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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**

D13



DATE: **OCT 31 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:



**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 Administrative Appeals Office (AAO) dismissed the petitioner's appeal from that decision. The petitioner then filed a motion to reopen and reconsider the AAO's decision. The AAO will grant the motion to reconsider and affirm the dismissal of the appeal.

The petitioner is a synagogue. 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 religious instructor. The director determined that the petitioner had failed to submit required documentation of its tax-exempt status.

On motion, the petitioner submits a statement as well as copies of materials already in the record.

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 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 Internal Revenue Code, as something other than a religious organization:

The petitioner filed the Form I-129 petition on May 11, 2009. The instructions to that form quote the above regulation, making it clear that the petition must include a copy of an IRS determination letter. Nevertheless, in a May 1, 2009 letter that accompanied the petition, [REDACTED] administrator of the petitioning organization, stated: "Our congregation is tax exempt under 501 C.3 [sic] even though we have not filed Form 1023 as we are a synagogue."

The petitioner submitted a partial copy of the instructions for IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code. The instructions indicate that synagogues and other houses of worship "may be considered tax exempt under section 501(c)(3) even if they do not file Form 1023." The excerpt submitted by the petitioner also contained the following passage: "Even though the above organizations are not required to file Form 1023 to be tax exempt, these organizations may choose to file Form 1023 in order to receive a determination letter that recognizes their section 501(c)(3) status and specifies whether contributions to them are tax deductible."

On June 29, 2009, the director issued a request for evidence (RFE), instructing the petitioner to submit the required IRS determination letter. In response, the petitioner submitted a letter from

accountant [REDACTED], stating that the petitioner “is automatically considered tax exempt and is not required to apply for and obtain recognition of tax-exempt status from the IRS.”

The director denied the petition on August 19, 2009, stating that the petitioner had failed to submit required evidence. The petitioner appealed the director’s decision on September 18, 2009. On appeal, [REDACTED], secretary of the petitioning organization, stated that the petitioner’s status as a synagogue “would ordinarily be sufficient to proof [sic] tax exempt status.” [REDACTED] stated that the petitioner had recently filed IRS Form 1023 in order to obtain the required determination letter. A copy of Form 1023 submitted on appeal shows that the petitioner prepared the form in September 2009, after the director denied the petition.

On May 6, 2010, the petitioner submitted a copy of a newly issued IRS determination letter dated April 26, 2010.

The AAO dismissed the appeal on August 27, 2010, stating that the issue was not whether the IRS considered the petitioner to be tax-exempt, but rather whether the petitioner had complied with a clear USCIS evidentiary requirement. The AAO stated:

The record as it consisted before the director demonstrates that the petitioner failed to submit the documentation required by the regulation to establish that the petitioner is a bona fide nonprofit religious organization. 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 and now submits it on appeal. However, 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 has been adjudicated based on the record of proceeding before the director.

On motion, the petitioner states:

Petitioner made every effort to comply with the request in a timely manner and argues that a ‘reasonable time’ was not granted to cure the defect. When petitioner did submit the documentation they [were] advised that it will not be considered. Petitioner was never advised that obtaining the 501 C3 Determination Letter would not cure the defect in their petition. In fact petitioner relied on the fact that they could cure the defect by submitting the documentation.

Therefore USCIS should be estopped from denying the petition until it considers the 501 C3 Determination Letter.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The petitioner, on motion, identified no new facts to be proved in the reopened proceeding. The petitioner submitted

no affidavits or other documentary evidence. Therefore, the motion does not meet the requirements of a motion to reopen.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). The petitioner, on motion, alleges incorrect application of law or USCIS policy, and attempts to establish that the previous decision was incorrect based on the evidence at the time of the decision. Therefore, the AAO will grant the motion to reconsider.

The AAO, like the Board of Immigration Appeals, is without authority to apply the doctrine of equitable estoppel so as to preclude a component part of USCIS from undertaking a lawful course of action that it is empowered to pursue by statute or regulation. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991). Estoppel is an equitable form of relief that is available only through the courts. The jurisdiction of the Administrative Appeals Office is limited to that authority specifically granted to it by the Secretary of the United States Department of Homeland Security. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2004). The jurisdiction of the AAO is limited to those matters described at 8 C.F.R. § 103.1(f)(3)(E)(iii) (as in effect on February 28, 2003). Accordingly, the AAO has no authority to address the petitioner's equitable estoppel claim.

A key assertion on motion is the claim that the petitioner "made every effort to comply with the request in a timely manner." It is not clear what the petitioner meant by "the request." If the petitioner referred to the request for evidence, then the record proves that the petitioner did not make any effort to comply with the request in a timely manner. The director requested the determination letter on June 29, 2009. In response, the petitioner did not claim that it had filed IRS Form 1023. Instead, the petitioner submitted a letter from its accountant, repeating the previous claim that, as a house of worship, the petitioner is automatically considered tax-exempt without filing Form 1023 or obtaining a determination letter.

At the time of the denial, USCIS had twice informed the petitioner that an IRS determination letter was required evidence: first in the instructions to Form I-129, and again in the RFE. The petitioner made no effort at compliance, instead confusing IRS policy with USCIS regulations.

The denial of the petition was not a "request" for the determination letter, which the petitioner could address by submitting that letter. Rather, the denial was a finding that the petitioner had failed to submit required evidence. The petitioner's subsequent filing of IRS Form 1023 was not in compliance with any "request."

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 the present proceeding, the director requested a copy of an IRS determination letter. The petitioner responded to the RFE, but did not include all of the requested evidence. Therefore, in effect, the petitioner requested a decision based on the evidence then in the record. The director, in denying the petition, acted entirely in compliance with the pertinent regulations. The director had given the petitioner an opportunity to remedy a deficiency in the record, and the petitioner refused to do so, claiming that the evidence was not required.

The purpose of an appeal before the AAO is not 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 Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

Neither the filing of the petition in May 2009, nor the filing of the appeal in September 2010, created an indefinite, open-ended period in which the petitioner could eventually submit required initial documentation. The regulations cited elsewhere in this decision place clear limits on the petitioner's opportunities to supplement a previously filed petition. The petitioner forfeited its opportunity to obtain an IRS determination letter before it filed the petition, and another opportunity to do so in response to the RFE. The director made the correct decision based on the evidence and information in the record at the time of the denial decision. Later, the AAO correctly dismissed the appeal because the time for timely submission of the IRS letter had long passed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will affirm the dismissal of the appeal.

**ORDER:** The AAO's decision of August 27, 2010 is affirmed. The petition is denied, and the appeal is dismissed.