



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **APR 18 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner:
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:

[Redacted]

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,

R. Rosenberg

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 AAO will dismiss the appeal.

The petitioner is a church. It seeks to classify the beneficiary as a nonimmigrant 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), to perform services as a pastoral music director. The director determined that the petitioner had not submitted required evidence to establish that it qualifies as a bona fide nonprofit religious organization.

On appeal, the petitioner submits a brief from counsel and additional evidence.

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)(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 Internal Revenue Service (IRS) confirming such exemption.

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 Internal Revenue Service (IRS) establishing 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) of the Internal Revenue Code of 1986, 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 religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

The instructions on the Form I-129, Petition for a Nonimmigrant Worker, also list these identical evidentiary requirements. The petition was filed on November 9, 2012. On the petition, the petitioner listed its address as [REDACTED] California [REDACTED] and its Federal Employer Identification Number (EIN) as [REDACTED]. The petitioner did not include a determination letter from the IRS with its initial evidence as required by the above-cited regulation. Instead, the petitioner submitted a printout from the IRS website's Exempt Organization Select Check search, listing the petitioning church as a public charity in [REDACTED] California. The IRS letter required under the above regulations indicates whether the petitioning organization was determined to be an organization described in section 170(b)(1)(A)(i) of the Code, which refers specifically to churches and related organizations. The Exempt Organization Select Check search results, however, do not include this information and therefore do not establish whether an organization was granted tax-exempt status as a religious organization or as something else. If approved as something other than a religious organization, the regulations provide for additional documentary evidence. 8 C.F.R. § 214.2(r)(9)(iii).

In a request for evidence (RFE) dated March 18, 2013, the director instructed the petitioner to provide evidence of its bona fides as a non-profit religious organization as required by the

regulation. In response, counsel stated that the petitioner had recently discovered that it had lost its determination letter, and had requested a copy of the letter from the IRS. The petitioner submitted an additional printout from the IRS website, a printout from a website, 501c3lookup.org, and a copy of IRS Form 4506-A, Request for Public Inspection or Copy of Exempt or Political Organization IRS Form, dated June 6, 2013.

The director denied the petition on July 12, 2013, finding that the petitioner failed to submit the required IRS determination letter with the petition, or in response to the RFE, to establish it qualifies as a bona fide nonprofit religious organization in the United States that is exempt from taxation.

On appeal, the petitioner submits a copy of an October 7, 1992 determination letter from the IRS addressed to the petitioning church at [REDACTED] California [REDACTED].” As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal or motion. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

At issue on appeal is whether the director erred in finding that the petitioner failed to submit the required IRS determination letter. When USCIS published the religious worker regulation, supplementary information published with the regulation explained USCIS's rationale for this requirement:

Several commenters objected to the proposed requirement that petitioners must file a determination letter from the IRS of tax-exempt status under IRC section 501(c)(3), 26 U.S.C. 501(c)(3), with every petition. Commenters pointed out that the IRS does not require churches to request a determination letter to qualify for tax-exempt status. A designation that an organization is a "church" is sufficient to qualify for tax-exempt status. Although some churches choose to request a formal IRC section 501(c)(3) determination, they are not required to do so. . . .

USCIS recognizes that the IRS does not require all churches to apply for a tax-exempt status determination letter, but has nevertheless retained that requirement in this final rule. *See Internal Revenue Service, Tax Guide for Churches and Religious Organizations: Benefits and Responsibilities under the Federal Tax Law* (IRS pub. no. 1828, Rev. Sept. 2006). A requirement that petitioning churches submit a tax determination letter is a valuable fraud deterrent. An IRS determination letter represents verifiable documentation that the petitioner is a bona fide tax-exempt organization or part of a group exemption. Whether an organization qualifies for exemption from federal income taxation provides a simplified test of that organization's non-profit status.

Requiring submission of a determination letter will also benefit petitioning religious organizations. A determination letter provides a petitioning organization with the opportunity to submit exceptionally clear evidence that it is a bona fide organization.

73 Fed. Reg. 72276, 72279-80 (Nov. 26, 2008). Under the controlling regulations, the issue is not whether the IRS would automatically regard the petitioner as tax-exempt, but whether the petitioner has provided the required IRS determination letter. At filing, through the regulations and the form instructions, the petitioner was on notice of the required evidence. The petitioner was given an additional opportunity to submit the IRS letter in response to the director's request for evidence. The petitioner failed to submit evidence of a currently valid determination letter from the IRS.

