



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JUL 23 2014** Office: CALIFORNIA SERVICE CENTER FILE:

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 petitioner appealed the decision to us at the Administrative Appeals Office (AAO). We dismissed the appeal. The matter is now before us on a motion to reopen and reconsider. We will dismiss the motion. The petition remains denied.

The petitioner 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 serve 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 tax-exempt religious organization. We upheld that determination on appeal.

On motion, the petitioner submits a letter from a church official.

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)(9) requires the petitioner to submit a currently valid determination letter from the Internal Revenue Service (IRS) showing that the organization is tax-exempt under section 501(c)(3) of the Internal Revenue Code. The instructions on the Form I-129 list the evidentiary requirements.

The petitioner filed Form I-129, Petition for a Nonimmigrant Worker, on May 31, 2013. The petitioner did not include the required IRS determination letter. The director, in a June 28, 2013 request for evidence, instructed the petitioner to submit a copy of its IRS determination letter.

The petitioner's response indicated that the petitioner had not filed IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, because churches are automatically considered exempt and need not apply for recognition of exemption.

In denying the petition on September 30, 2013, 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.

On appeal, the petitioner stated: "We have begun the process of applying for the non-exempt 501(c)(3) status." The petitioner submitted no other documentation in support of the appeal.

We dismissed the appeal on February 20, 2014, quoting supplementary information from the Federal Register, explaining why USCIS requires the determination letter:

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). In our dismissal notice, we stated:

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.

In a footnote, we added:

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 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.

On motion from our decision, [REDACTED] the petitioner's bookkeeper, states: "I must again reiterate that we have begun the lengthy process of applying for a formal 501(c)(3) status. . . . I am confident that we will have no problems receiving a formal statement of such status." The present petition is before USCIS, not the IRS, and the petitioner must meet USCIS requirements in order to qualify the beneficiary for the benefit sought. The issue is not whether the IRS considers the petitioner to be a tax-exempt organization. Rather, the issue is whether the petitioner has submitted the evidence required by USCIS's regulations. Since 2008, the regulation at 8 C.F.R. § 214.2(r)(9) has required the submission of a currently valid IRS determination letter with the petition. The petition form itself advised the petitioner of this requirement, and the petitioner does not claim to have satisfied the requirement. Instead, the petitioner asserts that it will be able, at some time in the future, to submit the required letter. 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). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

The petitioner's motion has introduced no new facts into the proceeding, and the petitioner has not established that our previous decision included any error of fact or law. The petitioner's ongoing efforts to obtain an IRS determination letter do not show that the petition was already approvable at the time of filing. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1), (12). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248.

The petitioner's assertions regarding the IRS determination letter do not warrant reopening or reconsideration of the petition.¹

Our February 2014 decision also included the observation that the petitioner had not adequately established "how the beneficiary will support himself and his wife and son on a salary of less than \$150 per month." We did not cite this information as a separate ground for denial of the petition. Rather, we stated that the submitted information raised the possibility that the beneficiary might be inadmissible under section 212(a)(4) of the Act. We also specified that the beneficiary's admissibility "is not at issue in the instant proceeding." See *Matter of O*, 8 I&N Dec. 295 (BIA 1959), which held that the visa petition process is not a forum for determining an alien's admissibility into the United States.

The petitioner has not submitted any evidence on motion. Instead, Ms. [REDACTED] contends that the beneficiary will receive compensation worth \$1,850 per month, including rent and utilities, an allowance for gasoline, and a monthly allowance. Even if the petitioner had submitted evidence to support this claim on motion, such evidence would not be grounds for reopening or reconsideration, because the issue of the beneficiary's compensation was not a cited ground for denial of the petition or dismissal of the appeal. Our previous decision made an observation about a possible future finding regarding the beneficiary's admissibility, but we made no formal finding of inadmissibility, and any such finding would have been separate from the outcome of the petition itself.

The petitioner's motion does not meet the regulatory requirements of a motion to reopen at 8 C.F.R. § 103.5(a)(2), or those of a motion to reconsider at 8 C.F.R. § 103.5(a)(3). Therefore, the regulation at 8 C.F.R. § 103.5(a)(4) requires dismissal of the motion. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The motion is dismissed. The petition remains denied.

¹ If the petitioner obtains the required IRS documentation, the petitioner may choose to file a new petition at a time when the petitioner is able to meet all of the applicable eligibility requirements. In the context of the present proceeding, however, we will not entertain a future motion based on newly acquired IRS documentation.