



**U.S. Citizenship
and Immigration
Services**

(b)(6)

DATE: **APR 02 2014** OFFICE: CALIFORNIA SERVICE CENTER [REDACTED]

IN RE: Petitioner: [REDACTED]

Beneficiary: [REDACTED]

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:

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
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 is a church. It seeks to extend the beneficiary's stay 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 "Bishop/Academic Dean." The director determined that the beneficiary violated the terms of his R-1 nonimmigrant status by engaging in unauthorized employment. The director, therefore, denied the petitioner's extension request. The director also determined that the petitioner had not submitted required evidence to establish that it qualifies as a bona fide nonprofit religious organization or a bona fide organization which is affiliated with the denomination and accordingly denied the petition.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(12) requires that any request for an extension of stay as an R-1 must include initial evidence of the previous R-1 employment (including Internal Revenue Service (IRS) documentation if available). The regulation at 8 C.F.R. § 214.2(r)(13) states that an R-1 alien may not be compensated for work for any religious organization other than the one for which a petition has been approved or the alien will be out of status. Under 8 C.F.R. § 214.2(r)(5), extension of status is available only to aliens who maintain R-1 status.

The issue of the beneficiary's maintenance of R-1 status is significant only insofar as it relates to the application to extend that status. An application for extension is concurrent with, but separate from, the nonimmigrant petition. There is no appeal from the denial of an application for extension of stay filed on Form I-129, Petition for a Nonimmigrant Worker. 8 C.F.R. § 214.1(c)(5). Because the beneficiary's maintenance of status is an extension issue, rather than a petition issue, the AAO lacks authority to decide this question.¹

The director further determined that the petitioner had not submitted required evidence to establish that it qualifies as a bona fide nonprofit religious organization or a bona fide organization which is affiliated with the denomination.

The USCIS regulation at 8 C.F.R. § 214.2(r)(3) provides 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 [IRS] confirming such exemption.

¹ Counsel states on appeal that the petitioner proceeds "only to appeal the decision of the USCIS related to revocation of [the beneficiary's] R-1 status." Although counsel characterizes the director's decision as a revocation, the director did not revoke the petition initially granting the beneficiary R-1 status. Rather, the director denied the petitioner's request for an extension of status. As stated above, the issues raised by the petitioner regarding the director's decision to deny the extension request are not appealable and may not be considered by the AAO.

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 that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the Internal Revenue Code . . .

Regarding evidence of the petitioner's tax-exempt status, the regulation at 8 C.F.R. § 214.2(r)(9) requires the following:

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 instructions on the Form I-129 petition also list these identical evidentiary requirements. The petition was filed on February 7, 2013. The petitioner did not include a determination letter from the IRS confirming its tax-exempt status as required by the above-cited regulation. Instead, the petitioner asserted its affiliation with [REDACTED] and submitted an IRS determination letter relating to that organization.

In a Notice of Intent to Deny (NOID) dated May 3, 2013, the director instructed the petitioner to provide evidence of its bona fides as a non-profit religious organization or a bona fide organization affiliated with the denomination as required by the regulation. The director noted that the submitted determination letter did not indicate that [REDACTED] was granted a group exemption that would apply to subordinate or affiliated organizations.

In response, the petitioner submitted a May 31, 2013 letter from [REDACTED] stating that the petitioner's "group 501(c)(3) is currently being processed." The director denied the petition on June 19, 2013, finding that the petitioner had failed to submit the required IRS determination letter with the petition or in response to the NOID.

The petitioner did not submit a valid IRS determination letter confirming its tax-exempt status. Accordingly, the petitioner failed to establish that it qualifies as a bona fide nonprofit religious organization or a bona fide organization that is affiliated with the denomination. Further, on appeal, the petitioner does not contest the director's findings on this issue or offer additional evidence or arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); see also *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

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, that burden has not been met.

ORDER: The appeal is dismissed.