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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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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

SEP 22 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:

[REDACTED]

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, with a fee of \$585. 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 an Islamic school. It seeks to extend the beneficiary's status as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as a teacher. 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).

On appeal, counsel asserts that the director "erred by failing to recognize the tax exempt status of the petitioner conferred by law, without the necessity of an IRS [Internal Revenue Service] determination letter" and "by failing to recognize and accept the continuing validity of petitioner's tax exempt status previously proved upon the granting of the initial R-1 for the beneficiary." Counsel submits a brief and additional documentation in support of the 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 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.

In a June 30, 2007 letter submitted in support of the petition, the petitioner stated that it is “wholly owned by the [REDACTED] which received its tax exempt status in September 1981.” With the petition, filed on December 5, 2007, the petitioner submitted a copy of a September 10, 1981 IRS letter to the [REDACTED] in Columbia, Missouri, granting that organization tax-exempt status under sections 501(c)(3) and 170(b)(1)(A)(i) of the IRC. Despite counsel’s assertion in his December 4, 2007 letter submitted with the petition, the letter from the IRS did not grant tax-exempt status to the subordinate units of the [REDACTED]

On August 25, 2008, an immigration officer (IO) visited the petitioner's premises for the purpose of conducting a compliance review verification. Prior to his visit, the IO confirmed with the IRS that the petitioning organization had been assigned a federal tax employer identification number (FEIN), had not received a recognition of tax-exempt status from the IRS, and was not covered under the IRS tax exemption granted to the [REDACTED]. During an interview, [REDACTED] the petitioner's chairman of the board of education and the official who signed the petition, told the IO "that the school was mainly supported by tuition and two main fundraisers" and that the petitioner received "some support" from the [REDACTED].

In a January 29, 2009 Notice of Intent to Deny (NOID) the visa petition, the director advised the petitioner of the IO's findings. In response, counsel provided a February 26, 2009 affidavit in which he stated that he was "unaware that there had been a change of entity for the School and that it was [now] separately incorporated" at the time the petition was filed and that he had assumed that the petitioner "was still operated under the auspices of the Islamic Institute." Counsel further stated that the petitioner "had not filed for tax-exempt status apparently because no one at the School knew how to go about it," and that the petitioner filed IRS Form 1023 on February 25, 2009. Counsel stated that "according to the IRS instructions and regulations accompanying the form, the tax-exempt status of the filing organization becomes effective immediately on the date of filing, which for the IRS is the postmark date. Therefore, the [petitioning organization] now has its own tax-exempt status."

The petitioner submitted a copy of the completed IRS Form 1023 with supporting documentation and a copy of a postal receipt dated February 25, 2009. Counsel provided no documentation to support his assertion that the petitioner was recognized as tax-exempt by the IRS upon mailing the IRS Form 1023. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner has not submitted a letter from the IRS granting it tax-exempt status as of the date of this decision. Furthermore, assuming that counsel's assertion is correct, the petitioner did not obtain tax-exempt status until after the petition was filed. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

The director denied the petition, finding that the petitioner had not established that it was a bona fide nonprofit religious organization at the time the petition was filed.

Counsel expands on his argument on appeal, asserting that the petitioner is an integrated auxiliary of the [REDACTED] and therefore (1) has tax-exempt status without the necessity of an IRS determination letter and (2) has an automatic and "statutory 'mandatory' tax exemption."

Counsel argues first that the petitioner meets the definition of an integrated auxiliary of [REDACTED] as it is a religious school affiliated with the church and is internally supported. Counsel further

asserts that, as an integrated auxiliary of the [REDACTED], the petitioner qualifies “for automatic tax exemption under 26 U.S.C. § 508(c),” which “grants an automatic and *mandatory* tax exemption to integrated auxiliaries of churches.” [Emphasis in the original.]

We do not have to reach the question of whether the petitioner qualifies as an integrated auxiliary of the [REDACTED]. Counsel has misread and misapplied the language of 26 U.S.C. § 508(c) which requires organizations, with specific exceptions, that are organized after October 9, 1969 to notify the Secretary of the Treasury that it is applying for recognition under section 501(c)(3) of the IRC and that the organization’s failure to do so raises the presumption that it is a private foundation. Subsection (c) lists the exceptions to the statute, including “mandatory exceptions” applicable to churches, their integrated auxiliaries, and conventions or associations of churches. Thus, the statute exempts churches and their integrated auxiliaries from the requirement to notify the Treasury Secretary that it is applying for section 501(c)(3) status and not that they had been granted an “automatic and mandatory tax exemption.”

