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



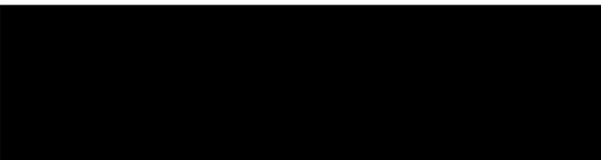
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Date: **SEP 28 2011** Office: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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:



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 a subsequent appeal. The matter is now before the AAO on a motion to reopen and to reconsider. The motion will be granted; the previous decision of the AAO will be affirmed and the petition will be denied.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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 U.S. Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

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 an assistant administrator of dorm and administrator of Korean student affairs. 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 AAO concurred with the director's decision and further found that the petitioner had failed to establish that the proffered position qualifies as that of a religious occupation and how it intends to compensate the beneficiary.

On motion, counsel asserts that the petitioner does not have to obtain a determination letter from the Internal Revenue Service (IRS). Counsel further argues that the beneficiary could not carry out the duties of the proffered position unless she was "completely committed to [the petitioner's] beliefs." Counsel submits a letter and additional documentation in support of the motion.

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 first issue presented on motion 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 support of the petition, the petitioner submitted a copy of its constitution and bylaws. The petitioner also submitted a copy of a 1994 and a 1997 letter from a law firm advising the petitioner that it was not required by IRS regulations to “seek formal recognition of exemption from federal income tax and thereby obtain a letter of determination.” In response to the director’s request for additional documentation, the petitioner submitted its certificate of occupancy and copies of brochures and calendars that counsel stated was evidence of the organization’s tax-exempt status.

On motion, counsel again references the 1994 and 1997 letters from the law firm to support the petitioner’s assertion that it is not required to obtain a determination letter from the IRS certifying that it is a tax-exempt organization. Counsel further asserts:

[The petitioner] has already provided the USCIS documentation to prove that they would be recognized as tax exempt if they had applied. The USCIS is attempting to force [the petitioner] to obtain formal recognition as tax exempt by the IRS. This is an attempt to intrude upon the religious freedom granted to the church by the Constitution of the United States. Said new regulations, are, in effect, limiting a church to further their religious beliefs and liberties.

When the regulations were being changed, commentators [sic] objected to this new requirement. However, USCIS kept the requirement in the new regulations. The IRS has recognized ways to establish proof and recognition as a Church. However, USCIS took the lazy way out and instead claim “a requirement that the petitioning churches submit a tax determination is a valuable fraud deterrent.” There are other ways to determine if an application is fraudulent. [The petitioner] has a school that has been recognized by the USCIS, ICE, and the Veterans Administration as a school. . . . There are other avenues to prove an organization is not engaging in fraudulent activities. [The petitioner] has had prior R-1 applications approved.

The requirement of an IRS determination letter is an unduly burdensome requirement to impose upon [the petitioner], further limits their religious liberties, and would force them to compromise their religious values.

Counsel’s arguments are unpersuasive. First, as evidence of its tax-exempt status, the petitioner merely asserted that it was tax-exempt and provided letters from a law firm advising it that it did not have to obtain formal recognition from the IRS as a tax-exempt organization. Significantly, the petitioner submitted no additional current documentation from the law firm that addresses the USCIS requirement for a formal IRS determination letter. As the AAO stated in its previous decision, the regulations governing federal income taxation and those governing immigration laws are administered by two different agencies to serve different federal purposes. The IRS

does not require formal recognition of the petitioner's status as a church for income tax purposes; USCIS does require such a determination for the purpose of establishing eligibility for certain immigration benefits.

