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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 07 190 52541 Office: CALIFORNIA SERVICE CENTER Date: **JAN 26 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)

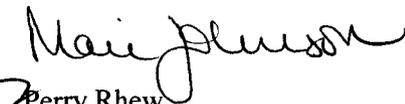
ON BEHALF OF PETITIONER:

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 a Conservative Jewish synagogue. It seeks to change the beneficiary's status to that of 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 cantor. The director determined that the petitioner had failed to submit required evidence of its tax-exempt status.

On appeal, the petitioner submits new documentation from the Internal Revenue Service (IRS).

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 filed the petition on June 11, 2007. At that time, the USCIS regulation at 8 C.F.R. § 214.2(r)(3)(i) required the petitioner to submit evidence that the organization qualifies as a non-profit organization, in the form of either:

- (A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or
- (B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The petitioner submitted documentation of its status as an Iowa Nonprofit Corporation, but no evidence of federal tax-exempt status. Instead, the petitioner submitted a partial copy of the instructions for IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code. The instructions indicated that synagogues and other houses of worship "may be considered tax exempt under section 501(c)(3) even if they do not file Form 1023."

On November 26, 2008, while the petition was pending, USCIS published new regulations for nonimmigrant religious worker petitions. The new regulation at 8 C.F.R. § 214.2(r)(9) requires the petitioner to submit 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.

Supplementary information published with the new regulations 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).

Responding to earlier comments about this rule, 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.

Id. at 72279-80.

On January 14, 2009, the director issued a request for evidence, instructing the petitioner to submit evidence newly required under the revised regulations. Among other things, the director requested IRS documentation of the petitioner's tax-exempt status.

In response to the notice, the petitioner resubmitted previously submitted materials, along with the claim that "Form 1023 is not necessary and that synagogues are, by operation of law, considered to hold tax exempt status under this provision of the law even if they do not file this form." This language appeared in a photocopied letter from May 2007, before the new regulations existed. The petitioner did not acknowledge or address the new regulatory requirements at 8 C.F.R. § 214.2(r)(9).

The director denied the petition on May 16, 2009, because the petitioner failed to submit an IRS determination letter when the director requested it. The petitioner filed its appeal on June 16, 2009. The appeal included a copy of an IRS Form 1023 application, along with a copy of a June 15, 2009 cover letter requesting expedited processing of the application. The petitioner has since submitted a copy of an IRS determination letter dated September 17, 2009, indicating that the petitioner is a tax-exempt church.

The issue in this proceeding is not whether the IRS now considers the petitioner to be a tax-exempt religious organization. The issue, rather, is whether the petitioner provided evidence required by USCIS regulations when instructed to do so. We are aware that the requirement for an IRS letter did not exist until November 2008. Nevertheless, the timing of the petitioner's activities is very significant. When the director specifically instructed the petitioner to submit an IRS determination letter in January 2009, the petitioner did not, at that time, make any evident attempt to obtain such a letter. The petitioner did not file IRS Form 1023 until after the petition was denied.

In a response to a request for evidence, submission of only some of the requested evidence will be considered a request for a decision on the record. *See* 8 C.F.R. § 103.2(b)(11). Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. 8 C.F.R. § 103.2(b)(14). The director correctly denied the petition based on the evidence available at the time. The petitioner's subsequent submission of an IRS determination letter does not retroactively nullify the director's correct finding that the petitioner had failed to provide that evidence in response to a specific request.

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* The circumstances preclude the AAO from considering the sufficiency of the evidence submitted on appeal.

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

ORDER: The appeal is dismissed.