IRS Publication 557, *Tax-Exempt Status for Your Organization*, requires organizations who seek recognition of tax exemption under section 501(c)(3) of the IRC to file an IRS Form 1023 with supporting documentation. The publication at page 21, however, exempts churches or integrated auxiliaries of a church from filing IRS Form 1023 “if they meet the requirements of section 501(c)(3).” Therefore, there is no “mandatory” exemption of any organization under section 501(c)(3).

Furthermore, the regulations governing immigration under the purview of the United States Citizenship and Immigration Services (USCIS) and those governing federal taxation under the purview of the IRS serve two different purposes. While the IRS regulations may automatically exempt churches as nonprofit organizations for the purpose of determining whether such an organization is required to file a federal tax return and pay taxes, the USCIS regulation offers no such exemption for those organizations who seek benefits under immigration laws. We note that the IRS guidance to churches includes the following advisory:

Although there is no requirement to do so, many churches seek recognition of tax-exempt status from the IRS because such recognition assures church leaders, members, and contributors that the church is recognized as exempt and qualifies for related tax benefits.

IRS Publication 1828, *Tax Guide for Churches and Religious Organizations*.

Thus, the IRS recognizes that there may be reasons why organizations that are not required to file an IRS Form 1023 may want to obtain official IRS recognition as a tax-exempt organization although under IRS regulations, they are not required to do so. The IRS provides detailed guidance on how to obtain a determination letter that applies equally to churches and integrated auxiliaries and to other religious organizations. *Id.*

According to IRS Publication 557, the IRS does not automatically accept that a particular organization is a church simply because the organization states that it is. The organization must meet the requirements of section 501(c)(3) to be automatically exempt, and one of the reasons for choosing to file the Form 1023 is to receive IRS recognition of the organization as a church.

Further, while the Act and its implementing regulations do not require an organization to establish that it is a church or, as counsel argues, an integrated auxiliary of a church, to qualify as a bona fide nonprofit religious organization, it must establish that its tax-exemption is based on its religious nature. As discussed earlier, the IRS and USCIS regulations serve different purposes, and while a currently valid letter from the IRS recognizing an organization as tax exempt is required under USCIS regulations, the IRS automatic exemption of a church or integrated auxiliary as nonprofit is unrelated to the USCIS requirements that the organization establish itself as both a religious organization and as a nonprofit organization for immigration purposes.

Counsel also asserts that the beneficiary had been approved for R-1 status based on a petition filed by ICCM on behalf of the instant petitioner. Counsel states:

The only change since then has been incorporating the School and obtaining a separate FEIN for it. The relationship to the ICCM is still that of integrated auxiliary, because the petitioner is still "internally supported" by the ICCM. The statute continues the School's tax-exempt status. . . . Therefore, to the extent that a letter is required and the Service is unwilling to accept the statutory determination as an adequate substitute under its arguably defective regulatory requirement, the ICCM IRS determination letter submitted with the petition would still suffice as evidence of the tax exempt status of this integrated auxiliary of the church. It would not make sense that the previously tax exempt school would suddenly become non-tax exempt while still meeting the requirements of the statute. The tax exemption pre-existed the petition. [Footnote omitted.]

We reject counsel's argument. First, the previous petition filed on behalf of the beneficiary was filed by the petitioner in the current case and not, as alleged by counsel, by the [REDACTED]. Further, if the previous nonimmigrant petition was approved based on the same unsupported assertion of the petitioner's tax-exempt status that is contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petition on behalf of the beneficiary, the AAO would not be bound to follow

the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Counsel also assumes, with no supporting documentation, that as an integrated auxiliary, the petitioner and the [REDACTED] are the same organization and therefore the petitioner is exempt under the IRS determination letter issued to the [REDACTED]. The IRS regulations consistently refer to churches and integrated auxiliaries as separate entities. The petitioner has been incorporated as a separate entity and has its own separate FEIN. Therefore, it is not the same legal organization as the [REDACTED] recognized by the IRS in its determination letter.

Additionally, the letter to the [REDACTED] does not indicate that the IRS has granted a group exemption to the [REDACTED]. The IO verified this fact with the IRS prior to his compliance review verification visit to the petitioning organization. Therefore, the petitioner is not covered under a group exemption granted to a parent organization.

There is nothing in the record to reflect that the petitioner has a valid determination letter from the IRS and, although the petitioner indicates that it filed for such a determination in February 2009, as of the date of this decision, it has not provided the determination to USCIS.

Accordingly, the petitioner has failed to provide a determination letter from the IRS to establish that it is a bona fide nonprofit religious organization exempt from taxation or to establish that it is covered under a group exemption granted to its parent organization. The petitioner has therefore failed to establish that it is a bona fide nonprofit religious organization exempt as defined by the regulation.

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.