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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: DEC 2 6 2013 OFFICE: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The matter is now before the AAO on appeal. The AAO will withdraw the director's decision. The petitioner has not yet established that the petition is approvable, and therefore the AAO will remand the matter for further action and consideration.

The petitioner is a nonprofit corporation affiliated with the Church of Scientology. It seeks to classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R) of the Act, to perform services as an audiovisual specialist. The beneficiary is a member of the [redacted] The director determined that the petitioner had not established that it qualifies as a *bona fide* tax-exempt organization.

On appeal, the petitioner submits additional evidence, including financial documents and a new letter from the Internal Revenue Service (IRS).

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
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> (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.

Tax-Exempt Status

The first issue in this proceeding concerns the petitioner's claimed tax-exempt status. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(3) includes the following definitions:

Bona fide non-profit religious organization in the United States means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the Internal Revenue Service (IRS) confirming such exemption.

Bona fide organization which is affiliated with the religious denomination means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the IRS confirming such exemption.

Tax-exempt organization means 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 sections 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendments or equivalent sections of prior enactments of the Internal Revenue Code.

The USCIS regulation at 8 C.F.R. § 214.2(r)(9) states:

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 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 petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on December 31, 2012. On Part 5, line 11 of the petition form, the petitioner identified its "Type of Business" as a "501(c)(3) non-profit organization affiliated with the Church of Scientology."

The initial submission included a copy of an October 1, 1993 IRS determination letter indicating that the petitioner is "exempt from federal income tax . . . as an organization described in section 501(c)(3)" of the Internal Revenue Code (IRC, or the Code). The letter shows an address for the petitioner in the Netherlands Antilles and lists the petitioner's "Foundation Status Classification" as "509(a)(3)."

On February 12, 2013, the director issued a notice of intent to deny the petition (NOID), stating that the petitioner submitted "insufficient documentation" to "meet the requirements of 8 C.F.R. § 214.2(r)(9)(iii)." Among other concerns, the director stated that the petitioner's 1993 IRS letter "is not current, does not contain the current address of the petitioner, and does not describe the classification under Sec. 170(b)(1)(A) of the IRC."

> USCIS acknowledges that obtaining a determination letter from the IRS will require the payment of a user fee to the IRS, as discussed in the proposed rule, if the organization does not possess its original determination letter. 72 FR at 20449. USCIS has, however, confirmed with the IRS that determination letters do not expire. Therefore, an organization will need to pay a fee only once to obtain a determination letter. Although USCIS will accept determination letters of any date, USCIS may request evidence or confirm that the exemption is still valid. For example, if the address on the letter differs from the address given in the petition, an explanation should be provided. USCIS has retained the reference to "currently valid" determination letters in the rule text to emphasize that a letter revoked by the IRS cannot be used to meet the definition of tax-exempt organization under the INA. USCIS will routinely examine the publicly available tax documentation for the petitioning organization to determine the ability of the organization to provide support, will consult with the IRS on whether any petitioning organization is validly exempt from taxation under IRC section 501(c)(3), 26 U.S.C. 501(c)(3), and may refer to IRS Publication 78, Cumulative List of Organizations, to verify whether the determination letter is current.

73 Fed. Reg. 72276, 72280 (Nov. 26, 2008).

In addition, the USCIS regulation at 8 C.F.R. § 214.2(r)(16) states that USCIS may verify the petitioner's supporting evidence through any means that USCIS determines to be appropriate. To verify the petitioner's claimed tax-exempt status, the director consulted the IRS's searchable database of exempt organizations.[1] The director stated that a search of this database "did not produce any records for the petitioner."

In response, the petitioner submitted copies of two IRS determination letters, both dated October 1, 1993. One is a copy of the petitioner's letter, submitted previously. The other letter was addressed to the California. Both letters referred to "your application for recognition of exemption," indicating that each entity filed its own application. The letter to the referenced the church's "request for a group ruling" but did not report the outcome of that request.

