

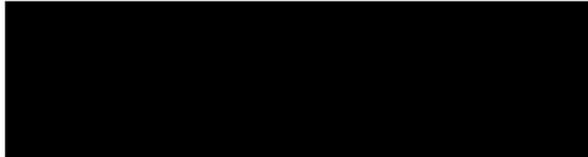
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

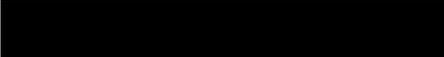


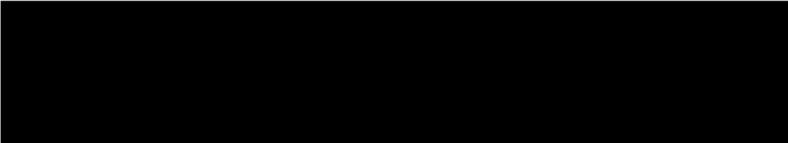
**U.S. Citizenship
and Immigration
Services**

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DATE: NOV 17 2011 OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary:

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(i)

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 AAO will dismiss the appeal.

The petitioner describes itself as a church belonging to the International Church of the Nazarene. It seeks to classify the beneficiary as a nonimmigrant religious worker under section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1), to perform services as a pastor. The director determined that the petitioner had not submitted required evidence of its tax-exempt status.

On appeal, the petitioner requests additional time to obtain the required evidence.

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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(1) states that, to be approved for temporary admission to the United States, or extension and maintenance of status, for the purpose of conducting the activities of a religious worker for a period not to exceed five years, an alien must:

(i) Be a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least two years immediately preceding the time of application for admission;

- (ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);
- (iii) Be coming solely as a minister or to perform a religious vocation or occupation as defined in paragraph (r)(3) of this section (in either a professional or nonprofessional capacity);
- (iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and
- (v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

The USCIS regulation at 8 C.F.R. § 214.2(r)(9) requires the petitioner to submit:

- (i) A currently valid determination letter from the IRS [Internal Revenue Service] 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.

The petitioner filed the Form I-129 petition on June 21, 2010. The petitioner's initial submission did not include a copy of an IRS determination letter issued to the petitioner or to any parent organization with a group exemption. Therefore, on September 7, 2010, the director instructed the petitioner to submit "a signed letter from the Internal Revenue Service" to establish the petitioner's tax-exempt status. The director also requested other evidence.

The petitioner responded to the notice, but the response did not include an IRS determination letter or any explanation for its absence. The director, therefore, denied the petition on December 3, 2010, stating that the petitioner "did not provide a valid IRS determination letter confirming [its] tax exempt status."

On appeal, in a letter dated December 21, 2010, the petitioner requested "an additional ninety (90) days" to give the IRS enough time to provide a determination letter. To date, ten months later, the record contains no further submission from the petitioner.

In response to a request for evidence . . . [s]ubmission of only some of the requested evidence will be considered a request for a decision on the record. 8 C.F.R. § 103.2(b)(11). Where an applicant or petitioner does not submit all requested additional evidence and requests a decision based on the evidence already submitted, a decision shall be issued based on the record. Failure to submit

requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. 8 C.F.R. § 103.2(b)(14).

In this proceeding, the petitioner does not claim to have submitted an IRS determination letter, either with the original petition or in response to the request for evidence. Instead, the petitioner requests time to obtain a letter from the IRS.

The purpose of an appeal before the AAO is not to give the petitioner a third opportunity to perfect the record. Rather, the purpose of an appeal is to address alleged erroneous conclusions of law or statements of fact in the director's decision. *See* 8 C.F.R. § 103.3(a)(1)(v). The director's finding that the petitioner had not submitted an IRS determination letter was not an erroneous statement of fact; the record shows that the petitioner did not even prepare IRS Form 1023 until after the director made that finding. Likewise, the director made no erroneous conclusion of law. The plain wording of 8 C.F.R. § 214.2(r)(9) requires the petitioner to submit a copy of an IRS determination letter, and the absence of that document required the director to deny the petition.

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. 8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978). Therefore, even if the petitioner were to submit an IRS determination letter at this late stage, it would not show that the director should have approved the petition, based on the evidence in the record at the time of the decision.

Review of the record reveals another ground for denial of the petition. The AAO may identify additional grounds for denial beyond what the Service Center identified 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 (9th 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 USCIS regulation at 8 C.F.R. § 214.2(r)(11)(i) requires the petitioner to submit verifiable evidence explaining how the petitioner will compensate the alien:

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.

On an employer attestation accompanying the Form I-129 petition, the petitioner stated that the beneficiary "will be paid \$400.00 per week. He will be given housing and all utilities will be paid by

the church. He will also be provided with an automobile.” Part 5, lines 13 and 14 of the Form I-129 petition instructed the petitioner to state its gross and net annual income. The petitioner did not provide any figures, instead writing “non-profit” in both spaces. The petitioner did not submit evidence that it owns or rents a dwelling or automobile for the beneficiary’s use.

The director, in the September 7, 2010 request for evidence, instructed the petitioner to submit the evidence described in the regulation at 8 C.F.R. § 214.2(r)(11)(i). The petitioner’s response to that request did not include any financial documentation or evidence of arrangement to provide the beneficiary’s housing or transportation. The director did not mention this deficiency in the denial notice, but this does not excuse the petitioner from having to submit required evidence. The absence of the required documentation constitutes a second basis for denial of the petition. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

The AAO will dismiss the appeal 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. The petitioner has not met that burden.

ORDER: The appeal is dismissed.