Counsel also argues that the requirement of an IRS letter intrudes upon the petitioner's ability to practice its religious beliefs and compromises its religious values. Counsel, however, offers no explanation or example of how the petitioner is prevented from the free exercise of its religion or is required to compromise its religious values. Following counsel's argument to its logical conclusion would require the United States to defer to religious organizations on nonreligious issues and permit churches to establish immigration policies for the country. While the determination of an individual's status or duties within a religious organization lies with the organization, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with USCIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

Additionally, counsel's arguments were addressed in the comments accompanying the final rule, to wit:

F. Religious Freedom Restoration Act of 1993 (RFRA)

Commenters asserted that the proposed regulation would violate the First Amendment, Const. of the United States, Amdt. I (1791), and the Religious Freedom Restoration Act of 1993, Public Law 103-141, sec. 3, 107 Stat. 1488 (Nov. 16, 1993) (RFRA), found at 42 U.S.C. 2000bb-1, by placing a substantial burden on a religion that is not in the furtherance of a compelling government interest, or at least not furthered by the least restrictive means. Some commenters stated that preventing fraud was commendable but that a compelling government interest has not been established. Several commenters said that filing petitions for nonimmigrants or having to request an extension of status after only one year would place undue financial and paperwork burdens on religions. Additionally, the commenters stated that the proposed definitions of religious occupation and religious vocation prohibited their denominations from utilizing the program.

USCIS disagrees with the specific notion that the final rule violates the RFRA. The RFRA provides:

Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except * * * if it demonstrates that application of the burden to the person—

- (1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

Public Law 103-141, sec. 3, 42 U.S.C. 2000bb-1. The final rule is intended to permit religious organizations to petition for admission of religious workers under restrictions that have less than a substantial impact on the individual's or an organization's exercise of religion. A petitioner's rights under RFRA are not impaired unless the organization can establish that a specific provision of the rule imposes a significant burden on the organization's religious beliefs or exercise. Further, this rule is not the sole means by which an organization or individual may obtain admission to the United States for religious purposes, and DHS believes that the regulation, and other provisions of the INA and implementing regulations, can be administered within the confines of the RFRA. An organization or individual who believes that the RFRA may require specific relief from any provision of this regulation may assert such a claim at the time they petition for benefits under the regulation.

Nor does this final rule impose a "categorical bar" to any religious organization's petition for a visa or alien's application for admission. Instead, the rule sets forth the evidentiary standards by which USCIS will adjudicate nonimmigrant and immigrant petitions.

USCIS also does not believe that the new requirements will reduce the diversity or types of religious organizations that practice in the United States or the types of religious workers whom religious organizations could hire. Changes have been made so that the final definitions of "religious occupation," "religious vocation," "minister," and "denomination" will not prevent religious organizations from using the religious worker program as some commenters claimed. Additionally, rather than the proposed one year initial period of admission and two extensions of two years each, the final rule permits up to 30 months for the initial period of admission and one extension of up to 30 months. Therefore, the final rule imposes a much smaller financial and paperwork burden on petitioners than the proposed rule.

Eradicating fraud where fraud has been determined to exist in one-third of nonimmigrant visa petitions, as discussed in the proposed rule, is a compelling government interest to ensure the integrity of the immigration process as well as for the protection of national security. See 72 FR at 20442. Therefore, the final rule retains the requirements that a religious organization file a petition for each religious worker and submit an IRS determination letter establishing the organization's tax-exempt status.

Additionally, USCIS will maintain the discretion to conduct on-site inspections as USCIS believes they are the most effective and least restrictive means of combating fraud in the religious worker program.

USCIS will consider all of the factual evidence presented in support of a petition for a religious worker under the provisions of the rule. After reviewing the comments and the applicable law, however, USCIS does not believe that the evidentiary requirements of the rule constitute a violation of the RFRA.

Counsel argues that USCIS “took the lazy way out” by requiring the submission of a currently valid determination letter from the IRS and that there are “other avenues to prove an organization is not engaging in fraudulent activities.” As discussed in the comments accompanying the final rule, an IRS determination letter represents verifiable documentation that the petitioner is a bona fide tax-exempt organization or part of a group exemption. Whether an organization qualifies for exemption from federal income taxation provides a simple test of that organization’s non-profit status. 73 Fed. Reg. 72276, 72279 (Nov. 26, 2008). While counsel’s statement regarding other means of combating immigration fraud is undoubtedly true, as discussed above, USCIS believes that the requirement is the most effective and least restrictive means of combating fraud in the religious worker program.

