

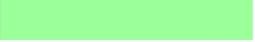
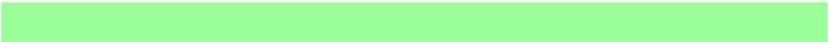
(b)(6)

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



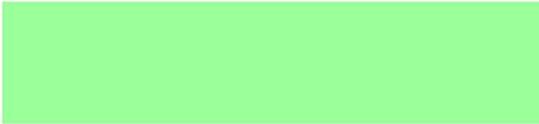
U.S. Citizenship
and Immigration
Services



Date: Office: CALIFORNIA SERVICE CENTER FILE: 
IN RE: FEB 20 2013 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 with the field office or service center that originally decided your case by filing a 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 classification of the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as an associate pastor for its women's ministry. 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 had been a member of its religious denomination for two full years immediately preceding the filing of the petition.

On appeal, counsel asserts that the petitioner submitted the required documentation of its tax-exempt status and of the beneficiary's qualifying membership in the denomination. The petitioner submits 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 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 IRS [Internal Revenue Service] 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.

The petition was filed on December 12, 2011. In a June 21, 2011 letter provided with the petition, the petitioner stated that it had filed for exemption as a nonprofit organization with the IRS and submitted a copy of an IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, dated April 18, 2011, a copy of a June 13, 2011 check to the IRS, and a copy of the postal receipt indicating the petitioner mailed the

application for exemption to the IRS on June 14, 2011. The petitioner also submitted a copy of its articles of incorporation, reflecting that it was incorporated in the State of New York on March 25, 2008, and a July 21, 2011 affidavit from its senior pastor, [REDACTED] who stated that the petitioner was “awaiting the approval of the 501(c)(3) tax exempt status from the IRS.”

In a February 3, 2012 request for evidence (RFE), the director instructed the petitioner to submit a determination letter from the IRS to establish that it is a bona fide nonprofit religious organization in accordance with the above-cited regulation. In an April 11, 2012 statement, [REDACTED] indicated that a copy of a September 22, 2011 determination letter from the IRS was included with the petitioner’s response. Although one of the tabbed papers was labeled “Copy of Determination Letter from IRS – 501(c)(3),” no letter followed the tab.

On June 18, 2012, the director denied the petition, finding, *inter alia*, that the petitioner had failed to provide an IRS determination letter as required by the regulation to establish it is a bona fide nonprofit religious organization. On appeal, the petitioner submits a copy of a September 11, 2011 letter from the IRS recognizing the petitioner as a tax-exempt organization under sections 501(c)(3) and 170(b)(1)(A)(i) of the IRC. Counsel asserts on appeal that the document was included with the petitioner’s response to the RFE but provided no documentation to support this assertion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel further asserts, “The Service could have requested additional evidence to clarify the [misunderstandings] in particular, the fact that a 501(c)(3) determination letter was mentioned [specifically] and was not found.” Counsel’s assertion is without merit. It is the petitioner’s responsibility to ensure that all of the required evidence establishing eligibility for a particular benefit is submitted. The director has no obligation to follow up on whether a petitioner intended to submit certain evidence but failed to do so. The regulation at 8 C.F.R. § 103.2(b)(11) states:

Responding to a request for evidence or notice of intent to deny. In response to a request for evidence . . . the . . . petitioner may: submit a complete response containing all of the requested information at any time within the period afforded; submit a partial response and ask for a decision based on the record; or withdraw the application or petition. All requested material must be submitted together at one time . . . Submission of only some of the requested evidence will be considered a request for a decision on the record.

In her February 3, 2012 RFE, the director gave the petitioner an opportunity to correct the deficiencies in its evidence. The evidence submitted in response failed to establish the petitioner’s bona fides as a nonprofit religious organization as that term is defined by the

regulation. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The issue to be determined on appeal is whether the director erred in finding that the petitioner failed to establish eligibility.

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'l Comm'r 1978). It is clear that at the time of filing the petition, the petitioner did not have a determination letter from the IRS recognizing it as a nonprofit religious organization. The petitioner also failed to submit the letter in response to the director's RFE. Accordingly, the record before the director failed to establish that the petitioner is a bona fide nonprofit religious organization as defined by the regulation.

The second issue is whether the petitioner has established that the beneficiary has been a member of its religious denomination for two full years immediately preceding the filing of the visa petition.

The regulation at 8 C.F.R. § 214.2(r)(1) states that, to be approved for temporary admission to the United States, or extension and maintenance of status, for the purpose of conducting the activities of a religious worker for a period not to exceed five years, an alien must:

- (i) Be a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least two years immediately preceding the time of application for admission.

The petition was filed on December 12, 2011. Therefore, the petitioner must establish that the beneficiary was a member of its religious denomination for at least the two years immediately preceding that date.

In Section 1, question 4 of the Form I-129 Supplement R, which asks the petitioner to describe the relationship between the petitioning organization and the organization abroad of which the beneficiary is a member, the petitioner stated, "The Church, [redacted] where [the beneficiary] is an [ordained] minister, is a mission of the [petitioning organization]." In Question 6, the petitioner stated, "We are a nonprofit organization but we are not affiliated to a religious denomination."

