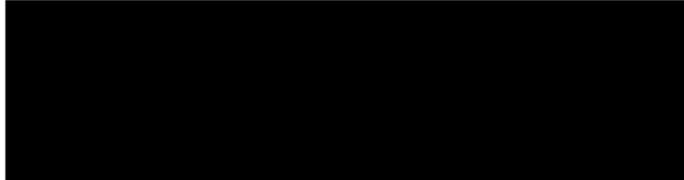


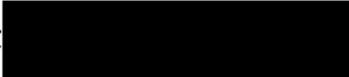
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

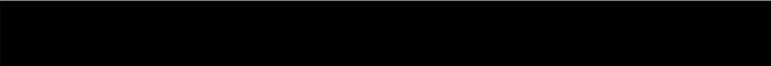
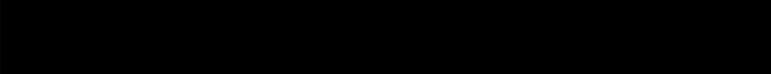


U.S. Citizenship
and Immigration
Services



D13

DATE: DEC 03 2012 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 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 an assistant pastor. The director determined that the petitioner failed to submit a required determination letter from the Internal Revenue Service (IRS).

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 issue in this proceeding concerns required documentation of the petitioner's tax-exempt status. The USCIS regulation at 8 C.F.R. § 214.2(r)(9)(i) requires the petitioner to submit a currently valid determination letter from the IRS showing that the organization is a tax-exempt organization.

The petitioner filed the Form I-129 petition on August 4, 2011. On the petition form, the petitioner listed its Federal Employer Identification Number (FEIN) as [REDACTED]. On an accompanying employer attestation, under "[d]etailed description of the beneficiary's proposed daily duties," the petitioner stated that the beneficiary "will lead weekend services in prayer, he will also preach to the whole congregation on designated weekends, he will also pastor our children's ministry. He will also pray and tea[c]h to our members during our mid-week service and lead bible study."

The petitioner's initial submission included a letter from Dr. [REDACTED] senior pastor of the petitioning church, who stated:

[The petitioning church] was found[ed] in 1978. Our church was designated a 501(c)(3) organization by the Internal Revenue Service. We have misplaced our 501(c)(3) IRS Determination Letter and have requested another copy from the IRS. We were told that this request would take 7-10 days to process. We were not aware that this documentation was missing from our files. . . .

We . . . will submit the IRS Determination Letter as soon as we receive it.

The petitioner's initial submission included printouts from its web site, several pages of which concerned the petitioner's "church ministries." One of those ministries is [REDACTED] the web page for which identified Sister [REDACTED] as executive director of the [REDACTED] and Sister [REDACTED] as the regional director of [REDACTED].

On October 12, 2011, the director issued a request for evidence, instructing the petitioner to submit, among other things, a copy of its IRS determination letter. In response, Dr. [REDACTED] stated:

As I told you in my first letter that our Church's 501(c)(3) IRS determination letter was misplaced. I called IRS for another copy and was told that my church applied for recognition of exemption in March 1986, but that the application did not go through based on some [missing] information. . . . I was then advised by the IRS to send in another application form (Form 1023) in order to finish the processing of the 501(c)(3) status.

My Church has sent in the application form with everything the IRS requested. I was advised that the IRS will send a response within 60 days from my date of submission which will be around the middle of February 2012. As we were not aware that the church did not complete the application process in 1986, we thus respectfully ask that the USCIS give [the petitioner] time to submit this documentation.

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). Dr. [REDACTED] did not specify the exact date that the petitioner submitted the new Form 1023 application, but "the middle of February 2012" would mark "60 days from [the] date of submission," then the petitioner would have filed the form in mid-December 2011.

The petitioner was already aware, as of the August 4, 2011 filing date, that it needed to submit the IRS determination letter. At that time, Dr. [REDACTED] claimed that he expected to receive the form within "7-10 days." The record does not show that the petitioner had requested the IRS letter prior to the filing date. Rather, IRS correspondence in the record refers to the petitioner's "September 22, 2011, request for copies." Thus, the petitioner made the request six weeks after the filing date.