Furthermore, the record does not reflect that the petition would have been approved under the regulations in effect prior to November 26, 2008. In order to establish its bona fides as a tax-exempt organization under the prior regulation at 8 C.F.R. § 204.5(m)(3), the petitioner was required to submit either an exemption letter from the IRS or such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the IRC as it relates to a religious organization. The petitioner failed to submit all of this required documentation with its petition or in response to the RFE.

The petitioner failed to provide the documentation required by the regulation to establish that it is a bona fide nonprofit religious organization. Therefore, it has failed to establish that the AAO’s decision was error as a matter of fact, law, or policy.

The second issue on motion is whether the petitioner has established that the position qualifies as that of a religious occupation.

The regulation at 8 C.F.R. § 214.2(r)(1) defines religious occupation as an occupation that meets all of the following requirements:

- (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.
- (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination;

(C) The duties do not include positions which are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible; and

(D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

The petitioner identified the duties of the position as shuttle service, office receptionist, dorm supervisor, student affairs coordinator (which includes teaching teenagers' Sunday school, "advocate for students," and translation), and church responsibilities (to include deaf choir, augmenting /visiting in bus ministry, playing preludes before services, helping with the junior choir, working in the nursery and interpreting for the deaf). The petitioner submitted no documentation to establish that the duties primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination. On motion, the petitioner, through its assistant [REDACTED] states:

This position qualifies as a traditional religious function. In order to properly fulfill the job duties and higher calling of this office, the person must share the same religious beliefs and desire to spread our religious beliefs. In her capacity as the assistant administrator of the dorms and other church responsibilities, she must perform these duties to share and teach the beliefs of our denomination. This position involves teaching, counseling students, and teaching the fundamentals of our denomination. As such, she is witnessing to many individuals and represents the Church; therefore, the mission of our Church is further spread.

Nonetheless, the petitioner submitted no documentation to support [REDACTED] statements or that the position is recognized as a religious occupation within its denomination. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The duties of the position are many and varied, including shuttle service, office receptionist, working in the nursery, translating, and interpreting for the deaf. The petitioner provided no documentation of the primary responsibilities of the position or that those duties primarily relate to a traditional religious function or that the duties primarily relate to, and clearly involve, inculcating and carrying out the religious creed of its denomination.

The petitioner has submitted no documentation to establish that the AAO's previous decision was in error.

The third issue presented on motion is whether the petitioner has established how it intends to compensate the beneficiary.

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.

(ii) *Self support.*

(A) If the alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.

(B) An established program for temporary, uncompensated work is defined to be a missionary program in which:

- (1) Foreign workers, whether compensated or uncompensated, have previously participated in R-1 status;
- (2) Missionary workers are traditionally uncompensated;
- (3) The organization provides formal training for missionaries; and
- (4) Participation in such missionary work is an established element of religious development in that denomination.

(C) The petitioner must submit evidence demonstrating:

- (1) That the organization has an established program for temporary, uncompensated missionary work;

- (2) That the denomination maintains missionary programs both in the United States and abroad;
- (3) The religious worker's acceptance into the missionary program;
- (4) The religious duties and responsibilities associated with the traditionally uncompensated missionary work; and
- (5) Copies of the alien's bank records, budgets documenting the sources of self-support (including personal or family savings, room and board with host families in the United States, donations from the denomination's churches), or other verifiable evidence acceptable to USCIS.

The petitioner submitted unaudited financial documents in support of the petition and provided no verifiable documentation of the accuracy and reliability of those financial documents. On motion, the petitioner submits a copy of its financial statements for 2008 and 2009 that were audited on February 26, 2010, two years after the petition's filing date of July 8, 2008.

The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not 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 failed to submit sufficient verifiable documentation to establish how it intends to compensate the beneficiary and to establish that the AAO's prior decision was in error.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. The petitioner submits no precedent decisions establishing that the AAO's previous decision was based on an incorrect application of law or policy. As the evidence presented does not overcome the grounds for the previous dismissal, and no reasons are set forth indicating that the decision was based on an incorrect application of law, the previous decisions of the AAO and the director will be affirmed. The petition is denied.

ORDER: The AAO's decision of October 7, 2010 is affirmed. The petition is denied.