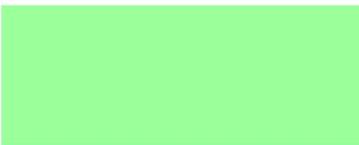
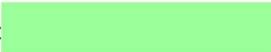


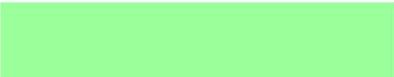
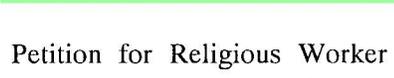


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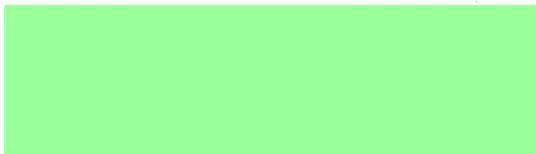


DATE: **NOV 06 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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. The appeal will be dismissed.

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 music director. The director determined that the petitioner had not submitted required evidence to establish that it qualifies as a bona fide nonprofit religious organization and that the petitioner failed to establish how the petitioner would compensate the beneficiary.

On appeal, the petitioner submits additional 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 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 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 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 July 26, 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 August 20, 2013, the director instructed the petitioner to provide evidence of its bona fides as a non-profit religious organization as required by the regulation. In response to the RFE, the petitioner submitted a New York State Exempt Organization Certificate pertaining to the petitioner and the petitioner's Employer Identification Number (EIN) Cover Sheet from the IRS assigning to the petitioner an EIN of [REDACTED]

The director denied the petition on February 6, 2014, finding that the petitioner had failed to submit the required IRS determination letter with the petition or in response to the RFE to establish it qualifies as a bona fide nonprofit religious organization in the United States that is exempt from taxation.

On appeal, the petitioner states that it is recognized by the State of New York as a tax exempt religious organization and resubmits a New York State Exempt Organization Certificate applicable to the petitioner. The petitioner further submits a letter from the IRS which states that the IRS has

no record that the petitioner is recognized as a tax exempt religious organization under Internal Revenue Code section 501(a). The letter further states:

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 states that since the petitioner qualifies as a tax exempt nonprofit religious organization without application for an IRS determination letter, no determination letter is needed and the petitioner qualifies for the visa sought. The petitioner further states that it is affiliated with the [REDACTED]. In support of that assertion, the petitioner resubmitted a letter dated October 22, 2013 from [REDACTED] of the [REDACTED] who states that the petitioner is affiliated with its organization and is listed in its contact directory. The petitioner states that although it is an independent Baptist church, and does not share [REDACTED] IRS tax exempt status, it should, nevertheless, be classified as tax exempt because of that affiliation. The petitioner further asserts that [REDACTED] has taken steps to have the petitioner covered by its tax exempt status. Although the petitioner asserts that [REDACTED] is a tax exempt religious organization, it has presented no evidence of any such determination by the IRS. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

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 request for evidence. 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.

As noted above, the petitioner claims that it should be classified as a tax exempt religious organization by virtue of its affiliation with [REDACTED]. In support of that assertion, the petitioner submitted a letter dated October 22, 2013 from Paul W. Hylton who states that the petitioner is listed on page 131 of [REDACTED] 2012 – 2013 contact directory. The petitioner did not, however, submit documentation to establish that [REDACTED] is a tax exempt religious organization or that it was granted group exemption status by the IRS which would permit the petitioner to be covered by any such exemption. Nor did the petitioner submit a copy of [REDACTED]'s contact directory showing that the petitioner is, in fact, listed as an affiliated organization. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The petitioner specifically stated in its April 5, 2014 letter submitted on appeal that it was an independent Baptist church and did not share a 501(c)(3) tax exemption with [REDACTED]. It has also failed to establish that it is covered by any group tax exemption by virtue of its affiliation with [REDACTED]. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

Finally, the petitioner states that it has taken the necessary steps to obtain a valid determination letter from the IRS establishing that it is a tax-exempt religious organization. The petitioner has not submitted documentation showing that it has even applied for any such exemption. Even if that

were the case, the petition could not be approved as the petitioner must establish its eligibility for the benefit sought at the time of filing. 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 director also determined that the petitioner failed to establish how the petitioner would compensate the beneficiary.

The 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:

(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.

