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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: APR 04 2013

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)(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 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 appeal will be dismissed.

The petitioner 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 education resource teacher. 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) and that the "position meets the compensation standards for religious workers."

On appeal, counsel states that the petitioner's "nonprofit religious status has been confirmed by the Maryland State Department of Education and the State of Maryland," and that "because [REDACTED], is classified as a non-profit religious organization by the IRS" and the petitioner is its subsidiary, the petitioner "through group ruling, is also considered a non-profit religious organization." Counsel also asserts that the petitioner maintains two active bank accounts, one of which is designated for payroll and that the petitioner is "financially capable of compensating the beneficiary." Counsel submits a brief and 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 Title 26) 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 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 Internal Revenue Service (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 September 9, 2011, the petitioner submitted a copy of a July 24, 2007 advance ruling letter from the IRS advising [REDACTED] that it was exempt from income tax under section 501(c)(3) of the IRC as a public charity under section 170(b)(1)(A)(vi). The letter states that the advance ruling would end on June 30, 2011. The letter does not indicate

that [REDACTED] applied for or was granted a group exemption for its subordinate units. The petitioner submitted no documentation that [REDACTED] received a permanent exemption from the IRS applicable to its subordinate units or that the petitioner has received an individual tax-exempt certification from the IRS.

In its September 8, 2011 letter submitted in support of the petition, the petitioner, through its executive director, [REDACTED] stated:

The [petitioner] [REDACTED] was established in 1995 with the purpose “to conduct religious, charitable and educational services by proclaiming Christ’s liberating gospel throughout the world by word and deed”. Through a succession of social awareness and religious campaigns, the [REDACTED] has increasingly expanded its humanitarian operations and was consequentially incorporated in July 2007 under the administrative umbrella of [REDACTED] hereinafter the [REDACTED]. The [REDACTED] is currently operating charitable, religious, educational, and humanitarian programs through its subsidiary: the [petitioning organization] host of the following religious educational programs: the [REDACTED] – enrolling students ages infancy to five years old, the [REDACTED] – a K-8 church exempt school, two after-school programs, and the [REDACTED] program – enrolling students ages five to fourteen years old. [REDACTED] is capable to provide indigent communities across Baltimore, Maryland not just material assistance, but also spiritual, psychological, and educational tools for establishing better, more sustainable lives. [Emphasis in the original.]

The petitioner submitted a copy of its articles of incorporation that were filed with the State of Maryland on May 16, 2003. The petitioner also submitted a copy of the unsigned articles of incorporation and reinstatement for [REDACTED] dated June 5, 2005. The petitioner submitted a copy of a certificate from the State of Maryland Department of Assessments and Taxation, dated September 20, 2010, certifying that the petitioner was incorporated in the State of Maryland on May 16, 2003.

In a January 10, 2012 request for evidence (RFE), the director instructed the petitioner to submit documentation “in the form of the most current IRS determination letter . . . as it relates to religious organizations” or the most current IRS letter granting a group exemption to [REDACTED], and documentation to establish the religious nature of [REDACTED] including a properly completed IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, a properly completed Schedule A supplement, if applicable, and a copy of the organizing instrument for the organization.

In its March 30, 2012 response, the petitioner again outlined the history of the church and the incorporation of [REDACTED]. The petitioner also stated that the "Church's nonprofit religious status has been confirmed by the Maryland State Department of Education and the State of Maryland." The petitioner also again stated that it derived its exempt status from "the Parent Non-Profit Organization . . . through a group ruling."

The petitioner submitted, *inter alia*, (1) a copy of a September 22, 2010 letter from the State of Maryland Department of Labor, Licensing and Regulation recognizing the petitioner as a nonprofit organization and as a church and stating that the petitioner is not liable for contributions under the Maryland Unemployment Insurance Law; (2) documentation indicating that the petitioner's [REDACTED] is recognized by the Maryland State Department of Education as a church school; (3) information regarding the petitioner's religious activities; and (4) a copy of a stock certificate indicating that [REDACTED] holds a 100% interest in the petitioning organization. The petitioner also resubmitted the July 24, 2007 advance ruling letter from the IRS to [REDACTED] and a March 27, 2012 letter from the IRS to [REDACTED] acknowledging receipt of its IRS Form 1023. The petitioner stated that the current IRS application for recognition of [REDACTED] "is still pending." The petitioner submitted no documentation from the IRS recognizing it as a nonprofit religious organization under section 501(c)(3) of the IRC.

