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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

[Redacted]

Date: **JAN 09 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:

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 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 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 priest. 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).

On appeal, the petitioner states that it has been in existence since 1946 and "is exempt from Federal income tax under IRC 501(c)(3)." 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 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.

With the petition, filed on January 3, 2012, the petitioner submitted a copy of a March 1, 1948 letter from the State of California Franchise Tax Commissioner advising the petitioner of the approval of its application for exemption from taxation under the state's Bank and Corporation Franchise Tax Act. The petitioner also submitted a copy of its articles of incorporation.

In an April 19, 2012 request for evidence (RFE), the director instructed the petitioner to submit documentation of its tax-exempt status as outlined in the above-cited regulation. In response, the petitioner submitted a copy of IRS Form 1023, Application for Recognition of Exemption Under

Section 501(c)(3) of the Internal Revenue Code, which the petitioner signed on June 3, 2012. The petitioner's letter submitting the form to the IRS is dated May 25, 2012. The director denied the petition on July 31, 2012, finding that the petitioner had failed to establish that it is a bona fide nonprofit religious organization as required by the regulation. On appeal, the petitioner states:

Petitioner filed Form 1023 on June 10, 2012. It received a letter from the IRS dated August 1, 2012, acknowledging receipt of Petitioner's Form 1023 and indicating that it would be approximately 90 days from the date of the letter for the IRS to issue the determination letter. . . . Petitioner is waiting for the IRS determination letter indicating that it is exempt from Federal income tax under IRC 501(c)(3).

By letter dated September 26, 2012, the petitioner provided a copy of an August 31, 2012 letter from the IRS recognizing the petitioner as tax-exempt under section 501(c)(3) of the IRC.

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). The petitioner failed to provide a currently valid determination letter from the IRS establishing that it is a bona fide nonprofit religious organization with the petition or in response to the director's RFE. The IRS determination letter submitted by the petitioner is dated eight months after the petition was filed.

Accordingly, the petitioner failed to establish that it is a bona fide nonprofit religious organization as defined by the 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.