The petitioner also submitted a copy of a January 12, 2004 letter from the IRS, addressed to the The letter indicated that the church holds Group Exemption Number and read, in part:

> In October 1993 we issued a determination letter that recognized your organization as exempt from federal income tax. Our records indicate that your organization is currently exempt under section 501(c)(3) of the Internal Revenue Code.
>
> Based on the information submitted, we recognized the subordinates named on the list your organization supplied as exempt from federal income tax under section 501(c)(3) of the Code. Also, we classified those subordinates as organizations . . . of the type described in sections 509(a)(1) and 170(b)(1)(A)(i) of the Code.

The record does not show that the church's group exemption covers the petitioning organization. The record does not include "the list [the church] supplied" when it applied for its group exemption. The assertion that the listed organizations are classified under section 509(a)(1) of the IRC appears to exclude the petitioning organization, which is classified under section 509(a)(3) of the IRC. Furthermore, the record shows that the petitioner had filed its own application for recognition of exemption.

The petitioner submitted copies of materials describing the role of the petitioning entity in relation to the church. The petitioner also submitted a copy of an appellate decision from 2010, withdrawing a finding by the director that the petitioner had not established its religious nature. The appellate decision included an acknowledgment that, according to the petitioner's evidence, the petitioner's "funds are dedicated to advance, protect and defend the religion of Scientology." The decision also indicated that the petitioner's "IRS determination letter satisfies 8 C.F.R. § 204.5(m)(8)(iii)(A)."

[1] At the time the director conducted the search, the web address for the database was http://apps.irs.gov/app/pub78. The current address is http://apps.irs.gov/app/eos/.

The director denied the petition on March 28, 2013. The director stated that the petitioner's evidence satisfied the evidentiary requirements at 8 C.F.R. §§ 214.2(r)(9)(iii)(B) through (D), but not (A), because the petitioner did not address the assertion in the NOID that the petitioner's determination letter "can not be verified through the IRS public web site."

On appeal, counsel asserts that the petitioner "requested a current IRS letter verifying that [the petitioner] is a bona fide non-profit religious organization, and the IRS has stated that it is being sent via regular mail." A supplement to the appeal includes a copy of an April 26, 2013 letter, stating: "Our records indicate that you were recognized as exempt under section 501(c)(3) of the Internal Revenue Code."

The petitioner has submitted sufficient evidence from the IRS to establish that the petitioner's 1993 determination letter remains valid. The record establishes that the petitioner is tax-exempt under section 501(c)(3) of the IRC. This ground for denial is withdrawn.

Review of the record reveals another ground for denial. The AAO may deny an application or petition that fails to comply with the technical requirements of the law 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 (9th 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).

Compensation

The additional ground for denial concerns how the petitioner intends to compensate the beneficiary. The USCIS regulation at 8 C.F.R. § 214.2(r)(11) reads, 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. . . . [T]he petitioner must submit verifiable evidence explaining how the petitioner will compensate the alien. . . . 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.

Lines 14 and 15 of Part 5 of Form I-129 instruct the petitioner to state its gross and net annual income. The petitioner did not provide this information, instead stating "Non-profit" in the spaces provided for the figures. The petitioner also did not provide the beneficiary's "Current U.S. Address" as instructed on Part 3, line 2j of the form, instead providing counsel's address.

In Section 1, line 5d of the accompanying employer attestation, the petitioner stated: "As a member of the [the beneficiary] receives room and board, medical, dental, transportation, uniforms, and a weekly allowance of $50 and occasional bonuses." In an accompanying letter, director of the petitioning entity, stated that the petitioner "continues to have sufficient assets to compensate [the beneficiary] for her services."

