

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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
and Immigration
Services

PUBLIC COPY

D13

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: JUL 07 2010

IN RE:

Petitioner:

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:

[Redacted]

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.

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 sustain the appeal and approve the petition.

The petitioner is an Islamic mosque. 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 imam. The director determined that the petitioner failed to establish that it qualifies as a tax-exempt religious organization.

On appeal, the petitioner submits a brief from counsel and various documents.

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 Form I-129 petition on November 17, 2008. Where, as here, the petitioner claims to be a house of worship (rather than some other type of religious organization), the USCIS regulation at 8 C.F.R. § 214.2(r)(9) requires the petitioner to submit:

- (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.

In an introductory letter dated October 27, 2008, Dr. [REDACTED] chairman of the petitioner's board of trustees, stated that the IRS "recognized Petitioner as 'exempt from federal income tax.' . . . The Petitioner has submitted a copy of a signed letter from the IRS showing the Petitioner's tax exempt status." The petitioner submitted a copy of an IRS determination letter, dated July 28, 1981, stating that the petitioner is "an organization described in section 509(a)(1) & 170(b)(1)(A)(i)" of the Internal Revenue Code. Section 170(b)(1)(A)(i) of the Internal Revenue Code pertains to "a church or a convention or association of churches." Therefore, the IRS determination letter is, on its face, evidence that the IRS considers the petitioner to be a tax-exempt "church." The letter showed the petitioner's address as [REDACTED], Michigan.

Shortly after the petitioner filed the petition, USCIS significantly revised the regulations relating to nonimmigrant religious worker petitions. Supplementary information published at the time 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).

On February 17, 2009, the director issued a request for evidence (RFE) in order to allow the petitioner an opportunity to meet the new evidentiary requirements set forth in the revised regulations. Among

other things, the director requested a copy of a currently valid IRS determination letter to establish the petitioner's tax-exempt status. The director stated: "Electronic records indicate that your church in your current address is not recognized by IRS as tax exempt." The director did not elaborate as to the nature of the "[e]lectronic records."

In response, the petitioner submitted a second copy of the same IRS letter that had accompanied the initial submission, as well as an April 15, 2009 affidavit from [REDACTED] petitioner's board of trustees, who stated:

In 1978 the [petitioner] established a permanent location at [REDACTED] in Kalamazoo Michigan. In 1980 it purchased a building at [REDACTED] Michigan and began conducting services there in 1982. In January 1985, the [petitioner] officially designated its registered office at [REDACTED] Michigan.

The petitioner's then-attorney of record, [REDACTED] stated that "the petitioner . . . inadvertently failed to file a change of address with the IRS until the RFE brought that fact to their attention." The petitioner submitted a copy of IRS Form [REDACTED] dated March 17, 2009.

Copies of IRS Account Transcripts, dated May 6, 2009, showed that the petitioner filed "tax returns" in 2006-2008, paying "Federal tax deposits" of just over \$400 per month. The IRS documents show the petitioner's [REDACTED] address and the same nine-digit Employer Identification Number that appears on both the Form I-129 petition and the IRS determination letter.

The director denied the petition on July 8, 2009, stating:

On May 11, 2009, the petitioner responded to the request for evidence (RFE). After review of the response, it is determined that the petitioner failed to submit a valid and current IRS determination letter confirming their tax exempt status.

In response to the RFE, the petitioner submitted the following: (1) a letter from IRS dated May 6, 2009 informing the petitioner of their Employer Identification Number; and, (2) IRS account transcripts of the petitioner dated May 6, 2009 indicating taxes have been paid by the petitioner.

These documents do not prove that the petitioning religious organization is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986. Therefore, 8 C.F.R. 204.5(m)(5) has not been met in the present case. In fact, it appears from the IRS account transcripts that the petitioner is not exempt from taxation.

On appeal, the petitioner submits a new IRS letter dated August 7, 2009, confirming that "a determination letter was issued in July 1981 that recognized you as exempt from Federal income tax. Our records further indicate that you are currently exempt under section 501(c)(3) of the Internal

Revenue Code.” The 2009 letter shows the [REDACTED] address, in care of [REDACTED] (who represented the petitioner at the time the petitioner filed the appeal). The 2009 letter does not indicate or imply that there has been any interruption in the petitioner’s tax-exempt status; it does not, for instance, refer to restoration of that status.

Attorney [REDACTED] argues that the tax payments noted by the director are taxes withheld from the beneficiary’s salary, rather than income taxes owed by the petitioner itself. Payroll documents show that the amounts withheld from the petitioner’s paychecks account for most of the reported payments. There is a discrepancy of a few dollars per month, which the record does not fully resolve. Nevertheless, the amount in contention is so small that it cannot represent federal income tax on the petitioner’s six-figure annual income. As attorney [REDACTED] notes, the regulations only require the petitioner to submit a valid IRS determination letter, and the petitioner has submitted a determination letter along with a new IRS letter that verifies its validity.

It is understandable that the director is concerned about the different addresses, but at the same time, it is hardly remarkable that the petitioner has changed addresses during the 28 years between the IRS letter and the filing of the petition. IRS documentation showing the Employer Identification Number and the petitioner’s new address persuasively ties the petitioner, at its present location, to the IRS determination letter from 1981. The director cited these very documents as grounds for denial, without acknowledging how they support the petitioner’s claims. There is no evidence, nor any reason to suspect, that the petitioner is impersonating a different mosque, by the same name, that continues to operate on Buckhout Street. The preponderance of available evidence heavily favors withdrawal and reversal of the director’s decision.

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 met that burden. Accordingly, the AAO will withdraw the decision of the director denying the petition, and approve the petition.

ORDER: The appeal is sustained. The petition is approved.