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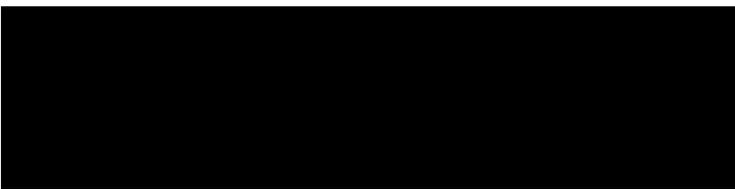
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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FILE: WAC 09 134 50730 Office: CALIFORNIA SERVICE CENTER Date: **FEB 01 2010**

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:

SELF-REPRESENTED

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 is described as a Baptist church and Christian school. It seeks to classify the beneficiary 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 a preacher, teacher and missionary. The director determined that the petitioner had failed to submit evidence of its federal tax-exempt non-profit status.

On appeal, the petitioner asserts that it is automatically tax-exempt and is not required to obtain confirmation from the Internal Revenue Service.

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.

U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. § 214.2(r)(1) state 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 petitioner's initial submission included an unsigned letter attributed to [REDACTED], a certified public accountant. The letter reads, in part:

[8 C.F.R. §] 204.5(m)(2) states that, for purposes of establishing whether an organization is a bona fide non-profit religious organization, an organization that has never sought tax exemption, but establishes to the satisfaction of the Internal Revenue Service (IRS) that it would be eligible therefore if it had applied for tax exempt status, will meet the definition [of a bona fide nonprofit religious organization].

[The petitioner] is a "church," and as such is recognized by the IRS without the requirement of filing form 1023-Application for Recognition of Tax Exempt Status (Internal Revenue Code (IRC) Section 508). . . .

Because of the exclusion from filing form 1023, a tax exemption letter is not required for a church. Accordingly the IRS has not issued an exemption letter to [the petitioner].

The director denied the petition on May 18, 2009, because the petitioner had not submitted a copy of a valid IRS determination letter. On appeal, the petitioner submits a copy of the letter quoted above. [REDACTED] of the petitioning organization, states: "The IRS regulation[s] do not require an authentic church to apply for a letter."

The letter attributed to [REDACTED] quoted an obsolete version of the USCIS regulation at 8 C.F.R. § 204.5(m)(2), which USCIS replaced and superseded when it published new regulations on November 26, 2008. (We note, also, that the quoted regulation pertained to immigrant rather than

nonimmigrant petitions, but the former regulation at 8 C.F.R. § 214.2(r)(2) contained similar language.)

By the time the petitioner filed the petition on April 6, 2009, the new regulations were already in effect. The new regulations included a revised definition of “bona fide nonprofit religious organization” at 8 C.F.R. § 214.2(r)(3). USCIS replaced the phrase “one that has never sought such exemption but establishes to the satisfaction of the Service that it would be eligible therefor if it had applied for tax exempt status” with “possessing a currently valid determination letter from the Internal Revenue Service (IRS) confirming such exemption.”

8 C.F.R. § 214.2(r)(9) now reads:

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; 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), 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 statement certifying that the petitioning organization is affiliated with the religious denomination. The statement must be submitted by the petitioner along with the petition.

In supplementary information published with this change to the regulations, USCIS stated:

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. . . .

[A]n organization must apply for and receive an IRC section 501(c)(3) determination letter to demonstrate nonprofit status if that organization wishes to utilize either the R-1 nonimmigrant or the special immigrant religious worker program.

73 Fed. Reg. 72276, 72279-80 (Nov. 26, 2008).

This proceeding is before USCIS, not the IRS, and therefore the issue in this proceeding is not whether the IRS automatically considers the petitioner to be a tax-exempt religious organization. The issue, rather, is whether the petitioner submitted evidence to USCIS that is required under USCIS regulations. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). By stating that it need not obtain an IRS determination letter, the petitioner concedes, rather than contests, the stated basis for denial. Because the petitioner has failed to meet a basic eligibility requirement, the petition cannot be approved, and must be denied.

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 met that burden. Accordingly, the AAO will dismiss the appeal.

ORDER: The appeal is dismissed.