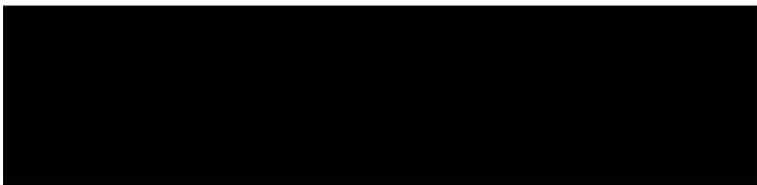


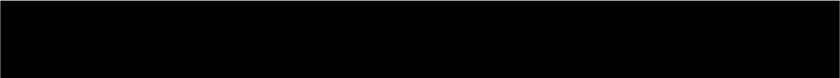
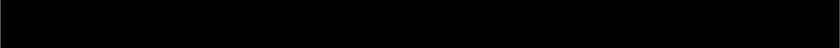
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Date: **MAY 11 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.

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

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 appeal will be dismissed.

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 an assistant 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).

The petitioner asserts on appeal that the Internal Revenue Service (IRS) "treats [the petitioner] as tax exempt and the law does not require a church to possess a Letter of Determination." The petitioner submits no 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 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.

With the petition, filed on March 14, 2011, the petitioner submitted a copy of its articles of incorporation, information from the Florida Department of State Division of Corporations reflecting that the petitioner is a nonprofit organization registered in the State of Florida, a copy of a November 30, 2010 State of Florida "consumer's certificate of exemption" exempting the petitioner from sales and use taxes as a religious organization, and a November 10, 2007 letter from [REDACTED] and financial consultants, advising the petitioner that "under federal law" churches are "not required . . . to seek formal recognition exemption from federal income tax (by filing IRS Form 1023) and thereby obtain a letter of determination."

In a June 8, 2011 request for evidence (RFE), the director advised the petitioner that, despite the letter from its accountant, immigration regulations require the petitioner to submit evidence of its tax-exempt status and instructed the petitioner to submit a currently valid determination letter from the IRS. In response, the petitioner, through its assistant pastor, [REDACTED] stated in a June 22, 2011 letter:

Today, [REDACTED] allowed me to speak with someone in the IRS who told me we could receive a letter from the IRS concerning the tax exempt status It could take from as little as 90 days to over 9 months. I was also informed that churches are not required to have this letter according to IRS publication 557, chapter 3, page 21 stating: Some organizations are not required to file form 1023. These include: Churches, interchurch organizations of local units of a church” Form 1023 is a request to have a recognition letter from the IRS. In good faith we were willing to comply to meet the documentation request from you but the time frame will not allow it and the IRS does not require it for churches therefore we never requested it.

The director denied the petition, noting that when the petition was filed, the U.S. Citizenship and Immigration Services (USCIS) regulations requiring the submission of a currently valid determination letter from the IRS were in effect. The director acknowledged the provisions of the IRS regulations regarding applying for a determination letter and advised the petitioner that immigration regulations require such a letter.

On appeal, the petitioner again states that the IRS does not require a church to apply for tax exemption and that “[o]nly after we presented this information to USCIS were we informed we must have this letter.” The petitioner further asks for additional time, “from 60-270 days” for the IRS to process its application.

The petitioner’s statements are unpersuasive. As noted by the director, the petition was filed more than two years after the current regulation, requiring the submission of a letter from the IRS, was promulgated. Therefore, it should have had knowledge of the regulatory requirements for such a letter. Furthermore, the regulations governing immigration under the purview of the USCIS and those governing federal taxation under the purview of the IRS serve two different purposes. While the IRS regulations may automatically exempt churches as nonprofit organizations for the purpose of determining whether such an organization is required to file a federal tax return and pay taxes, the USCIS regulation offers no such exemption for those organizations who seek benefits under immigration laws. The AAO notes that the IRS guidance to churches includes the following advisory:

Although there is no requirement to do so, many churches seek recognition of tax-exempt status from the IRS because such recognition assures church leaders, members, and contributors that the church is recognized as exempt and qualifies for related tax benefits.

IRS Publication 1828, *Tax Guide for Churches and Religious Organizations*, page 3.

Thus, the IRS recognizes that there may be reasons why a church may want to obtain official IRS recognition as a tax-exempt organization although under IRS regulations, the church is not required to do so. The IRS provides detailed guidance on how to obtain a determination letter that applies equally to churches as to other religious organizations. *Id.*

According to IRS Publication 557, the IRS does not automatically accept that a particular organization is a church simply because the organization states that it is. The organization must meet the requirements of section 501(c)(3) to be automatically exempt, and one of the reasons for choosing to file the Form 1023 is to receive IRS recognition of the organization as a church.¹

Further, while the Act and its implementing regulations do not require an organization to establish that it is a church to qualify as a bona fide nonprofit religious organization, it must establish that its tax-exemption is based on its religious nature. As discussed earlier, the IRS and USCIS regulations serve different purposes, and while a currently valid letter from the IRS recognizing an organization as a church is required under USCIS regulation, the IRS automatic exemption of a church as nonprofit is unrelated to the USCIS requirements that the organization establish itself as both a religious organization and as a nonprofit organization for immigration purposes.

The petitioner's request for an extension of time to submit the letter from IRS is denied, because the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

The petitioner failed to provide a currently valid determination letter from the IRS granting it tax-exempt status. The petitioner has therefore failed to establish that it is a bona fide nonprofit religious organization exempt as defined by USCIS regulation.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ IRS Publication 557 at page 25.