In the February 2013 NOID, the director stated: "The petitioner has not submitted any evidence to establish how they intend to compensate the alien with salaried or non-salaried compensation. They have merely stated they have sufficient assets to compensate [the beneficiary] for her services." In response, the petitioner submitted financial statements for calendar years 2011 and 2012, including the following figures (the 2011 statement shows rounded dollars):

	2011	2012
Income	$26,807,042	$25,316,976.88
Expenses		
Payroll costs	$271,880	$486,023.45
Staff welfare	$724,321	$902,387.09
Total Expenses	$25,349,552	$23,915,796.75
Net income	$1,457,491	$1,401.180.13

The petitioner also submitted copies of IRS Form W-2 Wage and Tax Statements, indicating that the petitioner paid the beneficiary $2,466.81 in 2011 and $3,621.11 in 2012.

In a photocopied affidavit, attorney stated:

> Most of the compensation provided to members of the . . . is noncash rather than cash. . . .
>
> [T]he member's employer provides for all of the member's living expenses, including room and board, medical and dental care, clothing uniforms) and a small cash stipend for personal expenses. The cash stipend is reported on IRS Form W-2 (Wage and Tax Statement). The non-cash compensation – room and board, medical and dental care and clothing – is not reported on IRS Form W-2 and not required to be so reported.
>
> Section 119 of the Internal Revenue Code ("Code") specifically excludes from gross income the value of (a) meals that an employer furnishes on its business premises to its employees, and (b) lodging on the employer's business premises that the employer is required to accept as a condition of employment, in both cases so long as these benefits are for the convenience of the employer rather than of the employee. Code sections 104 and 105 exclude from gross income an employer's payment (or reimbursement) of the employee's medical expenses (including dental expenses). . . . Under long-standing IRS rulings and case law . . . an employer's provision of employee uniforms . . . is a non-taxable working condition fringe benefit.

On appeal, the petitioner submits copies of quarterly wage and tax reports and further copies of the previously submitted financial statement and IRS Forms W-2. Counsel states that this evidence shows that the petitioner "compensates its salaried non-religious workers [*sic*]."

The financial and tax documents submitted in response to the NOID, and again on appeal, show that the petitioner has paid the beneficiary in excess of $50.00 per week. These materials, however, cover only the beneficiary's salary, which is admittedly a small fraction of the beneficiary's overall compensation. The petitioner must provide not only IRS documentation regarding the beneficiary's salaried compensation, but also verifiable documentation, comparable to IRS documentation, to establish non-salaried compensation. The financial statements do not meet this standard; single-line references to expenses for "staff welfare" are general claims rather than verifiable documentation. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

In his previously submitted affidavit, stated that the beneficiary's non-cash compensation is not taxable and therefore does not appear on IRS Form W-2. His affidavit, however, is not verifiable documentation that the petitioner provides those forms of non-cash compensation. Therefore, the affidavit cannot satisfy the requirement that the petitioner submit verifiable documentation that it will provide non-salaried compensation.

Mr. acknowledged that employee housing is non-taxable only under certain conditions. One of those conditions is that the housing is "on the employer's business premises." The petitioner, however, did not establish that the beneficiary's housing is on the petitioner's business premises. On Part 5, line 13 of Form I-129, the petitioner indicated that its "Current Number of Employees in the U.S." was "66." On the employer attestation, the petitioner indicated that the beneficiary would work at California, and that all 66 of the petitioner's employees work at that same location (*see* lines 5e and 1d of the employer attestation). Neither the petitioner's initial submission nor its response to the NOID included verifiable documentation to show that the property at includes work space, dining facilities and housing for 66 employees.[2] The record also contained no verifiable documentation that the petitioner provides medical care, uniforms, or the other benefits listed on the petition.

For the above reasons, the submitted evidence meets the petitioner's burden of proof regarding the beneficiary's salaried compensation, but not the non-salaried compensation including room, board, and other benefits.

The director's decision is withdrawn. The record, however, does not currently establish that the petition is approvable. The petitioner has overcome the ground for denial relating to its tax-exempt status, but the petitioner has not submitted verifiable documentation of the beneficiary's claimed

[2] The beneficiary's IRS Forms W-2 show the petitioner's address as The property at this address is adjacent to the property at at the northwest corner of the intersection between the two streets.

non-salaried compensation. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.