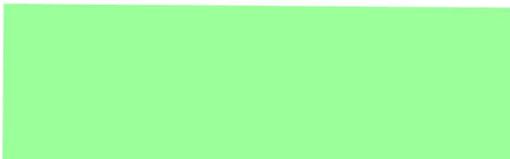


(b)(6)

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

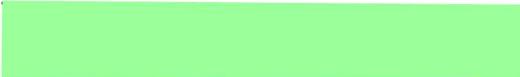
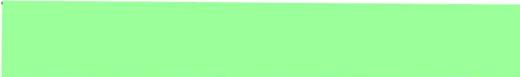


U.S. Citizenship  
and Immigration  
Services



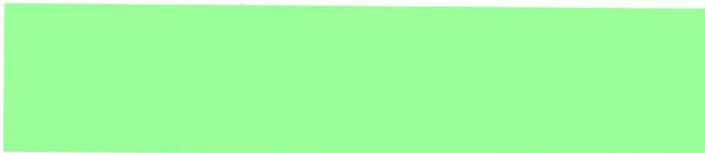
Date: **FEB 14 2013** Office: CALIFORNIA SERVICE CENTER

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 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) dismissed a subsequent appeal and a subsequent motion to reopen. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed.

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 (USCIS) policy. 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 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 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) and that the beneficiary sought to work for a bona fide religious organization at the request of the organization in a religious [vocation] or occupation. The AAO upheld that determination on appeal. The AAO also found that the petitioner had failed to establish how it intends to compensate the beneficiary. The AAO dismissed the petitioner's motion to reopen for failure to establish new facts that were supported by affidavits or other documentary evidence.

On the instant motion, counsel asserts:

First, the Director found that the Petitioner did not establish that it qualifies as a bona fide nonprofit religious organization exempt from taxation under § 501(c)(3) of the [IRC]. The AAO affirmed the director's decision in this regard. However, previously on appeal, the AAO acknowledges that Petitioner submitted documentation from the IRS granting tax-exempt status to [the petitioner]. Regulations at 8 C.F.R. § 214(r)(9) provide that a petition must include a valid determination letter from the IRS verifying that the organization (or the group, in the case of a religious organization) is a tax-exempt entity. This documentation, as acknowledged by AAO, was submitted, and acknowledged as received; thereby contradicting the finding.

Counsel's assertion is not persuasive. Counsel fails to acknowledge that the petitioner did not submit a copy of the IRS determination letter until its appeal. As stated in the AAO's prior decision, the petitioner must establish eligibility at the time the petition was filed. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978). The record before the director therefore failed to establish that the petitioner was a bona fide nonprofit religious organization. Additionally, on appeal, the AAO determined that the petitioner had failed to establish that it operated as a bona fide nonprofit religious organization.

Counsel also asserts that the AAO erred by finding that the petitioner had not established how it intends to compensate the beneficiary. In its motion to reopen, the petitioner submitted an affidavit from its pastor certifying that the beneficiary would receive an annual salary of \$25,000. The AAO found that the affidavit from the pastor did not constitute new evidence that would merit a reopening of its previous decision.

Counsel also alleges:

AAO's opinion is flawed in that it first holds that there was no existence of the entity at the address listed on Form I-129 . . . yet in the same opinion, it acknowledges that [the petitioner] relocated to [REDACTED] in stating in its decision that Petitioner does not explain how the missionary activities could be operated out of [REDACTED] residence.

Counsel arrives at this conclusion by selectively choosing language from the AAO's decision and using them out of context. For example, counsel does not acknowledge that the AAO found that the petitioner had not existed at the location it identified as its address of record for more than four years prior to the filing of the visa petition and was not operating at that location when an immigration officer (IO) visited the premises to verify its claims. Counsel also ignores the fact that the AAO questioned how the petitioner could perform business as usual from [REDACTED] residence after operating from a warehouse where work consisted of using forklifts and trucks.

Counsel has provided no pertinent precedent decisions to establish that the AAO's decision was based on an incorrect application of law or USCIS policy. Counsel provides unpublished copies of three AAO decisions. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Furthermore, counsel does not explain how any of the decisions are relevant to the instant proceeding. Counsel has also failed to establish that the AAO's previous decisions were incorrect based on the evidence of record at the time of the initial decisions.

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 counsel has failed to set forth reasons indicating that the decision was based on an incorrect application of law or policy, the previous decisions of the AAO and the director will be affirmed. The petition is denied.

**ORDER:** The AAO's decision of May 9, 2012 is affirmed. The petition remains denied.