

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

[REDACTED]

DATE: DEC 03 2012 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)(i) of the
 Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(i)

ON BEHALF OF PETITIONER:

[REDACTED]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting 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 is a Baptist church. 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 did not submit a required determination letter from the Internal Revenue Service (IRS) to establish tax-exempt status.

On appeal, the petitioner submits a newly issued IRS determination letter.

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 sole issue in contention concerns the petitioner's submission of a determination letter from the IRS, recognizing the petitioner's tax-exempt status. The USCIS regulation at 8 C.F.R. § 214.2(r)(9) requires that 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 Internal Revenue Code, 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 filed the Form I-129 petition on August 29, 2011. The petition included a copy of an October 27, 1988 letter from the office of the Texas Comptroller of Public Accounts, indicating that the petitioner “qualifies for exemption from state franchise tax and state sales tax.” This letter is not from the IRS, and does not establish exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code.

On September 7, 2011, the director issued a request for evidence (RFE), instructing the petitioner to submit various types of required evidence including “a currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization.” The petitioner’s response included various state and county documents, but not the required IRS documentation.

The director issued a second RFE on November 16, 2011, allowing the petitioner until February 8, 2012 to submit an IRS determination letter. On January 26, 2011, counsel stated that the petitioner “is currently working to gather the documents requested.” Counsel requested “an extension in the deadline to allow the bookkeeper to gather this information.”

Additional time to respond to a request for evidence or notice of intent to deny may not be granted. 8 C.F.R. § 103.2(b)(8)(iv). Rather than extend the response period, the director issued a third RFE on February 6, 2012, with a response deadline of April 30, 2012. The content of the third RFE is identical to that of the first RFE issued in September 2011.

The director denied the petition on February 15, 2012, stating that the petitioner responded to the November 2011 RFE but did not submit the required IRS determination letter. In correspondence dated February 22, 2012, counsel noted that the third RFE granted the petitioner until April 30, 2012 to respond. The director subsequently reopened the proceeding (on or about March 6, 2012) to accommodate the petitioner’s expected response to the third RFE.

The petitioner submitted a timely response to the third RFE. The response included documentation of state tax exemption, and a letter from accountant [REDACTED] noting that the IRS considers churches to be tax exempt whether or not they apply for recognition of the exemption. Mr. [REDACTED] stated:

This filing requirement is summarized in the instructions to Form 1023, Application for Recognition of Exemption. It states that churches “may be considered tax exempt under section 501(c)(3) even if they do not file Form 1023.” At their option, churches may file the Form 1023 to receive the IRS determination of exempt status. Again, they are not obligated to do so.

The director denied the petition on May 2, 2012, quoting the regulation at 8 C.F.R. § 214.2(r)(9) and stating that the petitioner had documented its exemption from state taxes, but had failed to submit the IRS determination letter.

On appeal, counsel repeated (essentially verbatim) [REDACTED] earlier letter to the effect that the IRS does not require churches to file Form 1023.

In this proceeding, the petitioner seeks a benefit not from the IRS, but from USCIS. Therefore, the petitioner must comply with USCIS regulations. The question is not whether the IRS considers the petitioner to be tax-exempt, but whether the petitioner has submitted specific required evidence (an IRS determination letter).

When USCIS revised its regulations for nonimmigrant and special immigrant religious worker petitions, it stated:

Several commenters objected to the proposed requirement that petitioners must file a determination letter from the IRS of tax-exempt status under IRC section 501(c)(3), 26 U.S.C. 501(c)(3), with every petition. Commenters pointed out that the IRS does not require churches to request a determination letter to qualify for tax-exempt status. A designation that an organization is a “church” is sufficient to qualify for tax-exempt status. Although some churches choose to request a formal IRC section 501(c)(3) determination, they are not required to do so. . . .

USCIS recognizes that the IRS does not require all churches to apply for a tax-exempt status determination letter, but has nevertheless retained that requirement in this final rule. . . . A requirement that petitioning churches submit a tax determination letter is a valuable fraud deterrent. 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 simplified test of that organization’s non-profit status.

Requiring submission of a determination letter will also benefit petitioning religious organizations. A determination letter provides a petitioning organization with the opportunity to submit exceptionally clear evidence that it is a bona fide organization.

73 Fed. Reg. 72276, 72279-80 (Nov. 26, 2008).

On July 18, 2012, USCIS received a newly issued IRS determination letter dated June 19, 2012. The director had requested this letter in three separate RFEs over the span of five months, even reopening the petition after denying it on this very basis. On those occasions, the petitioner did not submit an IRS letter or even suggest that a Form 1023 application was pending. Instead, the petitioner repeatedly claimed that it did not have to submit the IRS letter at all.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). The petitioner's submission of the IRS letter at this late date does not, and cannot, establish that the director erred by concluding that the petitioner did not submit it earlier. Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the AAO will dismiss the appeal.

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 dismiss the appeal.

ORDER: The appeal is dismissed.