Again on appeal, counsel asserts that the petitioning organization has been recognized as a nonprofit religious organization by the State of Maryland. However, U.S. immigration laws governing religious workers are not based on recognition by an individual state of an organization as a nonprofit religious organization. Counsel also asserts that the petitioner is recognized as a tax-exempt organization based on the exemption granted to the parent organization. However, there is nothing in the record to indicate that [REDACTED] has been granted a group exemption applicable to its subordinate units. Furthermore, the record does not contain a currently valid determination letter from the IRS showing that [REDACTED] is a tax-exempt organization. The July 24, 2007 letter from the IRS indicates that it is an advance ruling that ended on June 30, 2011, and the petitioner has submitted no new documentation to establish that [REDACTED] or the petitioning organization has been granted tax-exempt status by the IRS.

The regulation sets forth specific documentation that the petitioner must present in order to establish that it is a bona fide nonprofit religious organization for the purpose of this visa classification. The petitioner has submitted none of the documentation required by the regulation at 8 C.F.R. § 214.2(r)(9). The petitioner has therefore failed to establish that it is a bona fide nonprofit religious organization as defined by the regulation.

The director also determined that the petitioner had failed to establish that the "position meets the compensation standards for religious workers." More specifically, the director found that the petitioner had not submitted certification that the beneficiary and her family would not become a public charge. The director cites to no regulation that sets a "compensation standard" for temporary nonimmigrant religious workers. Unlike the immigrant religious worker regulation at

8 C.F.R. § 204.5(m)(7), which requires a petitioner to attest to its ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges, the regulation governing nonimmigrant religious worker requires no such attestation. Furthermore, the nonimmigrant religious worker regulation at 8 C.F.R. § 214.2(r)(11) permits the alien, under specific circumstances, to be self-supporting. Accordingly, we withdraw this determination by the director.

Nonetheless, 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 [Wage and Tax Statement] 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 indicated on the Form I-129, Petition for Nonimmigrant Worker, that it would pay the beneficiary \$14.50 per hour and that she would be expected to work 20 hours per week. The petitioner indicated that it employed 22 people and had a gross annual income of \$631,150. The petitioner left blank the question regarding its net annual income. With the petition, the petitioner submitted an unaudited copy of its financial statement dated February 1, 2011. The statement contains a line item for salaries and wages with an entry of \$121,524 and \$95,872 in Form 1099 income in January but contains no entries for the remainder of the year. A 2011 budget plan does not include an entry for salaries and wages but reflects 1099 income of \$95,872. The petitioner also submitted an uncertified copy of its unsigned and undated Form 1120S, U.S. Income Tax Return for an S Corporation, for 2010. The petitioner identified its business activity as “educational services” and “child care” and indicated that it paid \$121,559 in salaries and wages. The petitioner also indicates that it had a net loss of \$193,829 for the year.

The petitioner also submitted copies of its monthly bank statements for the period January 2011 through November 2011, showing ending balances ranging from a negative \$92.40 to a positive \$4,943.87. Additionally, the petitioner submitted copies of monthly bank statements for a payroll

account. The statements are for the period June 2011 through December 2011 and reflect ending balances ranging from \$551.86 in October 2011 to \$8,453.96 in December 2011.

The petitioner also submitted a copy of its "5 year projection" of revenue and expenses, which projects total income rising from \$1,315,916 in 2011 to \$1,737,690.50 in 2015 with expenditures from \$1,336,880 in 2011 to \$1,653,538 in 2015. The petitioner did not provide any evidence of its actual income and expenditures for 2011. The AAO also notes that the document is partially illegible and the "Totals" line ending the document cannot be read. However, a review of the amounts reflects that the petitioner would have experienced a loss in 2011 and 2012. The petitioner has submitted no evidence to indicate that the projected income is based on realistic expectations. Although the petitioner submitted copies of pay stubs indicating that it has paid its other employees in the past, it does not allege that the beneficiary will be replacing any of these individuals. Therefore, the petitioner's ability to compensate its other employees is not evidence of its ability to also pay the beneficiary the proffered wage.

The petitioner has failed to submit verifiable documentation of how it will compensate the beneficiary.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.