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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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U.S. Citizenship  
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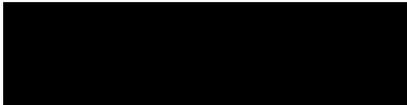
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Date: **JAN 04 2012** Office: CALIFORNIA SERVICE CENTER FILE:

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:



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 a motion to reconsider. The motions will be dismissed.

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 to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 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 a religious instructor. The director determined that the petitioner had not established it qualifies as a bona fide nonprofit religious organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code (IRC). The AAO affirmed the director's decision on appeal and additionally found that the petitioner had not established how it intends to compensate the beneficiary and had not provided the attestation required by the regulation at 8 C.F.R. § 214.2(r)(8),

On motion, counsel argues that as the Internal Revenue Service (IRS) granted the petitioner tax exemption retroactively to 1999, the petitioner has established that it was tax exempt as of the date the petition was filed. Counsel also asserts that the petitioner submitted sufficient documentation to establish how it intends to compensate the beneficiary. Counsel submits a brief and copies of previously submitted 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 is whether the petitioner has established that it is a bona fide nonprofit religious organization.

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 director denied the petition on June 12, 2009, determining that the petitioner had failed to submit a valid letter from the IRS confirming its tax-exempt status.

The petition submitted no documentation to establish its tax-exempt status when it filed the petition on August 8, 2007. In response to the director's request for evidence (RFE) of August 28, 2007, the petitioner stated that it was in the process of obtaining section 501(c)(3) status and could not include the evidence with its response. On appeal, the petitioner provided a copy of an August 20, 2009 letter from the IRS granting it tax-exempt status under section 501(c)(3) of the IRC. The AAO dismissed the appeal, finding that the petitioner had failed to provide the required documentation with its initial submission or in response to the RFE.

On motion, counsel argues that the petitioner "diligently pursued a determination letter by the IRS" and that "[t]he time provided by the Director to file proof of the exemption letter on the RFE was insufficient and not reasonable based on the timelines of the IRS." Counsel's argument is without merit.

The regulation in effect at the time the petition was filed on August 2007 provided at 8 C.F.R. § 204.5(m)(3)(i):

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

As stated, the petitioner did not submit the required initial documentation with the petition. Additionally, it failed to provide either an IRS determination letter or the alternate documentation permitted by the regulation in response to the RFE. Thus, at the time the petition was filed and at the time the petitioner responded to the RFE, it had the opportunity to provide other documentation that would establish its bona fides as a nonprofit religious organization. However, it failed to do so and because the case was still pending on November 26, 2008, the date new regulations were implemented, it was then required to submit an IRS determination letter. The AAO received that letter on August 27, 2009.

Counsel further argues: "Even if the evidence could not be provided at the time that the nonimmigrant petition was filed, the finding of the IRS establishes that the petitioner was de facto an exempt organization at the time of filing." Counsel's argument is without merit. The petitioner is required to provide evidence as of the date of filing the petition. Its failure to do so, even if the evidence was in its possession and was inadvertently omitted, is grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The petitioner submitted no documentation to establish that the IRS letter was even in existence at the time it filed the petition.

The second issue in this proceeding is whether the petitioner established how it would compensate the beneficiary.

The regulation at 8 C.F.R. § 214.2(r)(11) provides, in pertinent part:

*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 submitted copies of its monthly bank statements for July through October 2007. Although counsel states on motion that the petitioner also submitted its financial statements for 2007, the record does not contain any other financial documentation from the petitioner. Counsel asserts that the petitioner could not provide evidence of past compensation as the beneficiary did not have authority to work in the United States. The regulation cited above does not require evidence of past compensation; the regulation enumerates the means by which the petitioner can provide verifiable documentation of how it intends to compensate the beneficiary. Evidence of past compensation is simply one method of doing so. As discussed in the AAO's prior decision, the petitioner submitted none of the documentation enumerated in the above-cited regulation.

The AAO notes that the petitioner again failed to provide the attestation required by the regulation at 8 C.F.R. § 214.2(r)(8).

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. As no new evidence has been presented to overcome the grounds for the previous dismissal, and no reasons 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 July 8, 2010 is affirmed. The petition is denied.