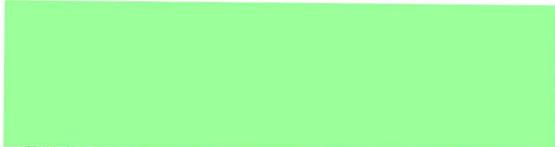
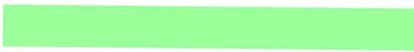




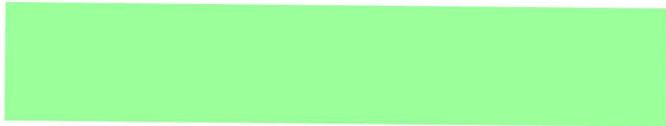
U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **FEB 20 2014** Office: CALIFORNIA SERVICE CENTER 

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:

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,

  
f 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 Immigration and Nationality Act (the Act) to perform services as its young adult ministry leader. The director determined that the petitioner had not submitted required evidence to establish that it qualifies as a bona fide nonprofit religious organization.

The petitioner states on appeal that it was unaware that U.S. Citizenship and Immigration Services (USCIS) “would not consider our congregation to be deemed acceptable as a tax exempt organization” based on the letter it submitted. The petitioner stated that it had initiated the process of obtaining a verification letter from the Internal Revenue Service and asked that USCIS “reconsider the I-290B filed previously.”<sup>1</sup>

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.

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<sup>1</sup> As the petitioner has not previously appealed the director’s decision, it is clear that the petitioner is seeking an appeal of the director’s denial of the Form I-129, Petition for a Nonimmigrant Worker, filed on May 31, 2013.

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 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 also list these identical evidentiary requirements. The petition was filed on May 31, 2013. 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 June 28, 2013, the director instructed the petitioner to provide, *inter alia*, evidence of its bona fides as a non-profit religious organization as required by the regulation.

In response, the petitioner submitted a copy of an August 23, 2013 letter from the IRS, advising the petitioner that it had “no record that [the petitioner is] recognized as exempt from Federal income tax under Internal Revenue Code section 501(a).” The letter further advised the petitioner that if it wished to apply for exemption, then it must submit a completed IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, or IRS Form 1024, Application for Recognition of Exemption Under Section 501(a). The letter also advised the petitioner that:

Churches, their integrated auxiliaries, and conventions or associations of churches that meet the qualifications for exemption are automatically considered tax exempt under section 501(c)(3) of the Code without applying for formal recognition of such status. No determination letters are issued to these organizations. . . .

The petitioner provided a copy of its articles of association and constitution indicating that it is a “house of public worship.” In denying the petition, the director stated:

Although [a determination letter] is not an IRS requirement, it is a USCIS requirement for organizations who wish to utilize either the R-1 nonimmigrant or the special immigrant religious worker program.

Therefore, the petitioner has not established that their organization qualifies as a bona fide nonprofit religious organization in the United States that is exempt from taxation.

The petitioner states on appeal:

Respectfully, in researching the history of our congregation – which was formed back in the late 1960's, we came across all the required documentation you required except for the 501(c)(3) status.

We did not know that, after our very lengthy conversation with the IRS, which resulted in the letter from them we submitted with the last round of information, that DHS/USCIS, would not consider our congregation to be deemed acceptable as a tax exempt organization.

We have begun the process of applying for the non-exempt 501(c)(3) status. We realize that this in and of itself is also a lengthy process. But, never the less, we believe this to be important and vital to our congregation that we do so. . . .

The petitioner submitted no other documentation in support of the appeal.

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 RFE. 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.<sup>2</sup>

The beneficiary is currently in the United States in an F-1 nonimmigrant student status. The petitioner seeks to change the beneficiary's status to that of R-1 nonimmigrant religious worker. The USCIS regulation at 8 C.F.R. § 248.3(a) states that an employer seeking the services of an alien as an R-1 nonimmigrant religious worker, must, where the alien is already in the United States and does not currently hold such status, apply for a change of status on Form I-129. Thus, the petition form is also the application form for change of status but the petition and the application are separate proceedings. Under USCIS regulation 8 C.F.R. § 248.3(g), there is no appeal from the denial of an application for change of status, and the AAO has no jurisdiction over that issue.

Nonetheless, the AAO notes that the petitioner proposes to pay the beneficiary a salary of \$1,600 per year and "provide assistance with food and transportation when needed." A church deacon has offered to provide the beneficiary and his family with a rent-free 2-bedroom apartment valued at \$7,200 per year. The record does not indicate that this free housing offer includes

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<sup>2</sup> 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 Obaighena*, 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.

utilities, nor does the offer of assistance with food and transportation indicate the nature of this support, whether in the form of providing monetary or in-kind assistance. The record is thus not clear as to how the beneficiary will support himself and his wife and son on a salary of less than \$150 per month.

The regulation at 8 C.F.R. § 214.2(r)(11) provides, in pertinent part:

*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.

The regulation requires that the petitioner establish either that it will compensate the beneficiary or provide evidence that the beneficiary will be self-supporting. As discussed above, part of the beneficiary's compensation will be provided not by the church but by a church member. The proposed monetary compensation to be provided by the petitioner is less than \$150 a month for a family of three. Section 212(a)(4) provides:

Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.

While not at issue in the instant proceeding, the beneficiary's admissibility to the United States may be relevant in any subsequent proceeding.

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.