



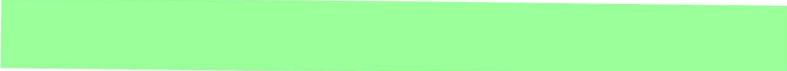
U.S. Citizenship
and Immigration
Services

(b)(6)

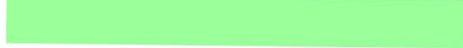


DATE: JAN 28 2014 OFFICE: CALIFORNIA SERVICE CENTER

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,

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 describes itself as a Pentecostal Christian church affiliated with the denomination of the [REDACTED]. It seeks to classify the beneficiary as a nonimmigrant religious worker under 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 an Assistant Minister from December 1, 2011 to December 31, 2016. The director determined that the petitioner failed to establish the beneficiary's eligibility for the classification sought because: the petitioner did not submit required initial evidence to establish that it qualifies as a bona fide nonprofit religious organization in the United States that is exempt from taxation; the petitioner did not establish that the beneficiary has been 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; and the petitioner did not demonstrate how it intends to compensate the beneficiary.

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.

U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. § 214.2(r) state 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) states that the following is required initial evidence that must be submitted:

- (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 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 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. On the Form I-129, Part 1, question (3)(j), the petitioner did not indicate its Federal Employer Identification Number. In Section I, Statement 6 of the Supplement R, the petitioner indicated that it was “a bona fide non-profit religious organization or a bona fide organization that is affiliated with the religious denomination and is tax-exempt 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.” However, although the petitioner submitted a Certificate of Exemption from the state of Massachusetts, the petitioner did not submit evidence of its federal tax exempt status as required by regulation.

On October 25, 2012, the director issued a Request for Evidence (RFE) asking, in part, that the petitioner provide documentation to establish that it qualifies as a bona fide nonprofit religious organization in the United States that is exempt from taxation. Specifically, the director asked that the petitioner submit the following:

- A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization; or
- For a religious organization that is under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or
- For a bona fide organization that is affiliated with the religious denomination provide the following:
 - (A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;

NOTE: Besides submitting the affiliated organization's IRS determination letter, the petitioner must also submit their own IRS determination letter.

The director stated in her decision dated March 28, 2013, that the petitioner responded to the request for evidence by submitting an additional copy of its Massachusetts Department of Revenue Form ST-2, Certificate of Exemption, but failed to submit the required IRS determination letter.

In the preamble to the current regulations governing special immigrant and nonimmigrant religious workers, USCIS discussed the rationale for requiring a petitioner to submit an IRS determination letter. USCIS stated that the requirement is a "valuable fraud deterrent" and that a determination letter provides "verifiable documentation that the petitioner is a bona fide tax-exempt organization or part of a group exemption." *See* 73 Fed. Reg. 72280 (Nov. 26, 2008).

On appeal, the petitioner does not allege that the director erred in finding that it failed to submit required evidence. Rather, the petitioner now submits a copy of an IRS determination letter stating that the [REDACTED] is exempt from federal income tax and was granted a Group Exemption Number of 1411. The purpose of the request for evidence 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 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). At filing, through the regulations and the form instructions, the petitioner was on notice of the required evidence and was given the additional opportunity to submit the IRS letter in response to the director's request for evidence. Under the circumstances, the AAO will not consider the sufficiency of the evidence submitted on appeal with regard to the petitioner's tax exempt status and finds no error on the part of the director for denying the petition based upon the petitioner's failure to submit required evidence.

It is further noted, however, that even if the documentation submitted were considered, the IRS determination letter does not establish the petitioner's tax exempt status. The petitioner submitted a letter (April 16, 2013) from [REDACTED] which states that [REDACTED] is a subordinate of [REDACTED] and that, as such, is covered by group exemption number 1411 as a 501(c)(3) organization with the IRS. The Form I-129, in Part 5, Statement 3, indicates that the beneficiary will work at the address listed in Part 1 of the Form I-129: [REDACTED]. The record does not establish the tax exempt status of the organization [REDACTED].

The second issue to be determined is whether the beneficiary has been 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.

The regulation at 8 C.F.R. § 214.2(r)(1)(i) states:

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

Denominational membership is defined at 8 C.F.R. § 214.2(r)(3) as:

Denominational membership means membership during at least the two-year period immediately preceding the filing date of the petition, in the same type of religious denomination as the United States religious organization where the alien will work.

