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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

D13



FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date DEC 28 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 \$630. 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*  
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 seeks to employ the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as an evangelist and faculty member. The director determined that the petitioner had not submitted sufficient verifiable documentation to establish that it qualifies for the instant visa petition. Specifically, the director determined that the petitioner failed to establish that it is a bona fide nonprofit religious organization and how it intends to compensate the beneficiary.

On appeal, the petitioner states that it is “enclosing all the documents and the information” requested by the director. 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 meets the requirements of the regulation and is eligible for the nonimmigrant religious worker visa pursuant to section 101(a)(15)(R)(1) of the Act.

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.

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 filed the Form I-129, Petition for a Nonimmigrant Worker, on January 17, 2008. The petitioner indicated that the beneficiary would work 40 hours per week and would receive a salary of \$400. On February 15, 2008, the director issued the petitioner a request for evidence (RFE), instructing the petitioner to submit the required initial evidence and other supporting documentation to establish eligibility under the regulation. The petitioner responded to the RFE on April 9, 2008, and submitted documentation addressing the issues of its bona fides as a tax-exempt, nonprofit religious organization, the beneficiary's membership in the organization and his qualifications for the proffered position.

On June 18, 2008, an immigration officer (IO) visited the petitioner's premises for the purpose of conducting an onsite inspection in connection with a different petition filed by the petitioner. The IO determined that the address of the petitioner revealed a church and parsonage that were in disrepair with no evidence of current usage. There was no one present at either site during the inspection and several attempts to reach [REDACTED] the official who signed the petition on behalf of the petitioner, were unsuccessful. The IO could not verify that the organization existed and operated as claimed in its petitions.

On April 6, 2010, the director notified the petitioner of the results of the onsite inspection and her intent to deny the petition based on the IO's findings. In her Notice of Intent to Deny (NOID), the director again instructed the petitioner to submit documentation to establish eligibility under section 101(a)(15)(R)(1) of the Act, including evidence that it is a bona fide nonprofit religious organization as defined by the regulation, its location, information about its employees, and detailed information about the proffered position.

In its response, the petitioner, through [REDACTED] provided a letter attempting to explain the discrepancies noted during the IO's visit, documentation indicating that it is incorporated in the State of Pennsylvania, and a letter from [REDACTED], advising the petitioner that it was covered under the organization's group exemption that was "assigned to you by [REDACTED] (as representatives of the Internal Revenue Service) serving as a Parent Organization." The petitioner submitted none of the other documentation requested by the director in the NOID or to overcome the findings of the IO during the site visit.

The director denied the petition, finding that the petitioner had failed to provide sufficient verifiable evidence of the requirements of the regulation and therefore had failed to establish eligibility for the visa petition. On appeal, the petitioner provides the following documentation:

1. A new Form I-129 in which it states that the duties of the proffered position would include visiting Ethiopians and inviting them to church, serving as pastor to the Ethiopian congregation, and recruiting and teaching Ethiopians in the bible school.
2. A document describing the petitioning organization and the educational degrees it offers.
3. Copies of visas for the beneficiary and his family.
4. Copies of letters from [REDACTED] advising the petitioner that it is covered under the group tax-exemption granted to the [REDACTED] as the parent organization and providing the petitioner with the group exemption number and employer identification number.
5. A copy of an "Application for Certificate of Authority" as a nonprofit organization filed with the Pennsylvania Department of State Corporation Bureau.
6. A copy of a letter from the Florida Department of State acknowledging that the petitioner had filed its articles of incorporation with the state.
7. A copy of the petitioner's articles of incorporation.
8. A copy of an October 19, 2005 deed reflecting the petitioner's purchase of property in Plymouth, Pennsylvania.
9. Copies of the petitioner's monthly checking account statements for May 2008 through August 2009 and October 2009 through January 2010, with closing balances ranging from \$1,199 in March 2009 to \$8,774 in October 2009.
10. Photographs, including one of a church and one depicting a sign indicating days and times for services, prayer meetings, and bible study for the [REDACTED]
11. A November 1, 2006 certificate certifying that the beneficiary was admitted as a life member with the petitioning organization.
12. A copy of the beneficiary's July 23, 2004 ordination certificate issued by the petitioning organization.
13. A copy of the June 2010 edition of "[REDACTED]" the petitioner's monthly Internet magazine.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

Although the petitioner submitted a letter from the [REDACTED] advising the petitioner that it was covered under the organization's group exemption letter, the petitioner failed to submit a currently valid determination letter from the IRS showing that either the petitioner or the [REDACTED] is a tax-exempt organization and establishing that the [REDACTED] had received a group exemption letter as required by the regulation at 8 C.F.R. § 214.2(r)(9). On the Form I-129, the petitioner stated that it would compensate the beneficiary with a salary of \$400, housing and travel allowance "as needed." On appeal, the petitioner stated that the beneficiary would receive a "monthly compensation package of \$2,000 including the housing and transportation allowance." The petitioner's bank statements indicate that it did not have sufficient funds in each month to compensate the beneficiary. The petitioner submitted no documentation to reflect that it has paid the beneficiary the proffered salary in the past and no documentation indicating that it has compensated a similar position in the past. The petitioner has therefore failed to provide verifiable documentation of how it intends to provide the beneficiary with the proffered compensation.

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.