



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: FEB 19 2014 OFFICE: CALIFORNIA SERVICE CENTER I [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:

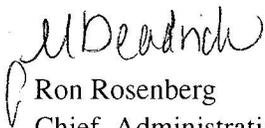
SELF-REPRESENTED

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 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 minister/teacher. The director determined that the petitioner failed to submit required evidence to establish that it qualifies as a bona fide non-profit religious organization.

On appeal, the petitioner submits a letter from the Internal Revenue Service (IRS), dated July 9, 2013.

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 . . .

The regulation at 8 C.F.R. § 214.2(r)(9) states:

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 to the Form I-129, Petition for a Nonimmigrant Worker, list the identical evidentiary requirements. The petitioner filed the petition on January 22, 2013 and identified itself as the prospective employer and listed its address as [REDACTED], and its Federal Employer Identification Number (EIN) as [REDACTED].

Accompanying the petition, the petitioner submitted a letter from the IRS, dated June 25, 1997, addressed to "[REDACTED]", at "c/o [REDACTED]". The letter stated that the IRS determined that organization to be exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code.

The current regulations governing special immigrant and nonimmigrant religious workers were published on November 26, 2008. In the preamble to the final rule, USCIS discussed the determination letter requirement:

USCIS acknowledges that obtaining a determination letter from the IRS will require the payment of a user fee to the IRS, as discussed in the proposed rule, if the organization does not possess its original determination letter. 72 FR at 20449. USCIS has, however, confirmed with the IRS that determination letters do not expire. Therefore, an organization will need to pay a fee only once to obtain a determination letter. 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.

USCIS will routinely 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. Although existing regulations permit applicants to submit material to USCIS regarding an applicant's non-profit status, the Department of Homeland Security (DHS) has determined that anti-fraud efforts, economy, and efficiency warrant the use of the formal IRS determinations, rather than an independent determination by USCIS.

On March 11, 2013, USCIS issued a Request for Evidence (RFE) that, in part, instructed the petitioner to submit documentary evidence that it qualifies as a bona fide non-profit religious organization. The director stated that the address listed on the submitted IRS letter did not match the petitioner's address. The director instructed the petitioner to provide documentary evidence to explain the discrepancy including evidence of a change of address with the IRS if applicable. The director also stated: "The IRS determination letter for 501(c)(3) exemption must indicate the petitioner's IRS Employer Identification Number."

In response to the notice, the petitioner resubmitted a copy of the June 25, 1997, IRS determination letter. The petitioner also submitted a copy of a Form 8822-B, Change of Address – Business, signed April 22, 2013, requesting a change of address for "[REDACTED]"

[REDACTED] The form listed the organization's [REDACTED] The petitioner also submitted an uncertified copy of its Form 900, Return of Organization Exempt From Income Tax, for 2009, which listed the [REDACTED] The petitioner did not provide an explanation for the discrepant information regarding its claimed EIN. 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).

On June 19, 2013, the director denied the petition. The director found that as the submitted IRS determination letter listed an address and EIN other than that identified by the petitioning organization, the petitioner failed to submit required evidence to establish its status as a bona fide non-profit religious organization.

On appeal, the petitioner submits a letter from the IRS to the petitioner, dated July 9, 2013, with an address and EIN matching those indicated on the petition. The letter states, in part: "Our records indicate that you were recognized as exempt under section 501(c)(3) of the Internal Revenue Code in a determination letter issued in June 1997." However, the petitioner again fails to explain the discrepant claims and documents regarding the petitioner's EIN.

At issue on appeal is whether the director erred based upon the record that was before her. *See* 8 C.F.R. 103.3(a)(1)(v) (requiring summary dismissal if specific errors of law or fact are not identified.) At the time the petition was filed, the petitioner submitted a determination letter that listed a different address and EIN than that identified by the petitioner. In response to the RFE, the petitioner again failed to submit qualifying documentation of its federal tax-exempt status and to explain the discrepancy in the submission of documents listing conflicting addresses and EINs.

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 required IRS letter and to address the conflicting information in response to the director's request for evidence but failed to do so.

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.

As an additional matter, the petitioner failed to establish how it intends to compensate the beneficiary. 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. 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.

(ii) *Self support.*

(A) If the alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.