In his July 21, 2011 affidavit, [redacted] stated that the petitioner "is in a missionary relationship with [redacted] located in Ecuador." The petitioner

also provided a copy of a June 22, 2011 letter from [REDACTED] senior pastor of [REDACTED] in which he stated that the beneficiary "has been an active member of our church, for many years and has served as a Pastor of Youth Ministries." He also stated that his organization "is a mission of the [the petitioning organization]; we have a missionary relationship where the church in the United States is of support to the mission work of the Lord in Ecuador."

The regulation at 8 C.F.R. § 214.2(r)(3) provides, in pertinent part:

Denominational membership means membership during at least the two-year period immediately preceding the filing date of the petition, in the same type of religious denomination as the United States religious organization where the alien will work.

Religious denomination means a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes one or more of the following:

- (A) A recognized common creed or statement of faith shared among the denomination's members;
- (B) A common form of worship;
- (C) A common formal code of doctrine and discipline;
- (D) Common religious services and ceremonies;
- (E) Common established places of religious worship or religious congregations; or
- (F) Comparable indicia of a bona fide religious denomination.

In her February 3, 2012 RFE, the director advised the petitioner:

There was no evidence submitted to support statement that the church in Chordeleg is a mission of the petitioning church. Please submit evidence to establish how the petitioning organization is affiliated with the [REDACTED] organization abroad of which the beneficiary is a member. Provide proof in the form of a corresponding registry/directory and evidence verifying such commonalities and cooperating or organizational connection. The registry or directory should be formally published or made from the governing body of the religious denomination for members of the religious denomination.

The director also instructed the petitioner to submit documentation to establish the beneficiary's qualifying two-year membership in its denomination.

In response, the petitioner stated that it provides financial support to its mission church in Chordeleg and, as evidence, submitted copies of what it stated are checks showing its support for the Chordeleg church. The documentation consists of two processed checks from the petitioner made payable to [REDACTED] in March and April 2011. However, it is not clear that the checks, each in the amount of \$1,000 and which appear to be annotated as offerings for the Ecuador church, are actually made payable to that church and that the church received the funds. The endorsements on the back indicate that they were made payable to [REDACTED] in Stamford, Connecticut. Other documents appear to be copies of wire transfers payable to the beneficiary and another individual in Ecuador. The payments were sent by [REDACTED] whose address is listed as [REDACTED] and also as [REDACTED]. The relationship of [REDACTED] to the petitioning organization is not established in the record.

The petitioner submitted a copy of a certificate of ordination reflecting that it had ordained the beneficiary as a minister on January 25, 2010 and referenced the June 22, 2010 letter from [REDACTED] stating that the beneficiary stating had been a member of the [REDACTED] for "many years." In denying the petition, the director stated:

The [ordination] certificate shows that the beneficiary was ordained by the petitioner but does not show that the beneficiary has met all membership requirement[s] of the petitioner. The letter of [REDACTED] in Chordeleg, Ecuador supports the membership of the beneficiary in the church in Chordeleg, Ecuador. But, it does not have supporting evidence to demonstrate a relationship between the petitioner and the church in Chordeleg, Ecuador or to establish a recognizable membership of the two churches operating under comparable indicia of a bona fide religious denomination. The petitioner did not submit evidence verifying both churches having such commonalities and cooperation or organizational connection, as requested. Therefore, the petitioner has not shown that the beneficiary met the two-year membership requirement.

Counsel disputes the director's conclusion, noting that the ordination certificate is dated in 2010 "more than two years ago," that [REDACTED] had submitted affidavits attesting to the relationship between the two organizations, and that the checks and other financial documents show that the petitioner has provided financial support to the Chordeleg. On appeal, the petitioner submits a copy of an "Ecclesiastical Affiliation Agreement" between the petitioning organization and the Chordeleg church dated March 12, 2009. The petitioner also provides a copy of [REDACTED] passport and photographs that it states depict the reverend and other church members visiting the church in Chordeleg. Counsel states that these photographs are evidence of the petitioner's support of its mission church in 2008.

The record sufficiently establishes that the beneficiary has been a member of the petitioner's religious denomination for two full years immediately preceding the filing of the petition. The director acknowledged that the letter from [REDACTED] was sufficient to establish that the beneficiary is a member of [REDACTED]. The letter also confirms that [REDACTED] is a mission of the [REDACTED] the petitioning organization. The beneficiary, who is in Ecuador, was ordained by the petitioning organization in 2010. On appeal, the petitioner submits a copy of the affiliation agreement between the organizations.

The director's determination that the petitioner has not established the beneficiary's qualifying membership in the petitioner's denomination is withdrawn. Nonetheless, as the petitioner has not established that it is a bona fide nonprofit religious organization as defined by the regulation at 8 C.F.R. § 214.2(r)(3), the petition cannot be approved.

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.