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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



A13

Date: **APR 20 2012** 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:

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.

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 withdraw the director's decision and will remand the petition for further action and consideration.

The petitioner is a church. It seeks to extend the beneficiary's status as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as 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 states that its main office is in Pacoima, California and that the beneficiary is its founder and senior pastor. The petitioner submits additional documentation in support of the appeal.

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 [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.

The petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, filed on July 30, 2010, that the beneficiary would work at its location at [REDACTED]

[REDACTED] In its July 27, 2010 letter submitted in support of the petition, the petitioner also stated that the proffered position was that of “Minister of our Santa Fe, NM church.” The petitioner submitted a copy of a June 11, 2010 letter from the IRS granting it tax exemption under sections 501(c)(3) and 170(b)(1)(A)(i) of the IRC. The IRS letter did not grant the petitioner tax-exempt status for any subordinate units.

In an April 18, 2011 request for evidence (RFE), the director advised the petitioner to submit documentation to establish “that the beneficiary’s work location in New Mexico qualifies as a nonprofit religious organization.” In response, counsel stated:

The application to qualify beneficiary's work location in New Mexico as a non-profit religious organization exempt from taxation is currently in process with the State Corporation Commission of New Mexico. The California address for the petitioner is the administrative office of [the petitioner], which has multiple locations throughout the United States. Therefore, the headquarters have been deemed a tax-exempt organization and the subsidiary churches are currently awaiting their individual determinations.

The petitioner resubmitted the June 11, 2010 letter from the IRS and submitted a copy of the undated articles of incorporation for [REDACTED]

The director denied the petition, finding that the petitioner had not submitted a valid determination letter from the IRS establishing that the petitioner's church in New Mexico is a bona fide nonprofit religious organization or that it is covered under a group exemption granted to the petitioner.

The director's decision is withdrawn. The regulation does not require that the specific location at which a beneficiary will work is tax exempt; rather, the regulation requires that the petitioner must establish that the potential employer is tax-exempt as a religious organization under section 501(c)(3) of the IRC. The record reflects that the petitioner is the potential employer and submitted a valid letter from the IRS indicating that it is tax exempt pursuant to the regulation at 8 C.F.R. § 214.2(r)(9).

Nonetheless, the petition cannot be approved as the record now stands. The record does not clearly establish that the beneficiary has been a member of the petitioner's denomination for two full years immediately preceding the filing of the petition.

The 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.

The petition was filed on July 30, 2010. Therefore, the petitioner must establish that the beneficiary was a member of its denomination for at least the two years immediately preceding that date.

The regulation at 8 C.F.R. § 214.2(r)(1) provides in pertinent part:

Denominational membership means membership during at least the two-year period immediately preceding the filing date of the petition, in the same type of

religious denomination as the United States religious organization where the alien will work.

Religious denomination means a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes one or more of the following:

- (A) A recognized common creed or statement of faith shared among the denomination's members;
- (B) A common form of worship;
- (C) A common formal code of doctrine and discipline;
- (D) Common religious services and ceremonies;
- (E) Common established places of religious worship or religious congregations; or
- (F) Comparable indicia of a bona fide religious denomination.

The petitioner stated on the Form I-129 that it was established in 2009 and in its July 27, 2010 letter submitted in support of the petition, that it was established in August 2009. In supplemental explanations to specific questions on IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, the petitioner stated that it was an "independent local church" that had been meeting as a church since 2008. The petitioner submitted a copy of a lease agreement dated April 1, 2009 for the San Fernando Road address signed by the beneficiary and indicating that the premises would be used as a "church assembly."

The beneficiary's visa, issued on August 28, 2006, reflected that he was approved for R-1 nonimmigrant religious worker status to work for the [REDACTED]. The beneficiary's Form I-94A, Departure Record, reflects that he entered the United States pursuant to that visa on August 1, 2007 for a period valid until July 31, 2010. The record also reflects that the beneficiary was a member of the [REDACTED] from at least 2006 until 2009.

In her May 27, 2011 letter, counsel stated that the petitioning organization is a Pentecostal church and that it and the Church of Christ "are both organizations without a formal creed but ones that emphasize the unity of Christians and use the Bible as the ultimate source of wisdom and direction." The petitioner submitted documentation from the Church of Christ website; however, the record does not establish that they are governed or administered under a common type of ecclesiastical government. Additionally, the record is not clear that the petitioner and the [REDACTED] are of the same religious denomination. The record

therefore does not establish that the beneficiary has been a member of the petitioner's denomination for two full years immediately preceding the filing of the petition.

Additionally, the petitioner has not established how it will 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.

The petitioner stated on the Form I-129 that the beneficiary's compensation would consist of a monthly salary of \$1,000 and board/lodging. With the petition, the petitioner provided copies of the beneficiary's IRS Form 1040, U.S. Individual Income Tax Return, for 2007, 2008 and 2009. The beneficiary reported \$12,000 in "other income" for 2007 and \$12,500 for 2008, and self-employment income of \$11,504 in 2009. The record contains no evidence that the returns were filed with the IRS and no evidence of the source of the beneficiary's income. The petitioner provided an unaudited copy of its financial statement for 2009, which reflects a net income of \$595; the document contains no line item expense for salaries.

In response to the RFE, the petitioner provided a copy of an IRS Form 1099-MISC, Miscellaneous Income, reflecting that the [REDACTED] paid the beneficiary \$42,000 in nonemployee income in 2009 and \$45,000 in 2010. The name of the payer and the payer's federal identification number are not those of the petitioning organization or of its Santa Fe church. The petitioner provided no other documentation, such as IRS documentation, to reflect that this income was reported to taxing agencies. The record is not clear as to the source of this income.

Accordingly, the record will be remanded for the director to inquire into the above issues. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its petition within a reasonable period of time. As always

in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.