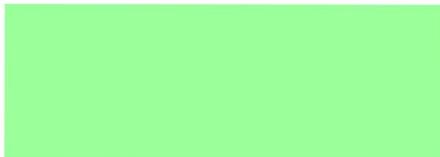


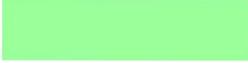
(b)(6)

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Service  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

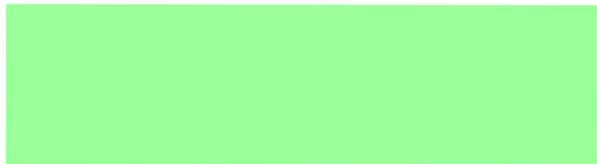


DATE: **DEC 15 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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:



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,

A handwritten signature in black ink, appearing to read "Ron 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. We 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 director of missions. The director determined that the petitioner had not submitted required evidence to establish that it qualifies as a bona fide nonprofit religious organization. The director also found that the petitioner failed to establish how it intends to compensate the beneficiary.

The petitioner submits additional evidence on 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.

#### I. BONA FIDE NON-PROFIT RELIGIOUS ORGANIZATION

The first issue to be discussed is whether the petitioner established that it qualifies as a bona fide nonprofit religious organization.

##### A. The Law

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;
- (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 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 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.

#### B. Analysis

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on May 16, 2013. The petitioner indicated on the petition that it is a Pentecostal church affiliated with the [REDACTED] denomination. The petitioner did not include a determination letter from the IRS with its initial evidence. Accompanying the petition, the petitioner submitted a copy of its IRS Form SS-4, Application for Employer Identification Number. The petitioner also submitted an "Affiliation Certificate" indicating the petitioner's affiliation with the [REDACTED]

In a request for evidence (RFE) dated October 15, 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, the petitioner submitted a New York State and Local Sales and Use Tax Exempt Organization Exempt Purchase Certificate. In addition, the petitioner submitted a December 20, 2013 letter from the [REDACTED] attesting to the petitioner's affiliation with the General Council of the [REDACTED]

The director denied the petition on March 25, 2014, finding that the petitioner had 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 IRS determination letters stating that the General Council of the [REDACTED] Missouri was granted a group exemption under section 501(c)(3) in August 1964. The petitioner also submits an April 16, 2014 letter from the General Council of the [REDACTED] stating that the petitioner is covered under the group exemption as a recognized subordinate unit.

The evidence submitted on appeal sufficiently establishes that the petitioner qualifies as a bona fide non-profit religious organization that is covered under a group tax-exemption. See 8 C.F.R. § 214.2(r)(9)(ii). Accordingly, the director's findings on this issue will be withdrawn.

## II. COMPENSATION

As an additional ground for denial, the director found that the petitioner failed to establish how it intends to compensate the beneficiary.

### A. The Law

The 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 [U.S. Citizenship and Immigration Services]. 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.

\* \* \* \*

### B. Analysis

The petitioner indicated on the petition that it will provide salaried compensation of \$400 per week. At the time of filing, the petitioner stated that it had 500 members, one current employee (identified as a senior pastor), gross annual income of \$350,000, and net annual income of \$60,000.

In the October 15, 2013 RFE, the director instructed the petitioner to submit evidence of how it intends to compensate the beneficiary, including IRS documentation or an explanation for its absence along with comparable, verifiable documentation. In response, the petitioner submitted a copy of its 2014 Operation Budget, indicating projected total revenue of \$361,200 for the year, total expenses of \$256,176 (not including the beneficiary's salary), and a net surplus of \$105,024. The petitioner did not submit any evidence to support the figures asserted in the budget. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

In denying the petition, the director stated that the submitted budget was not verifiable evidence because it was generated by the petitioner and was not supported by documentary evidence. Accordingly, the director found that the petitioner failed to submit sufficient evidence of its ability to provide the proffered compensation. On appeal, the petitioner submits copies of its checking and investment account statements for the months of January, February, and March of 2014, indicating combined ending balances of \$83,585.63, \$85,220.87, and \$82,566.29 respectively.

Although the bank statements on appeal together with the 2014 budget establish the petitioner's current ability to pay the proffered wage, they do not establish the petitioner's ability to pay the proffered wage at the time of filing the petition. 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. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978).

### III. CONCLUSION

The petitioner has submitted sufficient documentation to establish that it is a bona fide religious organization. However, as the petitioner failed to establish how it intended to compensate the beneficiary at the time of filing the petition, the appeal will be dismissed.

(b)(6)

*NON-PRECEDENT DECISION*

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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.