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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JAN 2 8 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:

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 church planter and pastor for The director determined that the petitioner failed to submit the required evidence to establish that it qualifies as a bona fide non-profit religious organization and that the beneficiary failed to maintain lawful nonimmigrant status prior to the filing of the petition.

On appeal, the petitioner submits a letter from counsel and a letter from the Internal Revenue Service (IRS).

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
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> (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,
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> (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
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> (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) states, in pertinent part:

Definitions. As used in this section, the term:

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) requires the following initial evidence:

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 same evidentiary requirements.

The petitioner filed the Form I-129 on November 9, 2012. Accompanying the petition, the petitioner submitted a letter from the IRS to the confirming that organization's tax-exempt status under section 501(c)(3) as a religious organization. The petitioner also submitted a letter from the IRS to the confirming that organization's 501(c)(3) tax-exempt status. The petitioner submitted religious denomination certifications, signed by officials of confirming the petitioner's affiliation with the organizations, as well as a letter from stating that the petitioner "is a member in good standing." The submitted IRS determination letters did not indicate that either had been granted a group exemption which would apply to affiliated or subordinate organizations and the petitioner failed to submit evidence of its own determination letter.

On December 11, 2012, USCIS issued a Request for Evidence (RFE), in part requesting evidence of the petitioner's tax-exempt status. The petitioner was specifically instructed to submit a valid IRS determination letter for the petitioning organization, a valid IRS determination letter establishing a group exemption covering the petitioner, or evidence that the petitioner qualifies as an organization affiliated with the religious denomination (which must include a valid IRS determination letter establishing that the petitioner is a tax-exempt organization).

In a letter responding to the RFE, the petitioner stated that it "has filed an application with the IRS so that we might be recognized as a free-standing non-profit religious organization." The petitioner submitted a letter from the IRS, dated January 14, 2013, confirming receipt of the petitioner's Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code. The petitioner also resubmitted a copy of the determination letter for CBF.

On March 19, 2013, the director denied the petition, finding that the petitioner failed to submit required evidence to establish that it qualifies as a bona fide non-profit religious organization under the regulations.

On appeal, the petitioner does not allege that the director erred in finding that it failed to submit required initial evidence. Rather, the petitioner now submits a copy of an IRS determination letter confirming the petitioner's 501(c)(3) tax-exempt status. In a letter submitted on appeal, counsel for the petitioner states that the "basis for denial is being resolved by the attached letter."

The determination letter submitted by the petitioner on appeal will not be considered. At filing, the petitioner was on notice of the regulations and form instructions requiring evidence to establish eligibility as a tax-exempt organization or a bona fide organization affiliated with the religious denomination. The petitioner did not submit the required evidence at filing. In the RFE the petitioner was specifically advised of the deficiency and afforded the opportunity to provide a currently valid determination letter from the IRS establishing that the petitioner was tax-exempt or was a qualifying affiliated organization. The purpose of an RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established as of the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(8) and (12). The petitioner did not submit the requested evidence in response to the RFE, submitting only a letter confirming that the petitioner had applied for exemption. 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 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. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Consequently, there was no error in the director's determination that the petitioner failed to submit the required evidence to establish its tax-exempt status.

The second ground for denial cited by the director concerns unauthorized employment by the beneficiary in violation of his F-1 nonimmigrant student status prior to the filing of the petition. Under

the USCIS regulation at 8 C.F.R. § 248.1(a), an alien must maintain status in order to qualify for change of nonimmigrant status. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status. 8 C.F.R. § 214.1(e). Therefore, the beneficiary's unauthorized employment would disqualify him from changing to R-1 nonimmigrant status. This issue, however, lies outside the AAO's appellate jurisdiction, because it is a change of status issue rather than a petition issue. *See* 8 C.F.R. § 248.3(g).

As an additional matter, the director's finding that the petitioner established how it intends to compensate the beneficiary will be withdrawn. 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).

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:
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> > (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.
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> > (ii) *Self support.*
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> > (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.
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> > (B) An established program for temporary, uncompensated work is defined to be a missionary program in which:
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> > > (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 it sought to employ the beneficiary until December 31, 2015. The petitioner stated on the petition that the beneficiary would receive wages of $28,821.72 per year. In Supplement R of the petition, the petitioner stated:

> [The beneficiary's] full time compensation is the result of a three way partnership between our church, [redacted]). It is designed to scale back as revenue streams from [the beneficiary's] church grow towards self-sustainment. Benefits are included. See the included partnership and compensation documents for further explanation and discussion.