* * *

The stated basis of the director's determination in this regard related to an October 8, 2013 letter from a church congregant which stated that she would be providing room and board for the beneficiary on behalf of the petitioner. The director determined the statement of the congregant for the provision of room and board was not sufficient verifiable evidence that the room and board would, or could, be provided. Whether or not the congregant would, or could, provide room and board for the beneficiary is not relevant to these proceedings as the petitioner did not state on the Form I-129, Petition for a Nonimmigrant Worker, that it would provide nonmonetary compensation for the beneficiary. The only compensation listed on the petition was a wage of \$10.00 per hour for 40 hours per week. The petitioner did not state at any other place in the record that it would provide the beneficiary with room and board. Thus, the only issue relevant to compensation is how the petitioner will compensate the beneficiary at the stated salary of \$400.00 per week (or \$20,800 per year).

The petitioner submitted with the filing of the petition an unaudited Profit and Loss Statement covering the time period of January through June 2013. The statement shows a net income for that period of \$50,049.26. In response to the director's RFE, relative to the issue of how the petitioner would compensate the beneficiary, the petitioner submitted a document entitled "Approved [REDACTED] 2013 Operating Budget" which shows that it has budgeted \$299,766 for personnel salaries and \$74,000 for personnel benefits. The petitioner also submitted copies of bank statements

showing the following month ending balances: June 2013 - \$94,179.01; July 2013 - \$97,538.22; August 2013 - \$88,625.52; and September 2013 - \$74,147.69. On appeal, the petitioner submitted a copy of its 2013 Annual Report and 2014 proposed budget which was presented to its congregation at its February 9, 2014 annual business meeting. That document states the following fund balances as of December 31, 2013: General Fund Checking - \$18,520.28; Mission Fund Checking - \$46,781.64; Mission Fund Money Market - \$21,511.86; Expansion Fund - \$8,393.95; Building Fund Money Market - \$59,290.77; and Petty Cash Fund - \$970.00. The petitioner's 2013 Statement of Income stated total income for 2013 of \$809,486.21. A copy of a 2013 Form W-2, Wage and Tax Statement, which the petitioner states is for a similar employee, was submitted showing wages paid to that employee of \$4,549.98. The petitioner states on its Form I-129, Supplement R, that it has 500 members.

The submitted documentation is insufficient to establish the petitioner's ability to compensate the beneficiary throughout the period of intended employment. The financial statements submitted by the petitioner are not audited and, therefore, represent only the assertions of the petitioner. The petitioner has not submitted corroborating documentation to support the contents of the documents. For example, as noted above, the petitioner's Statement of Fund Balances for December 31, 2013 shows balances in the following funds: General Fund Checking - \$18,520.28; Mission Fund Checking - \$46,781.64; Mission Fund Money Market - \$21,511.86; Expansion Fund - \$8,393.95; Building Fund Money Market - \$59,290.77; and Petty Cash Fund - \$970.00. The petitioner did not, however, provide banking documents to establish these balances. It is further not known what, if any, restrictions have been placed on the funds and whether those funds could be used for payment of salaries.

The petitioner submitted a 2013 Form W-2, Wage and Tax Statement, for an individual the petitioner states is a similar employee. That employee was paid only \$4,549.98 for the year. The annual salary of the present beneficiary would be \$20,800. The duties of the other employee are not stated. Thus, it cannot be determined that the employees are "similar" as stated by the petitioner. The petitioner's 2013 operating budget shows budgeted salaries of \$299,766 plus \$74,000 for personnel benefits. It is unclear why the petitioner did not submit copies of other employees W-2 Forms to show wages paid to the petitioner's employees or evidence of the payment of employee benefits. The petitioner only submitted bank statements for four months in 2013. As the petitioner submitted on appeal additional evidence regarding its ability to pay the beneficiary's wage, it had the opportunity at that time to submit additional bank statements for the remainder of 2013 and a portion of 2014 to show its financial stability, but failed to do so.

The petitioner did not submit past evidence of compensation for similar positions, IRS documentation such as Forms W2 for any similar positions, or any explanation for the absence of such documentation. The petitioner did not submit verifiable evidence to establish how it would compensate the beneficiary as of July 26, 2013, the date the petition was filed, in accordance with 8 C.F.R. § 214.2(r)(11).

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

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NON-PRECEDENT DECISION

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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.