The AAO issued the request for evidence on October 12, 2011. The IRS's correspondence in the record is dated November 17, 2011. Dr. [REDACTED] did not explain why the petitioner waited another month, until mid-December 2011, to file Form 1023. Dr. [REDACTED] also failed to explain how the petitioner could have "misplaced" the IRS determination letter, as claimed, if the petitioner never received such a letter in the first place.

The petitioner submitted an excerpt from the preamble to the nonimmigrant religious worker regulations in the Federal Register, stating: "USCIS will accept determination letters of any date." 73 Fed. Reg. 72276, 72280 (Nov. 26, 2008). At the time USCIS published that information, it was introducing a new requirement to submit an IRS determination letter. The purpose of the announcement, therefore, was to indicate that USCIS would accept letters newly obtained during the transition to the revised regulations, not that a petitioner could delay the processing of an already-filed petition indefinitely in order to obtain the letter.

The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the benefit request. 8 C.F.R. § 103.2(b)(14).

The director, in the request for evidence, had also requested a detailed description of the beneficiary's intended duties. The petitioner's response included a detailed breakdown of duties, occupying a page and a half and including such functions as "teach Sunday school/Youth Group," "conduct personal Bible Study," and "participate and lead the Church's Feeling Ministry."

The director denied the petition on February 13, 2012, stating: "Because the petitioner has failed to meet a basic eligibility requirement, the petition cannot be approved, and must be denied."

The petitioner filed a motion to reopen the petition on March 11, 2012. Dr. [REDACTED] stated:

[The petitioner] has a subsidiary named [REDACTED] which operates under the umbrella of [the petitioning] Church. . . . It has its own Tax ID# and . . . operates [REDACTED] The Beneficiary . . . is the responsible Director for these homes under his job duties under [the petitioning] Church. We petition to use [REDACTED]' 501(c)(3) exemption letter as the letter needed for USCIS to approve the application.

The petitioner submitted a copy of an IRS determination letter issued to [REDACTED] FEIN [REDACTED] on November 29, 2005, along with other documentation showing that [REDACTED] was incorporated in 2005, 27 years after the 1978 incorporation of the petitioning church.

The director granted the petitioner's motion to reopen, and again denied the petition on April 3, 2012. The director found that the petitioner "failed to establish its claim" that [REDACTED] "is a subsidiary of the petitioning organization," because the record shows that the two entities were separately incorporated and have different FEINs. The director also noted that the petitioner's earlier filings made no mention of [REDACTED] in connection with the petitioner's duties.

The petitioner's initial submission mentioned [REDACTED] as part of a list of church ministries, but the job description submitted with the petition did not indicate that the beneficiary would have any role in [REDACTED]. The petitioner's response to the request for evidence included a much longer job description for the beneficiary, which once again contained no mention of [REDACTED]. Only on motion did the petitioner claim that the beneficiary would serve as "the responsible Director for [REDACTED] [REDACTED]. The AAO concludes that the petitioner altered the beneficiary's intended duties in an attempt to make [REDACTED] IRS determination letter relevant to the petition. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1).

On appeal from the director's second decision, Dr. [REDACTED] states that, because the director would not accept the petitioner's attempt to use [REDACTED] IRS determination letter, the petitioner "has finally made an application for IRS letter of exemption . . . and is currently waiting for IRS approval."

On October 5, 2012, the AAO received a copy of the petitioner's newly issued IRS determination letter, dated September 17, 2012. The petitioner's submission of the letter at this late date cannot overcome the earlier denial of the petition. 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).

Throughout this proceeding, the petitioner has offered a variety of conflicting reasons for its failure to submit a copy of its IRS determination letter. First, the letter was "misplaced," and later the petitioner conceded that the letter never existed. The petitioner then attempted a material change in the beneficiary's duties in order to justify the submission of [REDACTED] IRS determination letter, before finally submitting its own new determination letter several months after filing the appeal.

The IRS determination letter did not exist at the time the director denied the petition, and therefore the director correctly denied the petition on that basis. The AAO will affirm that decision.

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.