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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  
and Immigration  
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **SEP 23 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, 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 a church. 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 an associate pastor. The director determined that the petitioner had not established that it qualifies as a bona fide nonprofit religious organization.

The petitioner submits 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 [Internal Revenue Service] establishing that it, or a group it belongs to, is exempt from taxation in accordance with section[] 501(c)(3) of the Internal Revenue Code" (IRC). 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, the petitioner submitted a copy of a State of West Virginia "Exemption Certificate" on which the petitioner identifies itself as a church and claims exemption from West Virginia sales tax on qualified purchases. The petitioner also submitted a copy of its articles of association and bylaws.

The director denied the petition because the petitioner failed to submit a determination letter from the IRS as required by the above-cited regulation.

On appeal, the petitioner submits a copy of a May 13, 2009 letter from the [REDACTED] verifying that the petitioner is affiliated with that organization and a copy of a June 20, 2007 letter from the IRS granting tax-exempt status to the [REDACTED] under sections 501(c)(3) and

170(b)(1)(A)(i) of the IRC. However, the IRS letter to the [REDACTED] Church does not indicate that the church was granted a group exemption applicable to any of its subordinate units.

As the petitioner has failed to provide a currently valid determination letter from the IRS establishing that it is a tax-exempt organization or that it is exempt from taxation under a group status granted to the [REDACTED] Church, it has failed to establish that it is a bona fide nonprofit religious organization as defined by the regulation.

Beyond the decision of the director, the petitioner has failed to establish how it will compensate the beneficiary. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The regulation at 8 C.F.R. § 214.2(r)(11) provides:

*Evidence relating to compensation.* Initial evidence must state how the petitioner intends to compensate the alien, including specific monetary or in-kind compensation, or whether the alien intends to be self-supporting. In either case, the petitioner must submit verifiable evidence explaining how the petitioner will compensate the alien or how the alien will be self-supporting. Compensation may include:

(i) *Salaried or non-salaried compensation.* Evidence of compensation may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. IRS documentation, such as IRS Form W-2 or certified tax returns, must be submitted, if available. If IRS documentation is unavailable, the petitioner must submit an explanation for the absence of IRS documentation, along with comparable, verifiable documentation.

The petitioner indicated on the Form I-129, Petition for Nonimmigrant Worker, that it would pay the beneficiary \$23,530 in addition to free housing. The Form I-129 also indicates that the beneficiary has been associated with the petitioning organization since June 2006. The petitioner submitted a copy of an IRS Form W-2, Wage and Tax Statement, that it issued to the beneficiary in 2008, reflecting that it paid him \$12,670 in wages. The petitioner also submitted a copy of a "vendor quick report," indicating that it paid [REDACTED] 6,400 in seven payments over an approximate 1½ year period for "intern housing." Nothing in the record reflects that the beneficiary occupied any of the "intern housing."

The petitioner has submitted no verifiable documentation to establish how it will compensate the beneficiary with a salary of \$23,530. Additionally, it has provided no verifiable documentation of the housing that it stated it would provide to the beneficiary. Accordingly, it has failed to establish how it will compensate the beneficiary.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.