A petitioner must establish eligibility at the time of filing and each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions. See 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 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). As the petitioner failed to submit required evidence, the director did not err in finding that the petitioner failed to establish eligibility for the benefit sought.

Further, no explanation was provided regarding the discrepancy between the address listed on the petition and that listed in the determination letter. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In the preamble to the final rule governing special immigrant and nonimmigrant religious workers, USCIS stated:

Although USCIS will accept determination letters of any date, USCIS may request evidence or confirm that the exemption is still valid. For example, if the address on the letter differs from the address given in the petition, an explanation should be provided. USCIS has retained the reference to "currently valid" determination letters in the rule text to emphasize that a letter revoked by the IRS cannot be used to meet the definition of tax-exempt organization under the INA. USCIS will routinely examine the publicly available tax documentation for the petitioning organization to determine the ability of the organization to provide support, will consult with the IRS on whether any petitioning organization is validly exempt from taxation under IRC section 501(c)(3), 26 U.S.C. 501(c)(3), and may refer to IRS Publication 78, Cumulative List of Organizations, to verify whether the determination letter is current.

Id., at 72280.

As an additional matter, the petitioner has not established how it intends to compensate the beneficiary. The AAO conducts appellate review on a *de novo* basis. See *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The USCIS regulation at 8 C.F.R. § 214.2(r)(11) provides:

Evidence relating to compensation. Initial evidence must state how the petitioner intends to compensate the alien, including specific monetary or in-kind compensation, or whether the alien intends to be self-supporting. In either case, the petitioner must submit verifiable evidence explaining how the petitioner will compensate the alien or how the alien will be self-supporting. Compensation may include:

(i) *Salaried or non-salaried compensation.* Evidence of compensation may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. IRS documentation, such as IRS Form W-2 or certified tax returns, must be submitted, if available. If IRS documentation is unavailable, the petitioner must submit an explanation for the absence of IRS documentation, along with comparable, verifiable documentation.

* * * *

On the Form I-129 petition, Part 5. Basic Information about the Proposed Employment and Employer, the petitioner stated that it would pay the beneficiary a salary of \$30,000 per year, and wrote "none" in the space provided for "Other Compensation." The petitioner did not submit page 29 of the Form I-129 Supplement R, a page of the Employer Attestation which instructs the petitioner to submit a detailed description of the proposed compensation. The petitioner submitted copies of bank account statements and copies of its financial statements for the years 2010 and 2011. The 2010 financial statement listed total assets of \$77,204 and net revenue of \$43,926 for the year with \$96,400 spent on "Pastoral/Ministers Salaries." The 2011 statement listed total assets of \$88,562 and net revenue of \$59,785 for the year with \$88,500 spent on "Pastoral/Ministers Salaries."

In the March 18, 2013 RFE, the petitioner was instructed to submit two previously missing pages from the Form I-129 petition and Supplement R, and to provide verifiable evidence of how the petitioner intends to compensate the beneficiary. In response, the petitioner submitted a new copy of the petition. In both Part 5 and the Employer Attestation of the new petition, the petitioner indicated that it would pay the beneficiary \$9,600 per year and provide room and board. The petitioner submitted a copy of its financial statement for 2012, which listed total assets of \$46,772 and net revenue of \$14,208 for the year with \$50,000 spent on "Pastoral/Ministers Salaries." The petitioner also provided copies of additional bank statements and an uncertified copy of its pastor's 2012 Form 1040, U.S. Individual Income Tax Return, reporting total income of \$22,000 without identifying the source of the income. The petitioner additionally provided a letter regarding the accommodations to be provided to the beneficiary.

The petitioner did not provide an explanation for the discrepancy between the proffered compensation as described at the time of filing and that described in response to the RFE. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective

evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, at 591-92. In response to a request for evidence of its ability to provide the proffered compensation, the petitioner may not change the proposed compensation. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). The petitioner has not established its intent or ability to provide the proffered compensation as described at the time of filing.

Further, if the petitioner intends to provide salaried or non-salaried compensation, the regulation at 8 C.F.R. § 214.2(r)(11) requires IRS documentation, such as Form W-2 or certified tax returns, or an explanation for its absence along with comparable, verifiable documentation. The only IRS documentation submitted by the petitioner consisted of an uncertified tax return for one of its employees, which did not identify the source of the employee's income.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.