(B) An established program for temporary, uncompensated work is defined to be a missionary program in which:

- (1) Foreign workers, whether compensated or uncompensated, have previously participated in R-1 status;
- (2) Missionary workers are traditionally uncompensated;
- (3) The organization provides formal training for missionaries; and
- (4) Participation in such missionary work is an established element of religious development in that denomination.

(C) The petitioner must submit evidence demonstrating:

- (1) That the organization has an established program for temporary, uncompensated missionary work;

- (2) That the denomination maintains missionary programs both in the United States and abroad;
- (3) The religious worker's acceptance into the missionary program;
- (4) The religious duties and responsibilities associated with the traditionally uncompensated missionary work; and
- (5) Copies of the alien's bank records, budgets documenting the sources of self-support (including personal or family savings, room and board with host families in the United States, donations from the denomination's churches), or other verifiable evidence acceptable to USCIS.

On the Form I-129 petition, the petitioner indicated that the beneficiary would not be paid wages, but that the petitioner would "provide for his needs while he is here." The petitioner stated in Part 9. Explanation Page: "The invitation is for a once a year visit, 2 weeks long, for the next 5 years." In the employer attestation portion of Form I-129 Supplement R, question 5.d., the petitioner was instructed to provide a description of the proposed salaried or non-salaried compensation or, if the beneficiary would be self-supporting, documentation to establish "that the position the beneficiary will hold is part of an established program for temporary uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination." In response, the petitioner stated: "This is a broader teaching/ministerial work to further the philosophy & religion of Spiritualism."

In a letter accompanying the petition, dated January 14, 2013, the petitioner stated:

We have here at our church a guest room and showers so visitors may stay at the church and are provided for.

We also at times will provide a guest room at The Holiday Inn which is two minutes from the church.

We, the church, pay the expenses of flights to our church.

All meals are provided by our congregation.

The petitioner submitted a June 20, 2012, letter from The [REDACTED] to the petitioner, indicating that the petitioner's 2011 Federal Return of Organization Exempt from Income Tax and its 2011 Federal Exempt Organization Business Income Tax Return were "enclosed" to be signed and filed with the IRS. However, the petitioner did not submit copies of the referenced returns.

In the March 11, 2013, RFE, the director requested verifiable evidence of how the petitioner intends to compensate the beneficiary, including IRS documentation if available, or an explanation for its absence along with comparable, verifiable documentation.

In response, the petitioner submitted an uncertified copy of its 2009 Form 990, indicating "Net assets or fund balances" of \$390,676 for the year. The petitioner submitted a November 18, 2009, statement for a Business Cash Rebate Card held by the petitioning organization. The statement included charges for " " on October 28, 2009, and " [sic]" for October 21, 2009, to November 2, 2009. The petitioner also submitted Group Booking Agreements, dated January 21, 2012, and January 30, 2013, for the . The petitioner stated that the petitioner "does also have guest accommodations at the church approved for visitors to our church." The petitioner also stated:

Re: Lack of w-2 Forms

The Journey Within will pursue a Social Security number if our guests become regular workers, at this time the minister/teachers are only here for one week out of the year, maybe two. They are not getting a weekly paycheck from us. We do not anticipate this becoming a weekly employment ever.

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 IRS Form W-2 or certified tax returns," or an explanation for its absence along with comparable, verifiable documentation. The petitioner has indicated that it intends to provide non-salaried compensation in the form of room and board and travel expenses. The only IRS documentation pertaining to compensation submitted by the petitioner was an uncertified 2009 Form 990. The letter from , submitted with the petition, indicates that the petitioner filed a tax return in 2011. Although the petitioner has explained the lack of past Forms W-2, Wage and Tax Statement, it has not explained the absence of certified tax returns. Further, the petitioner has not submitted sufficient verifiable evidence of its ongoing to ability to provide the proffered non-salaried compensation.

To the extent that the petitioner's response to Form I-129 Supplement R, question 5.d., indicated that the petitioner would be self-supporting as a participant in an established program for temporary, uncompensated missionary work, as permitted under 8 C.F.R. § 214.2(r)(11)(ii), the petitioner has not submitted sufficient evidence in compliance with that regulation. The petitioner has not submitted any evidence of the beneficiary's ability to support himself, as required under 8 C.F.R. § 214.2(r)(11)(ii)(C)(5).

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