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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

813

Date: JUN 08 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 \$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
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 its senior 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).

On appeal, the petitioner requests that the U.S. Citizenship and Immigration Service (USCIS) approve its petition once it receives the certification letter from the Internal Revenue Service (IRS) and to grant an extension of time necessary to allow the IRS to issue the letter. The petitioner subsequently submitted the IRS determination letter to the California Service Center on November 4, 2010.

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 May 26, 2010 letter submitted in support of the petition, which was filed on June 4, 2010, the petitioner stated, “In order to complete the documentation needed for the I-129 Petition for Non Immigrant Worker, our organization is to demonstrate tax exempt status, ideally by submitting a currently valid IRS 501(c)3 [sic] tax exempt determination letter. We do not have that letter.” The petitioner further stated:

[The petitioner] has, by its very nature, according to the US government, tax exempt status. The Internal Revenue Code for Exempt organizations lists “Corporations . . . organized and operated exclusively for religious . . . purposes

... as EXEMPT. We have not applied for the designation of 501(c)3 [sic] because we already possess it, therefore we do not have a letter of determination from the IRS resulting from a successful application process. We will have a letter coming from the Internal Service [sic] in 10-14 days stating these facts.

With the petition, the petitioner submitted a copy of section 501(c)(3) of the IRC, documentation regarding tax-exempt status for churches, a copy of its Articles of Incorporation, a copy of its constitution, a copy of its 2010 Domestic and Foreign Nonprofit Corporation Annual Report that it filed with the Secretary of State for North Dakota, and a copy of an application for property tax exemption on which it indicated that it was a church.

In a request for evidence (RFE) dated August 18, 2010, the director instructed the petitioner to submit evidence of its tax-exempt status in accordance with the above-cited regulation. In response, the petitioner reasserted that it was automatically tax-exempt under section 501(c)(3) of the IRC because it is a church and resubmitted copies of previously submitted documentation. The petitioner also submitted a copy of IRS Form 941, Employer's Quarterly Tax Return, for the second quarter of 2010, a copy of a September 1, 2010 letter from the Dakota Baptist Convention stating that the petitioner is a member of the Dakota Baptist Convention and that the Convention "falls under the umbrella of the Southern Baptist Convention [501(c)(3)] therefore all churches in the Dakota Baptist Convention would fall under this umbrella as well." The petitioner, however, did not submit a copy of the IRS certification letter to the Southern Baptist Convention recognizing that organization and its subordinate units as tax-exempt as required by the regulation at 8 C.F.R. § 214.2(r)(9)(ii).

The petitioner also submitted a copy of a June 7, 2010 letter from the IRS advising it that IRS records do not reflect that the petitioner has been recognized as tax-exempt under IRC section 501(a). The letter further advised the petitioner that churches "that meet the qualifications for exemption are automatically considered tax exempt under section 501(c)(3) of the Code without applying for formal recognition of such status. No determination letters are issued to these organizations."

The director denied the petition based on the petitioner's failure to provide a valid IRS determination letter and therefore its failure to establish that it is a bona fide nonprofit religious organization as defined by the regulation.

On appeal, the petitioner states that it had to modify its articles of incorporation to meet IRS requirements in order to be recognized as a tax-exempt organization and requested an extension of time, if necessary, to provide the IRS determination letter to USCIS. On November 4, 2010, 21 days after the appeal was filed, the petitioner provided USCIS with a copy of an October 26, 2010 letter from the IRS informing the petitioner that the IRS had determined it was exempt from federal income tax under section 501(c)(3) of the IRC as a church.

A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R.

§§ 103.2(b)(1), (12); *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). The petitioner admitted it did not have a valid determination letter from the IRS recognizing it as a tax-exempt organization at the time the petition was filed. The petitioner also failed to submit the letter in response to the RFE.¹ The petition may be denied on that ground alone. 8 C.F.R. § 103.2(b)(14). Although the petitioner now submits the required evidence on appeal, the petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence. Accordingly, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

The petitioner acknowledged the requirement to establish that it is a bona fide nonprofit religious organization but appeared to believe that it had an option of submitting a valid determination letter. However, the regulation does not provide any other method of establishing the bona fides of a petitioning organization and requires, as initial evidence, the submission of a valid IRS determination letter issued to the petitioning organization, to a parent organization for a group exemption, or to an organization with which a petitioning organization may be affiliated.

The petitioner stated that it was also relying upon IRS regulations that do not require churches to file for formal recognition from the IRS as a tax-exempt organization. However, the regulations governing immigration under the purview of the 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. The AAO notes 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 a church may want to obtain official IRS recognition as a tax-exempt organization although under IRS regulations, the church is not required to do so. The IRS provides detailed guidance on how to obtain a determination letter that applies equally to churches as 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

¹ According to the petitioner's own statement on appeal, it does not even appear that they were eligible to be classified under IRS regulations as tax-exempt until they amended their articles of incorporation.

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.²

Further, while the Act and its implementing regulations do not require an organization to establish that it is 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 a church is required under USCIS regulation, the IRS automatic exemption of a church 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.

Accordingly, the record does not establish that the petitioner had a valid determination letter from the IRS at the time it filed the petition and failed to submit one at the time it responded to the RFE. We concur with the director that the petitioner failed to establish that, at the time of filing, it was a bona fide nonprofit religious organization exempt from taxation 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.

² IRS Publication 557 at page 21.