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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: NOV 10 2010

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

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(i) of the
Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(i)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 identified as a church belonging to the [REDACTED]. 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 minister. The director determined that the petitioner had failed to submit required evidence of its tax-exempt status.

On appeal, the petitioner submits a brief from counsel and 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)(I) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(I), pertains to a nonimmigrant who seeks to enter the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination.

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.

For a house of worship such as the petitioner, the 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 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. (Clause (iii) in the regulation applies to other types of organization affiliated with a religious organization.)

The petitioner filed the Form I-129 petition on September 4, 2009. The petitioner's initial submission included a copy of a State of Oklahoma amended/not for profit certificate of incorporation. This is a state document rather than an IRS determination letter. The petitioner also submitted a copy of an IRS letter from 1999, informing the petitioner that the IRS had assigned the petitioner employer identification number (EIN) [REDACTED]. The letter is not a determination letter showing tax-exempt status, although it included instructions on how to obtain such a determination letter.

On October 8, 2009, the director instructed the petitioner to submit additional evidence, including a copy of an IRS determination letter showing that the petitioner is tax-exempt in its own right, or covered by a group exemption. The director advised that the regulations "allow ONLY the above mentioned evidence. State or local government tax exemption documents do not meet USCIS requirements" (emphasis in original).

In response, the petitioner's then-attorney of record, [REDACTED] stated that the petitioner's former pastor "resigned when misconduct charges [were] pending," and that "the Church's CPA has requested affiliation to [REDACTED] of Los Angeles, California; and we are providing IRS information regarding the status of the request."

The petitioner submitted a copy of a November 26, 2009 letter from the IRS, indicating that the IRS had assigned the petitioner EIN [REDACTED]. The petitioner did not explain why it apparently applied for a second EIN if the IRS had already assigned it a different EIN ten years earlier. The new letter stated: "Assigning an EIN does not grant tax-exempt status to non-profit organizations." Like the previous letter, the new letter included instructions on how to apply for recognition of tax-exempt status and receive a determination letter.

The director denied the petition on February 25, 2010, because "the petitioner did not provide a valid IRS determination letter confirming [its] tax exempt status. Therefore, the petitioner has not established that the[] organization qualifies as a bona fide nonprofit religious organization in the United States."

On appeal, counsel states:

The agency's denial is based solely on an allegation that the petitioner is not a 501(c)(3) non-profit religious organization, or has not established that it is.

The petitioner is a 501(c)(3) religious organization.

As a newly established branch church, the petitioner is covered by the parent church's . . . tax exemption determination dated November 9, 1999. As such, the petitioner is a 501(c)(3) religious organization.

For the foregoing reasons, the denial in this matter is in error and should be vacated.

In a supplement to the appeal, counsel states that the parent church in Los Angeles "has also applied for a group exemption. . . . Due to agency backlogs, that determination is still pending. It is certain that the group exemption will be granted." The petitioner also submits a copy of a February 5, 2010 IRS letter, acknowledging the Los Angeles church's "request for a group ruling." This contradicts counsel's earlier claim that "the petitioner is covered by the parent church's . . . tax exemption determination dated November 9, 1999." The petitioner submits a copy of a November 9, 1999 IRS determination letter issued to the Los Angeles church, but it is not a group determination letter, and it does not apply to any other church.

Counsel adds: "The petitioner is a bona fide church and as such is 'automatically considered tax exempt.'" Counsel attributes the quoted language to page 3 of IRS Publication 1828, *Tax Guide for Churches and Religious Organizations*. 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. The USCIS regulation at 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 September 2009. 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, does not dispute its failure to meet this requirement. Therefore, USCIS cannot approve the petition.

The director did not find, as counsel alleges, that "the petitioner is not a 501(c)(3) non-profit religious organization." Rather, the director found that the petitioner had failed to meet its burden of proof by submitting required evidence. Counsel, on appeal, does not contest this specific finding.

Where an applicant or petitioner does not submit all requested additional evidence . . . , a decision shall be issued based on the record. 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 non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

When the director requests specific evidence before rendering a decision, and the petitioner fails to submit that evidence at the time, we will not consider such evidence when submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). Even then, the petitioner does not submit the required evidence even on appeal. We have only counsel's assurance that the evidence "is certain" to come into existence at some future date.

The director found that the petitioner failed to submit an IRS determination letter, as required by the regulation at 8 C.F.R. § 214.2(r)(9). The petitioner has not shown that this finding was in error. We therefore agree with the director's finding, and we will dismiss the appeal.

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.