



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JUL 26 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:   
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:

SELF-REPRESENTED

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

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 AAO on appeal. The AAO will dismiss the appeal.

The petitioner is a “church and training center” affiliated with the [REDACTED]. It seeks to classify the beneficiary as a nonimmigrant religious worker under section 101(a)(15)(R) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R), to perform services as a Latino ministry assistant and co-pastor of [REDACTED] Columbia, Pennsylvania. The director determined that the petitioner had not submitted a required determination letter from the Internal Revenue Service (IRS) to establish its tax-exempt status.

On appeal, the petitioner submits an IRS group determination letter and letters from [REDACTED] officials.

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 U.S. Citizenship and Immigration Services (USCIS) 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;

- (ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);
- (iii) Be coming solely as a minister or to perform a religious vocation or occupation as defined in paragraph (r)(3) of this section (in either a professional or nonprofessional capacity);
- (iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and
- (v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

The USCIS regulation at 8 C.F.R. § 214.2(r)(9) reads, in pertinent part:

*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.

The petitioner filed the Form I-129 petition on September 25, 2012. [REDACTED] director of the petitioning entity, stated that the petitioning entity is “an extension of [REDACTED].”

The petitioner submitted copies of two letters from the IRS. A determination letter dated September 2, 1973, recognized the tax exempt status of the [REDACTED] of the [REDACTED]. A February 21, 1990 letter, addressed to the [REDACTED] acknowledged the issuance of the 1973 determination letter. To establish the link between the [REDACTED] and the [REDACTED] the petitioner submitted a copy of a July 8, 1980 document from the Pennsylvania Department of State acknowledging that the [REDACTED] changed its name to the [REDACTED]. The evidence described above did not mention a group exemption, and the petitioner did not submit any evidence that the [REDACTED] held a group exemption that covered the petitioning entity.

The petitioner submitted copies of church publications intended to establish the petitioner’s affiliation with the [REDACTED]. For example, a copy of the 2011 [REDACTED] Report listed several “Field Directors” under the heading “Church Development.” Among the names listed were those of [REDACTED], in charge of “Latino Church development in the USA and abroad.” These

materials establish a connection between the two entities, but they are not IRS documentation of the petitioner's qualifying tax-exempt status.

In a notice dated January 10, 2013, the director advised the petitioner of the director's intent to deny the petition. The director quoted the regulation at 8 C.F.R. § 214.2(r)(9) and stated that the petitioner's initial "evidence does not appear to include a determination letter from the IRS confirming that the petitioner is tax exempt, or confirming that a parent organization is tax exempt and recognizing a group exemption under which the petitioner is a subordinate." The director acknowledged the IRS determination letter issued to the [REDACTED], but stated that the letter does not "indicate that there is a group exemption."

In response to the notice, [REDACTED] stated that the petitioner is "a department within [REDACTED] religious organization." The petitioner submitted additional copies of the same IRS letters submitted previously, along with evidence of the petitioner's affiliation with the [REDACTED]. The submitted evidence, however, did not satisfy the regulatory requirements at 8 C.F.R. § 214.2(r)(9)(i), which requires an IRS determination letter issued directly to the petitioner, or 8 C.F.R. § 214.2(r)(9)(ii), which requires an IRS determination letter establishing a group tax exemption.

The director denied the petition on February 4, 2013, because the petitioner had not submitted its own IRS determination letter, and the determination letters for the [REDACTED] did not contain any reference to group exemption. The director concluded that the petitioner had failed to meet its burden of proof, because the petitioner had not submitted specific required evidence.

On appeal from the director's decision, the petitioner requested "extra time to provide evidence that [it is] a bona fide non-profit religious organization." [REDACTED] director of [REDACTED] [REDACTED] stated: "An upcoming meeting of the [REDACTED] Administrative Council on March 12-13, 2013 will be the first scheduled meeting of that body since a request for [the beneficiary's] sponsorship was submitted to" USCIS.

Subsequently, on March 25, 2013, the petitioner submitted a copy of a January 6, 2004 IRS determination letter, granting the [REDACTED] a group exemption. The petitioner did not submit this letter when the director had previously issued specific instructions to submit evidence of group exemption. The director put the petitioner on notice of required evidence and gave the petitioner a reasonable opportunity to provide it for the record before the issuance of the decision. 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, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988).

The petitioner also submitted a copy of a March 18, 2013 letter from [REDACTED], [REDACTED] treasurer and director of finance, addressed to the petitioner. The letter reads, in part: "Your organization is now a participating subordinate in our Federal group tax exemption for the remainder of the calendar year 2013. During the fourth quarter of 2013 you will receive a notice of option to renew for the year 2014. Our group exemption number is [REDACTED]." This letter appears to indicate that

the group exemption letter did not cover the petitioner before March 2013, and that the [REDACTED] newly added the petitioner to the group exemption specifically in response to the denial of the petition. As such, the group exemption did not include the petitioner at the time of filing in September 2012. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. §103.2(b)(1), (12). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978).

The evidence newly submitted on appeal does not show that the director erred based on the evidence that the petitioner had made available to the director and on the facts that existed at the time the petitioner filed the petition.

The AAO will dismiss the appeal for the above stated reasons. 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 appeal is dismissed.