new regulation published at 73 Fed. Reg. 72276 (Nov. 26, 2008). If the new decision is adverse to the petitioner, it shall be certified to the Administrative Appeals Office for review.