As the Form I-129 petition was filed on October 5, 2012, it is necessary for the petitioner to establish that the beneficiary has been a member of the same type of religious denomination as the petitioning organization from October 5, 2010, until October 4, 2012. The petitioner indicated in Section 1, Statement 11 of the Supplement to Form I-129 that the beneficiary has been a member of the petitioner's denomination for at least two years immediately preceding the filing of the petition and was otherwise qualified to perform the duties of the proffered position. In support of that assertion, the petitioner submitted a copy of the beneficiary's 2011 Guatemala ministerial license card. The petitioner also submitted a letter from [REDACTED] of [REDACTED] dated December 14, 2010, which states that "six years ago"

¹ It is further noted that an Internet search of "Churches by Zip Code" does not list the petitioner at [REDACTED] or any other address within that zip code [REDACTED].

the beneficiary and his family came to Guatemala to begin a ministry. [REDACTED] says that the beneficiary began with a local ministerial license as an assistant pastor at a local church and progressed to ordination, pastoring his own church, and then to the position of District Superintendent. The letter attests to the beneficiary's competency and dedication to his ministry.

In Statement 4 of the Form I-129 Supplement R, the petitioner stated that the beneficiary's church in Guatemala is affiliated with the [REDACTED] in the United States, but is also independent, having a missionary supervisor working with the church who is appointed by the [REDACTED] of the United States.

The director's RFE asked the petitioner to provide evidence that the beneficiary had the required two-year membership in the religious denomination or organization prior to the filing of the petition. The director stated that the evidence could include, but was not limited to:

- Baptismal records
- Evidence of confirmation
- Certificates of participation
- Awards given or titles conferred by the denomination or organization
- Attendance records, etc.

The director stated in her decision denying the petition that the petitioner responded to the RFE on other issues, but did not provide the above listed evidence.² On appeal, the petitioner submits the following evidence in regard to the required two-year membership in the religious denomination or organization issue:

- A letter from [REDACTED] Guatemala, which states that the beneficiary was a member in good standing of [REDACTED] from June 2, 2003 until December 31, 2011.
- Photocopies of the beneficiary's last two ministerial license cards held with the [REDACTED] for 2010 and 2011.

The AAO finds that the record before the director established that the beneficiary has been a member of a religious denomination of the same type as the petitioner for at least two years immediately preceding the time of application for admission. The director's decision to the contrary is withdrawn.

² The petitioner did submit a document entitled "[REDACTED]" in response to the RFE.

The final issue to be determined is whether the petitioner has established how it will compensate the beneficiary.

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

Evidence relating to compensation. Initial evidence must state how the petitioner intends to compensate the alien, including specific monetary or in-kind compensation. . . . [T]he petitioner must submit verifiable evidence explaining how the petitioner will compensate the alien. . . . 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 [Internal Revenue Service] 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.

* * * *

The petitioner stated in the employer attestation that it would pay the beneficiary an annual salary of \$30,000, paid at the rate of \$575 per week.³ The petitioner was instructed in the October 25, 2012 RFE to provide evidence to establish the petitioner's ability to compensate the beneficiary. In her decision, the director found that, although the petitioner responded to the RFE, the requested evidence regarding compensation was not provided. On appeal, the petitioner submits, for the first time, the following documentation concerning the petitioner's ability to compensate the beneficiary:

- The petitioner's unaudited financial reports from December 2011 to January 2013.
- Copies of the petitioner's bank statements from December 2011 to January 2013.

The unaudited financial reports and bank statements will not be considered for the first time on appeal. *See Matter of Soriano*, at 764; *Matter of Obaigbena*, at 533. Again, the purpose of the request for evidence 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 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). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO will not consider the

³ A weekly salary of \$575 is equal to an annual salary of \$29,900.

sufficiency of the evidence submitted on appeal with regard to the petitioner's tax exempt status and finds no error on the part of the director for denying the petition on this ground.

It is further noted that, even if the unaudited financial reports and bank statements were considered, the documentation would be insufficient to establish how the beneficiary would compensate the beneficiary as required by 8 C.F.R. § 214.2(r)(11). The petitioner did not provide IRS documentation of its ability to compensate the beneficiary, nor did it explain the absence of such documentation and provide comparable verifiable documentation as required under 8 C.F.R. § 214.2(r)(11). The submitted financial reports are unaudited and, as such, represent only the petitioner's unverifiable assertions. The bank statements submitted are also insufficient to establish the petitioner's ability to compensate the beneficiary. The record does not contain evidence of the petitioner's operating expenses or financial obligations. The petitioner did not submit a budget showing cash receipts or pledges, money set aside for ongoing current or long-term expenses, salaries or other obligations.⁴

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.

⁴ The petitioner stated on the Form I-129 that the beneficiary would also receive \$1,000 per month from the [REDACTED] [REDACTED]. The record does not contain corroborating evidence of this claimed compensation from [REDACTED].