

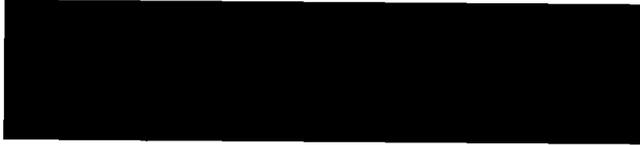
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

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)(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:

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 appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as an assistant pastor. The director determined that the petitioner had not established that it qualifies as a bona fide nonprofit religious organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code (IRC).

The petitioner submits additional documentation on appeal.

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 issue presented is whether the petitioner has established that it is a bona fide nonprofit tax-exempt, religious organization.

The regulation at 8 C.F.R. § 214.2(r)(3) defines a tax-exempt organization as “an organization that has received a determination letter from the Internal Revenue Service (IRS) establishing that it, or a group it belongs to, is exempt from taxation in accordance with section[] 501(c)(3) of the [IRC].” Additionally, the regulation at 8 C.F.R. § 214.2(r)(9) provides:

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 [IRC], 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.

With the petition, filed on June 2, 2009, the petitioner submitted a copy of a September 20, 2000 letter from the IRS to the [REDACTED]

[REDACTED] Los Angeles, California, indicating that the organization had been granted tax-exempt status under section 501(c)(3) of the IRC as an organization described under sections 509(a)(1) and 170(b)(1)(A)(vi) of the IRC. The petitioner also submitted a May 20, 2009 "Certificate of a Member Church" from the [REDACTED] [REDACTED] in Los Angeles, certifying that the petitioner was a "member church in full connection" with that organization.

The petitioner submitted no documentation to establish that the [REDACTED] [REDACTED] is the same organization as the [REDACTED]. Additionally, the petitioner submitted no documentation that the [REDACTED]

tax-exemption granted to the [REDACTED] applied to any of its subordinate units. Further, an organization that qualifies for tax exemption as a publicly supported organization under section 170(b)(1)(A)(vi) of the IRC can be either religious or non-religious. The burden of proof is on the petitioner to establish that its classification under section 170(b)(1)(A)(vi) derives primarily from its religious character, rather than from its status as a publicly supported charitable and/or educational institution. The organization can establish this by submitting documentation that establishes the religious nature and purpose of the organization, such as a copy of its organization instrument, brochures or other literature describing the religious purpose and nature of the activities of the organization. 8 C.F.R. § 214.2(r)(9).

In a request for evidence (RFE) dated August 5, 2009, the director advised the petitioner that the IRS letter submitted did not establish that the [REDACTED] Los Angeles address was tax-exempt under section 501(c)(3) of the IRC as a religious organization. The director instructed the petitioner to submit documentation to establish its tax-exempt status pursuant to current regulations.

In response, the petitioner submitted a copy of a December 5, 1994 letter from the IRS advance ruling to the [REDACTED] recognizing that organization as tax-exempt under sections 501(c)(3) and 170(b)(1)(A)(vi) of the IRC. The petitioner also submitted a copy of a certificate of amendment indicating that the [REDACTED] in 2000. As previously discussed, the [REDACTED] was granted tax-exempt status by the IRS in September 2000. However, the tax-exempt status did not apply to any of the organization's subordinate units nor did the IRS letter indicate that the exemption was based on the organization's status as a religious organization.

The petitioner submitted a May 22, 2007 letter from the [REDACTED] certifying that the petitioner was one of its affiliate churches. The letter refers to a "group exemption letter" that applied to the petitioning organization. However, no such letter is included in the record. Furthermore, the petitioner submitted a September 30, 2009 letter from the [REDACTED] indicating that the petitioning organization was now known as [REDACTED] and that it was a member of the [REDACTED]. The record does not, however, reflect that the petitioner has had a name change, although the petitioner stated in an October 5, 2009 letter that it was "taking necessary step[s] to change its name." The petitioner again provided no documentation to establish that the [REDACTED] are the same organization.

The director denied the petition, finding that the petitioner had failed to provide a currently valid determination letter from the IRS establishing that either the [REDACTED]

██████████ were tax-exempt under section 501(c)(3) of the IRC. The director also stated that although the petitioner stated that it was in the process of changing its name, it had used the name ██████████ since 2007. The director therefore questioned documentation previously submitted by the petitioner.

On appeal, the petitioner submits a December 18, 2009 letter from the IRS verifying the tax-exempt status of ██████████ as an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the IRC, a December 22, 2009 letter from the ██████████ signed by Reverend ██████████ verifying that the ██████████ changed its name to the ██████████ and documentation indicating the petitioner had filed an amendment to change its name to ██████████ on October 27, 2009.

Reverend ██████████ does not state in his letter when the ██████████ changed its name to the ██████████ and the petitioner submitted no additional documentation to corroborate the name change. We note that as late as December 22, 2009, ██████████ had not notified the IRS of the name change and the petitioner submitted no documentation to establish that the ██████████ had received a determination of tax-exempt status from the IRS.

Additionally, documentation from the IRS does not establish that the tax-exempt status granted to the ██████████ is a group tax-exemption that applies to its subordinate units. Nor does the letter indicate that the organization's tax-exempt status derives from its status as a religious organization.

The petitioner has therefore failed to provide a currently valid determination letter from the IRS establishing that it is a tax-exempt organization or that it is a religious organization that is recognized as tax-exempt under a group tax-exemption. Accordingly, the petitioner has failed to establish that it is a bona fide nonprofit, religious organization.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.