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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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Date: DEC 20 2011

Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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
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 classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as a chaplain. 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, the petitioner requests a waiver of the requirement for a religious denomination certificate. The petitioner submits a letter and additional documentation in support of the appeal and asks for oral argument.

The regulations provide that the requesting party must explain in writing why oral argument is necessary. U.S. Citizenship and Immigration Services (USCIS) will grant oral argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). The petitioner has identified no unique facts or issues of law to be resolved. The written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

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 of 1986 [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 July 19, 2010 letter from the IRS reflecting that it is tax-exempt under section 501(c)(3) of the IRC as an organization that is described in section 170(b)(1)(A)(ii) of the IRC, which refers to educational organizations. As the petitioner’s tax exemption is based on its status as an educational organization, it must provide documentation as listed under subsection (iii) above to establish the religious nature of its organization. The petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker,

that it is affiliated with the Community of the Lady of All Peoples which is located in Canada, which in turn has a legally non-binding affiliation with the Sons of Mary. It also indicated that because its sisters and the Community of the Lady of All Peoples had been excommunicated, they had been integrated into the Church of John.

In response to the director's January 18, 2011 Notice of Intent to Deny (NOID) the petition, the petitioner submitted documentation reflecting that it was included under the group ruling granted by the IRS to the United States Conference of Catholic Bishops (USCCB). When contacted by the USCIS Office of Fraud Detection and National Security (FDNS), the Office of the Bishop of the Diocese of Little Rock stated that the petitioning organization remained excommunicated and was not recognized under the group exemption granted to the USCCB.

The director denied the petition, finding that the petitioner had failed to submit documentation under subsections (iii)(C) and (D) of 8 C.F.R. § 214.2(r)(9). On appeal, the petitioner submits a copy of a booklet celebrating its centennial anniversary to satisfy the provision of 8 C.F.R. § 214.2(r)(9)(iii)(C). The petitioner states that after its excommunication from the Roman Catholic Church, it became a member of the denomination of the Church of John. The petitioner also stated that because the Church of John "is not yet recognized as tax-exempt 501(c)(3) it cannot validly, according to present rules, issue the said Religious Denomination Certificate." The petitioner asks whether it is possible to waive the requirement for the denomination certificate.

The AAO has no authority to waive the requirements of the statute or regulation. The petitioner indicates that it maintains an affiliation with the Community of the Lady of All Peoples, but it provided no documentation regarding that affiliation. As an autonomous organization, the petitioner can establish that it is a bona fide religious organization by providing all of the documentation required by the regulation at 8 C.F.R. § 214.2(r)(9)(iii).

The evidence, however, does not establish that the petitioner has a currently valid IRS determination letter. The petitioner acknowledges that it was put on notice that it was in danger of losing its tax-exempt status. According to the petitioner, it provided the necessary documentation to the IRS to be classified as a nonprofit religious organization and that it was notified by the IRS that the exemption had been granted. However, the petitioner has provided no documentation of this exemption certificate, and the IRS website does not identify the petitioner as a section 501(c)(3) organization.¹

The petitioner has therefore failed to establish that it is a bona fide nonprofit religious organization exempt as defined by the regulation.

¹ www.irs.gov/app/pub-78, accessed on December 12, 2011, a copy of which has been incorporated into the record.

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.