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Office of Administrative Appeals MS 2090
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FILE: WAC 09 048 51451 Office: CALIFORNIA SERVICE CENTER Date: **APR 29 2010**

IN RE: Petitioner: [REDACTED]
 Beneficiary: [REDACTED]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

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 dismiss the appeal.

The petitioner identifies itself as a Baptist church. It seeks to extend the beneficiary's status as a nonimmigrant religious worker under 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 assistant pastor/minister. The director determined that the petitioner had failed to submit required evidence of its tax-exempt status.

On appeal, the petitioner submits arguments from counsel and various documents concerning the petitioning entity.

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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(1) states that, to be approved for temporary admission to the United States, or extension and maintenance of status, for the purpose of conducting the activities of a religious worker for a period not to exceed five years, an alien must:

(i) Be 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 time of application for admission;

- (ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);
- (iii) Be coming solely as a minister or to perform a religious vocation or occupation as defined in paragraph (r)(3) of this section (in either a professional or nonprofessional capacity);
- (iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and
- (v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

The USCIS regulation at 8 C.F.R. § 214.2(r)(9) reads, in part:

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.

The petitioner filed the petition on December 10, 2008. The petitioner's initial submission included a copy of a 1976 letter from the California Franchise Tax Board, indicating that the petitioner is "exempt from state franchise or income tax." This letter is not from the IRS, and it relates to state, not federal, tax-exempt status.

██████████ pastor of the petitioning entity, stated: "Verification that we are a non-profit organization and have federal tax exemptions can be obtained by contacting the State of California IRS office." An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. All required application or petition forms must be properly completed and filed with any initial evidence required by applicable regulations and/or the form's instructions. 8 C.F.R. § 103.2(b)(1). The petitioner cannot satisfy this requirement by telling USCIS to contact a third party, such as the IRS, for further evidence. While USCIS reserves the right to verify the petitioner's claims and evidence under 8 C.F.R. § 214.2(r)(16), USCIS is under no obligation to solicit or obtain required evidence on the petitioner's behalf, whether or not the petitioner informs USCIS where such evidence can be obtained. ██████████ assertion that a local IRS office will confirm the petitioner's tax-exempt status is not, itself, evidence of that status.

On January 15, 2009, the director instructed the petitioner to submit an IRS determination letter to establish federal tax-exempt status. In response, [REDACTED] quoted IRS Publication 1828, *Tax Guide for Churches and Religious Organizations*: "Churches that meet the requirements of IRC section 501(c)(3) are automatically considered tax exempt and are not required to apply for and obtain recognition of tax-exempt status from the IRS." [REDACTED] repeated the assertion that "the State California [*sic*] IRS office" could verify "that we are a non-profit organization and have federal tax exemptions."

The director denied the petition on March 13, 2009, stating that the petitioner "did not provide a valid IRS determination letter confirming [its] tax exempt status."

On appeal, the petitioner submits documentation of its affiliation with [REDACTED] International. This documentation, however, does not include an IRS group determination letter for that organization, or evidence that the petitioner is covered by such a group exemption.

Counsel states: "Although it has not provided [USCIS] with a determination letter issued by the Internal Revenue Service, the petitioner has submitted . . . ample evidence establishing and demonstrating that it is a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986." Counsel repeats the quotation from IRS Publication 1828 that "[c]hurches . . . are automatically considered tax exempt and are not required to apply for and obtain recognition of tax-exempt status from the IRS."

We do not dispute the IRS's interpretation of its own requirements, but in this proceeding, the petitioner seeks a benefit not from the IRS, but from USCIS. 8 C.F.R. § 214.2(r)(9) clearly requires the petitioner to submit an IRS determination letter. When USCIS published this regulation, supplementary information published with the regulation explained USCIS's reasoning:

Several commenters objected to the proposed requirement that petitioners must file a determination letter from the IRS of tax-exempt status under IRC section 501(c)(3), 26 U.S.C. 501(c)(3), with every petition. Commenters pointed out that the IRS does not require churches to request a determination letter to qualify for tax-exempt status. A designation that an organization is a "church" is sufficient to qualify for tax-exempt status. Although some churches choose to request a formal IRC section 501(c)(3) determination, they are not required to do so. . . .

USCIS recognizes that the IRS does not require all churches to apply for a tax-exempt status determination letter, but has nevertheless retained that requirement in this final rule. See Internal Revenue Service, *Tax Guide for Churches and Religious Organizations: Benefits and Responsibilities under the Federal Tax Law* (IRS pub. no. 1828, Rev. Sept. 2006). A requirement that petitioning churches submit a tax determination letter is a valuable fraud deterrent. An IRS determination letter represents verifiable documentation that the petitioner is a bona fide tax-exempt organization or part of a group exemption. Whether an organization qualifies for

exemption from federal income taxation provides a simplified test of that organization's non-profit status.

Requiring submission of a determination letter will also benefit petitioning religious organizations. A determination letter provides a petitioning organization with the opportunity to submit exceptionally clear evidence that it is a bona fide organization.

73 Fed. Reg. 72276, 72279-80 (Nov. 26, 2008). This regulatory requirement was already in effect when the petitioner filed the petition in December 2008. Under the controlling regulations, the issue is not whether the IRS would automatically regard the petitioner as tax-exempt, but whether the petitioner has produced the required IRS determination letter. The petitioner, on appeal, concedes its failure to meet this requirement. Therefore, USCIS cannot approve the petition. We therefore agree with the director's decision to deny the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will dismiss the appeal.

ORDER: The appeal is dismissed.