

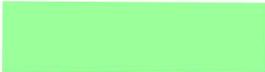
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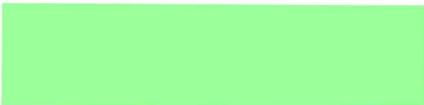
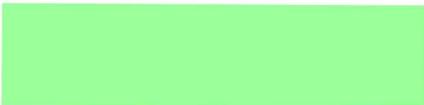
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

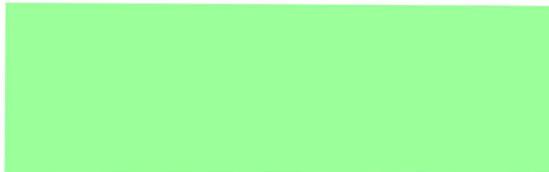


DATE: **MAY 22 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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:



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. We will dismiss the appeal.

The petitioner identifies itself as a “Hebrew Immersion Jewish Educational School.” 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 an “Early Childhood Instructor/Specialist Arts.” The director determined that the petitioner had not submitted required evidence to establish that it qualifies as a bona fide nonprofit religious organization or a bona fide organization which is affiliated with the denomination.

On appeal, the petitioner submits a statement and requests additional time to obtain evidence.

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 . . .

Regarding evidence of the petitioner's tax-exempt status, the regulation at 8 C.F.R. § 214.2(r)(9) requires the following as initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the 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 on the Form I-129, Petition for a Nonimmigrant Worker, also list these identical evidentiary requirements. The petition was filed on January 6, 2014, identifying the petitioning organization as the prospective employer with an employer identification number (EIN) of [REDACTED]. The petitioner's director of education signed the Religious Denomination Certification (RDC), indicating that the petitioner is affiliated with [REDACTED]. Accompanying the petition, the petitioner submitted a March 18, 2011, IRS letter to [REDACTED] EIN [REDACTED] confirming that organization's tax-exempt status under section 501(c)(3). The letter did not indicate that [REDACTED] was granted a group exemption that would apply to subordinate or affiliated organizations. The petitioner also submitted an August 23, 2012, letter from the IRS confirming receipt of the petitioner's application

¹ At the time of filing the petition, the petitioner submitted 2012 IRS Forms W-2, Wage and Tax Statements, and a 2012 Form W-3, Transmittal of Wage and Tax Statements, which list the petitioner's EIN as [REDACTED]. No explanation was provided for this discrepancy regarding the petitioner's 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).

for exemption from Federal income tax, and copies of subsequent requests for evidence in support of that application. Additionally, the petitioner submitted evidence of its tax exemption in the state of Illinois.

On January 28, 2014, the director issued a Notice of Intent to Deny the petition (NOID) instructing the petitioner to provide evidence of its bona fides as a non-profit religious organization or an organization that is affiliated with the denomination, as required by the regulations. The director noted that the submitted IRS determination letter for [REDACTED] did not indicate a group-exemption. The director also stated that, although the petitioner claimed to be a bona fide organization affiliated with [REDACTED] through its affiliation with [REDACTED] the petitioner failed to submit its own currently valid determination letter as required under 8 C.F.R. § 214.2(r)(9)(iii)(A), or an RDC signed by the religious organization as required under 8 C.F.R. § 214.2(r)(9)(iii)(D). Further, the director stated that, according to the IRS website, the petitioner had previously be granted a 501(c)(3) exemption that was subsequently revoked on November 15, 2010.

In a February 24, 2014 letter responding to the NOID, the petitioner asserted that it “is a bona[]fide organization affiliated with [REDACTED] and the [REDACTED] is its governing body.” The petitioner submitted a new RDC, signed by the administrator of [REDACTED] attesting to the petitioner’s affiliation with that organization and the denomination of [REDACTED]. The petitioner also submitted an undated letter from an attorney, [REDACTED] stating that the revocation of the petitioner’s previous 501(c)(3) designation was based on the organization’s inadvertent failure to file required annual returns for three consecutive years due to administrative confusion. Mr. [REDACTED] asserted that the petitioner began the process to reinstate its status when it became aware of the revocation, and that the petitioner was preparing to respond to the most recent request for additional evidence from the IRS, dated February 11, 2014.

The director denied the petition on March 4, 2014, finding that the petitioner failed to submit the required evidence to establish that it qualifies as a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination.

In a statement accompanying the Form I-290B, Notice of Appeal or Motion, the petitioner states that, “[t]hrough no fault of [its] own, but through changing IRS compliance requirements and corresponding IRS processing backlog, the organization has not yet been issued its currently valid IRS 501(c)(3) letter.” However, the petitioner contends: “[o]nce all new compliance measures have been received and recorded by the IRS, [the petitioner’s] 501(c)(3) letter will be retroactively reinstated, recognizing the organization’s continuous tax-exempt status as a religious organization.” On the Form I-290B, filed on April 3, 2014, the petitioner indicated that a brief and/or additional evidence would be forthcoming within thirty days. On May 2, 2014, the petitioner submitted a letter requesting additional time to obtain a reinstatement of its determination letter from the IRS.

Regarding the petitioner’s request for more time to obtain the determination letter, we deny that request. Under the controlling regulations, the issue is not whether the petitioner would be eligible for tax-exemption, but whether the petitioner provided the required evidence. The petitioner states

that “[a]llowing only 30 days in which to produce IRS compliance documentation and accountant records has proven an unattainable and unjust burden for the Petitioner and Beneficiary.” However, the petitioner was put on notice of the required evidence at filing, through the regulations and the form instructions. The petitioner was given an additional opportunity to submit the IRS letter in response to the director's NOID.

At issue on appeal is whether the director erred in finding that the petitioner failed to submit the evidence required under the regulations. When USCIS published the religious worker regulation, supplementary information published with the regulation explained USCIS's rationale for requiring a valid IRS 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 this instance, the petitioner failed to submit evidence of its own currently valid determination letter from the IRS. The petitioner submitted a determination letter for [REDACTED] and evidence regarding its relationship to that organization. However, as stated previously, the determination letter does not indicate a group exemption that would apply to subordinate organizations.

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, 249

(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.

On appeal, the petitioner additionally states the following:

During the past few years, [the petitioner] has submitted and received approvals for I-129 petitions R-1 workers, including extensive site visits by USDHS investigators verifying their recognized status as a non-profit religious organization. The supporting paperwork and site visit information for these prior approved R-1 worker cases was the same as the erroneously denied petition.

Regarding any previously approved Form I-129 petitions, USCIS is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). USCIS need not treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if the service center director had approved the nonimmigrant petitions filed by the petitioner, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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.