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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: FEB 06 2014

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) 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
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 classification of the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R) of the Act to perform services as a pastor. 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 requests additional time in which to supplement the appeal. As of the date of this decision, however, more than 60 days after the appeal was filed, the AAO has received no further documentation. Therefore, the record will be considered complete as presently constituted.

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 on appeal is whether the petitioner has provided required evidence to establish that it is a bona fide nonprofit tax-exempt religious organization in accordance with the regulation.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 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 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.

The instructions on the Form I-129, Petition for a Nonimmigrant Worker, also list these identical evidentiary requirements. The petition was filed on September 14, 2012. The petitioner did not include a determination letter from the IRS with its initial evidence as required by the above-cited regulation. In a request for evidence (RFE) dated May 17, 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 July 23, 2013 letter from its accountant advising that the petitioner was awaiting response from the IRS regarding its exempt status. The director denied the petition on September 30, 2013, 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 a copy of an August 12, 2013 letter from the IRS acknowledging receipt of the petitioner's application for exemption from federal income tax. The letter advised the petitioner that applications that can be processed immediately or those that require minor additional evidence will be processed immediately, or the petitioner would receive a telephonic request for additional information. For those applications that require additional development, the applicant "could expect to be contacted within approximately 90 days from the date of [the] notice." In its October 14, 2013 letter accompanying the appeal, the petitioner requested additional time in which to submit the IRS determination letter, stating "Due to the present Federal Government shut down, all efforts to contact [IRS have] been unsuccessful."

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 petitioner failed to establish eligibility for the benefit sought.¹

¹ 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); *Matter of*

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petitioner has also failed to establish how it intends to compensate the beneficiary.

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 [Wage and Tax Statement] 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.

The petitioner indicated at Part 5 question 8 of the Form I-129, that it would pay the beneficiary a yearly salary of \$24,000. It did not identify any other form of compensation in question 9. The petitioner also answered "pending" in questions 14 and 15 regarding the petitioner's gross and net annual income. In its response to the director's May 17, 2013 RFE, the petitioner provided copies of its monthly bank statements for April, May and June 2013. In a July 26, 2013 letter, the church secretary and the individual who signed the petition on behalf of the petitioning organization, verified that the church had rented an apartment for the beneficiary for a monthly rent of \$670 including utilities. The petitioner provided copies of processed checks dated April 10, 2013, May 4, 2013, and June 1, 2013 in the amounts of \$625, \$667.66, and \$670, respectively, but no evidence to demonstrate that those funds were available to pay employee

Obaigbena, 19 I&N Dec. 533 (BIA 1988). As the petitioner has failed to demonstrate error on the part of the director, even if the petitioner were to submit the required evidence before the AAO on appeal or motion, the evidence would not be considered.

wages as opposed to other ongoing expenses. The annotations on the checks indicate that they were to cover its pastor's rent and utilities.

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.* at 248. The petitioner did not submit past evidence of compensation for similar positions, budgets showing monies set aside for salaries, leases, IRS documentation, or any explanation for the unavailability of the documentation. The petitioner submitted no verifiable evidence to establish how it would compensate the beneficiary, as claimed, as of September 13, 2012, the date the petition was filed in accordance with 8 C.F.R. § 214.2(r)(11).

Furthermore, the petitioner has not established that the beneficiary is qualified for the proffered position. The regulation at 8 C.F.R. § 214.2(r)(3) defines religious worker as "an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister." The regulation at 8 C.F.R. § 214.2(r)(10) requires that, if the alien is a minister, the petitioner must submit:

- (i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and
- (ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological education is accredited by the denomination, or
- (iii) For denominations that do not require a prescribed theological education, evidence of
 - (A) The denomination's requirements for ordination to minister;
 - (B) The duties allowed to be performed by virtue of ordination;
 - (C) The denomination's levels of ordination, if any, and
 - (D) The alien's completion of the denomination's requirements for ordination.

In its statement detailing the duties and responsibilities of the position, the petitioner stated:

Our ministries require any aspiring pastor to have various qualifications, such as at least a college degree. It is compulsory that he/she has a [sic] training in the ministries various schools of divinity and be ordained as a pastor. She must have a critical education in theology and religious studies as well as in other aspects of being a pastor. Also, our pastor must have a comprehensive knowledge of the bible and a strong religious conviction. [S]he must have the skills of strong character, impartiality, preaching ability, Compassion for struggles and concern of others.

The petitioner states that it is an affiliate of the [REDACTED] which has headquarters in [REDACTED] Nigeria. The petitioner submitted no denominational bylaws, no documentation from [REDACTED] headquarters, or any similar documentation verifying the requirements for ordination in its denomination. 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)).

The petitioner submitted a copy of the beneficiary's August 22, 2009 Bachelor of Theology degree from [REDACTED] in [REDACTED] Nigeria and a copy of her November 10, 2009 certificate of ordination from [REDACTED]. The record contains a membership certificate indicating that the beneficiary became a member of the petitioner's denomination in May 2007. The petitioner does not allege any association or affiliation with [REDACTED] and submitted no documentation reflecting its acceptance of the beneficiary's credentials as a minister from [REDACTED]. The petitioner did not provide copies of the beneficiary's transcripts, curriculum, or other documentation that establishes that the theological education provided by [REDACTED] is accepted by the petitioner's denomination. The petitioner has failed to submit sufficient documentation to establish that the beneficiary is qualified for the proffered position.

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

ORDER: The appeal is dismissed.