

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

[REDACTED]

813

DATE: **DEC 21 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:

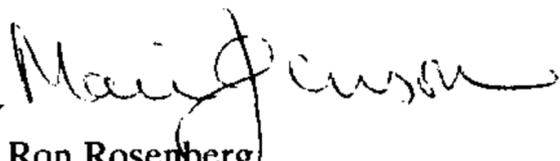
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INSTRUCTIONS:

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 Administrative Appeals Office (AAO) withdrew the director's decision and remanded the petition for a new decision. The director denied the petition a second time and certified the decision to the AAO for review. The AAO affirmed the denial of the petition. The petitioner then filed a motion to reopen and reconsider, which the AAO dismissed. The matter is now before the AAO again on a motion to reopen. The AAO will dismiss the motion.

The petitioner identifies itself as a subordinate church of the Church of God of Prophecy. 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 minister. The director determined, and the AAO agreed, that the petitioner did not submit a required determination letter from the Internal Revenue Service (IRS) to establish tax-exempt status. The AAO incorporates its three prior decisions by reference.

On motion, the petitioner submits a statement from counsel and documentation showing that the petitioner has applied for recognition of exemption. The petitioner subsequently submits a copy of 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)(I) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(I), pertains to a nonimmigrant who seeks to enter the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination.

The U.S. Citizenship and Immigration Services (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 above regulation applies to all R-1 nonimmigrant petitions pending on November 26, 2008. *See* 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). The petitioner filed the Form I-129 petition on December 26, 2007, and it was still pending on November 26, 2008.

In the director's certified decision of May 31, 2011, and the AAO's subsequent decisions dated August 11, 2011 and April 24, 2012, the ground for denial has been the petitioner's failure to submit, when requested, an IRS determination letter showing that the petitioner was tax-exempt under section 501(c)(3) of the Internal Revenue Code at the time of filing.

The petitioner's initial submission included an IRS determination letter dated July 5, 1957, recognizing the tax-exempt status of the Church of God of Prophecy, Cleveland, Tennessee. The petitioner claimed that this letter covers all subordinate churches, including the petitioning church. The 1957 letter, however, makes no reference to a group exemption that covers multiple entities, and therefore it does not satisfy the requirement at 8 C.F.R. § 214.2(r)(9)(ii).

The AAO first noted this deficiency in its remand order dated February 18, 2011. The AAO also noted that a letter from the denomination's headquarters is not an IRS determination letter. The petitioner has, therefore, been on notice since February 18, 2011 that the IRS letter addressed to the church's headquarters in Cleveland, Tennessee, is not sufficient to meet applicable requirements.

On March 30, 2011, the director advised the petitioner that the IRS determination letter in the record does not mention a group exemption. In response, counsel stated:

The parent church contacted the IRS about obtaining a written statement. The IRS advised that it does not issue letters stating that affiliates of 501(c)(3) [sic] are also exempt and instead issues one letter for an organization and that affiliates are covered under the parent's letter. A request has been made for the IRS to state this fact in writing and we have been advised that a letter takes 2 weeks to prepare. Petitioner is awaiting that letter and will forward it to USCIS upon its receipt.

The petitioner later submitted an IRS letter dated May 19, 2011, which read, in part: "Churches . . . are automatically considered tax exempt . . . without applying for formal recognition of such status."

At issue in this proceeding is not general IRS procedure regarding group exemptions. Rather, the denial revolves around the petitioner's failure to produce specific evidence – an IRS determination letter showing either that the petitioner itself is tax-exempt, or that its parent organization holds a group exemption. Group exemptions involve specific annual filings with the IRS; coverage under a group exemption is, therefore, documented, and not simply a matter of opinion or interpretation. Further information about group exemption is available in IRS Publication 4573, *Group Exemptions*, available online at <http://www.irs.gov/pub/irs-pdf/p4573.pdf> (printout added to record November 7, 2012).

The director denied the petition on May 31, 2011, having received no IRS determination letter showing that the petitioner falls under either an individual or group exemption. The AAO, in affirming the certified decision on April 24, 2012, observed that the present proceeding is a request for a benefit from USCIS, not from the IRS.

The petitioner has now filed a new motion to reopen the petition, pursuing the matter on two fronts. First, counsel contends: "The fact at issue remains the tax exempt status of the church," and that the "[p]etitioner is prima facie eligible to petition for a temporary religious worker as it qualifies as a tax exempt religious institution." This assertion essentially repeats the prior observation that the IRS considers churches to be tax-exempt even if they do not apply for recognition of exemption. As the AAO has already noted, however, the fact at issue is not the status of the church; it is the petitioner's compliance with evidentiary requirements. The question is not whether the IRS considers the petitioner to be tax-exempt, but whether the petitioner has submitted specific required evidence (a determination letter that applies to the petitioner or a group letter that includes the petitioner).

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).

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 denial of the petition was not a finding that the petitioner is not tax-exempt; the petitioner could overcome such a finding by submitting evidence of tax-exempt status. Rather, the denial was a finding that the petitioner failed to submit specific, required evidence. The petitioner, on motion, does not overcome this finding or even address it directly.

The other avenue that the petitioner pursues on motion is to submit documentation showing that it has filed IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code. As the AAO noted in its April 2012 decision, a "motion is not an opportunity to correct its own defects in the record" by submitting materials that the director had previously requested, and which the petitioner had failed to submit in a timely manner. The petitioner did not file this application until April 2012, more than a year after the AAO brought the deficiency to the petitioner's attention in its February 2011 remand order.

On August 10, 2012, USCIS received a new IRS determination letter, dated July 26, 2012, issued to the petitioning church. The letter shows an "Effective Date of Exemption" of June 11, 2012. There is no provision in the regulations to allow a petitioner to supplement a previously filed motion to reopen. Counsel states "this new evidence will serve to satisfy all requirements," but the petitioner has submitted the letter too late to satisfy the requirements with respect to the present petition.

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). 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). 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). Here, the petitioner makes no showing that the director should have approved the petition at the time of filing, or that the AAO should have approved the petition on any of the three occasions when the petition was previously before the AAO. Instead, the petitioner submits a newly created document, with an effective date two months after the AAO's last decision, which serves to emphasize the point that this required document was absent from the record during each of the prior adjudications that this petition has received. The newly issued IRS determination letter does not establish error by the AAO or by the director. Rather, it serves only to address the petitioner's failure to submit the letter in response to multiple prior notices. Untimely submission of previously requested evidence is not grounds for reopening the petition. *C.f. Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988) (evidence that the petitioner or applicant should have submitted in response to a request for evidence or notice of intent to deny is not entitled to consideration when submitted at a later time).

The AAO adds that a motion must be accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding. 8 C.F.R. § 103.5(a)(1)(iii)(C). The motion includes no such statement, and therefore the petitioner has not properly filed the motion. This, by itself, would be grounds for dismissal of the motion under 8 C.F.R. § 103.5(a)(4).

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). Accordingly, the AAO will dismiss the motion.

ORDER: The motion is dismissed.