The petitioner submitted a "Church Planting Partnership Agreement" between the petitioning church, [redacted], which was signed by an official from each organization in September, 2011. The agreement stated that it covered "the 2011-2013 budget years, and is renewable and/or reviewable upon consent of all parties at the beginning of each calendar year." The stated the following, in pertinent part:

· Provide a three year scale down investment of $8,000 the first year, $7,000 the second year, and $5,000 the third and final year, for pastoral support for the church planter reaching out to the commensurate to the church's three year plan for self-sustainment. . . .

· Provide a three year scale down investment of $11,000 the first year, $5,000 the second year, and $3,000 the third and final year, for pastoral support for the church planter reaching out to the commensurate to the church's three year plan for self-sustainment. . . .

churches will:

· Provide a three year scale down investment of $11,000 the first year, $5,000 the second year, and $3,000 the third and final year, for pastoral support for the church planter reaching out to the metro area, commensurate to the church's three year plan for self-sustainment. . . .

The petitioner submitted an unsigned "2012 Salary Worksheet for Ordained Ministers" listing total salary and benefits of $28,821.72 for the beneficiary. The petitioner also submitted a list of "Accounts Administered for the Benefit of [the petitioner]," indicating a total market value of $1,916,143.87.

In the December 11, 2012, RFE, the director noted that funds for the beneficiary's compensation would come from the petitioner and two other organizations. The director instructed the petitioner to submit verifiable evidence from each of the three organizations regarding their ability to provide the proffered compensation, including IRS documentation or an explanation for its absence along with comparable, verifiable documentation.

In response, the petitioner submitted copies of five checks from to the petitioning church with notations indicating they were for the ' The checks were dated October 12, 2011, January 31, 2012, April 13, 2012, October 8, 2012, and January 8, 2013, for amounts totaling $10,750. The petitioner also submitted a list of checks from to the petitioner for ' totaling $16,500.00 between October 28, 2011, and October 30, 2012, as well as additional internal bookkeeping records listing contributions from The petitioner submitted a copy of a budget for the petitioning organization, which included $32,000.00 as a "stipend" for the beneficiary. Additionally, the petitioner submitted a copy of the beneficiary's Form W-9, Request for Taxpayer Identification Number and Certification.

The USCIS regulation at 8 C.F.R. § 214.2(r)(11) and the attestation requires the petitioner to "state how the petitioner intends to compensate the alien" and to "submit verifiable evidence explaining

how the petitioner will compensate the alien." The cited regulation twice specifies the petitioner, *i.e.*, the employer, as the entity that will "compensate the alien." The regulation does not state that the petitioner can discharge this responsibility by arranging for third parties to compensate the alien.

Even if third party compensation was allowed in this instance, the regulation at 8 C.F.R. § 214.2(r)(11) also indicates that if the petitioner intends to provide salaried or non-salaried compensation, IRS documentation "such as IRS Form W-2 or certified tax returns," or an explanation for its absence along with comparable, verifiable documentation, is required. The petitioner indicated that the beneficiary will, initially, receive salaried compensation from the petitioning church, with funds to come from the petitioner and two other organizations. However, although the "Church Planting Partnership Agreement" demonstrates the intent of each organization to contribute funds, the petitioner has not submitted IRS documentation of the ongoing ability of the organizations to provide such funds. Nor has the petitioner provided an explanation for the absence of IRS documentation along with comparable, verifiable documentation.

Additionally, the "Church Planting Partnership Agreement" states that the petitioner and the other organizations intend to provide funding for pastoral support for three years, at which point the beneficiary's church, the is to be self-sustaining. The agreement was signed in September, 2011, indicating that the proffered compensation will not be provided throughout the intended dates of the beneficiary's employment. The petitioner provided no evidence regarding the ability of the to compensate the beneficiary. To the extent that the beneficiary would be self-supporting for a portion of the intended employment period, the petitioner has not submitted sufficient evidence to establish that the beneficiary would be a participant in an established program for temporary, uncompensated missionary work, as permitted under 8 C.F.R. § 214.2(r)(11)(ii), nor has the petitioner 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.