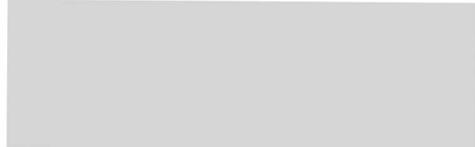


(b)(6)

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 06 2015** 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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, we will remand the petition for further action and consideration.

The petitioner is a synagogue. 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 rabbi's assistant. The director determined that the petitioner had not submitted required evidence to establish that it qualifies as a bona fide nonprofit religious organization.

The petitioner submits additional evidence on appeal.

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.

### I. QUALIFYING ORGANIZATION

The issue to be discussed is whether the petitioner qualifies as a bona fide nonprofit religious organization or a bona fide organization which is affiliated with the religious denomination.

#### A. Law

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.

*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; . . .

### A. Facts and Analysis

The Form I-129, Petition for Nonimmigrant Worker, was filed on December 24, 2013. Accompanying the petition, the petitioner submitted a copy of its Articles of Incorporation, filed October 26, 2012.

In a request for evidence (RFE) dated February 20, 2014, 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, the petitioner submitted a copy of an August 7, 2013, letter from the IRS confirming receipt of the petitioner's Form 1023, Application for Recognition for Exemption Under Section 501(c)(3) of the Internal Revenue Code. The petitioner also submitted a copy of its Form 1023 application with supporting documentation.

The director denied the petition on August 18, 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 submits a copy of an August 15, 2014, determination letter from the IRS finding that the petitioner is tax-exempt under section 501(c)(3) of the Internal Revenue Code. The letter states that the "Effective Date of Exemption" is October 26, 2012.

The statutory requirement is that the petitioning employer must be a bona fide nonprofit, religious organization in the United States. *See* section 101(a)(15)(R)(i) of the Act. By specifying that the evidence of nonprofit status must take the form of an IRS determination letter, the regulation at 8 C.F.R. § 214.2(r)(9) "provides a petitioning organization with the opportunity to submit exceptionally clear evidence that it is a bona fide organization." 73 Fed. Reg. 72276, 72280 (November 26, 2008).

The IRS determination letter has an effective date of October 26, 2012. If the petitioner had not been tax-exempt as of the filing date, and only later took steps to qualify for the exemption, then the petition would be subject to denial because the petitioner was not eligible for the benefit sought after the filing date. *See* 8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Here, however, the petitioner did not create a new set of facts, but rather obtained IRS documentation showing that it held the qualifying tax-exempt status at the time of filing.

While the petitioner's submission of the IRS letter was not without procedural flaws, we must now take the petitioner's submission of the IRS letter into account when considering the evidence of record. When we take that letter into consideration, the sole stated ground for denial cannot stand, and we must therefore withdraw the director's decision.

At the same time, other disqualifying factors prevent the approval of the petition. Because we review the record on a *de novo* basis, we may identify additional grounds for denial beyond what the

Service Center identified in the initial decision. See *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

## II. QUALIFYING POSITION

### A. Law

The regulation at 8 C.F.R. § 214.2(r)(3) includes the following definitions:

*Minister* means an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and
- (D) Works solely as a minister in the United States which may include administrative duties incidental to the duties of a minister.

*Religious occupation* means an occupation that meets all of the following requirements:

- (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination;
- (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination;
- (C) The duties do not include positions which are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible; and
- (D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

*Religious worker* means an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister.

The regulation at 8 C.F.R. § 214.2(r)(10) requires the petitioner to submit the following documentation if the alien will work as a minister:

- (i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and
- (ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological education is accredited by the denomination, or
- (iii) For denominations that do not require a prescribed theological education, evidence of:
  - (A) The denomination's requirements for ordination to minister;
  - (B) The duties allowed to be performed by virtue of ordination;
  - (C) The denomination's levels of ordination, if any; and
  - (D) The alien's completion of the denomination's requirements for ordination.

#### B. Facts and Analysis

The petitioner listed the title of the proffered position on the petition as "Rabbi's Assistant" and indicated that the beneficiary will conduct religious prayer services as a cantor, will teach Jewish laws and customs to beginners, and will also supervise food preparation for events at the synagogue to ensure compliance with Jewish dietary laws. On the petition, the petitioner described the beneficiary's qualifications for the position as follows:

The beneficiary is an orthodox Jewish member of his congregation, [REDACTED] [REDACTED] for the last 10 years. He has attended all his life religious schools and institutions of Jewish higher learning ([REDACTED] colleges) and he is very knowledgeable in all Jewish prayers and customs. He has a good level of biblical knowledge and of Jewish dietary laws and is well capable to supervise all food preparation to ensure adherence to kosher standards and to teach basic level bible classes and Mishna lessons to our congregants [sic].

In an April 26, 2014, letter responding to the director's RFE, the petitioner stated: "All activities that [the beneficiary] is being sponsored for are Traditional Religious Functions of a Rabbi or his assistant, teaching Judaism, Leading Prayers and Supervision of Kosher Food preparation." The petitioner submitted a proposed daily schedule for the proffered position. In addition, the petitioner submitted a letter from [redacted] stating that the beneficiary has been a member of that congregation for the last 10 years, and "often leads congregants in prayer as a cantor on the Sabbath and festivals on a voluntary basis," and "on occasion" has acted as "kosher food supervisor."

It is not evident whether the petitioner intends to employ the beneficiary in a ministerial position or in a religious occupation. To the extent that the proffered position is ministerial, the petitioner must establish that the beneficiary is fully authorized by the denomination as a member of the clergy. See 8 C.F.R. § 214.2(r)(3) and (10). In Schedule A of the petitioner's Form 1023 application, the petitioner indicated that its rabbis are required to "possess Semihah" (ordination). If the proffered position is not ministerial, the petitioner must submit evidence that the duties are traditionally recognized as a religious occupation within the denomination and that the beneficiary meets the denomination's qualifications for that occupation.

### III. COMPLIANCE REVIEW

#### A. Law

The regulation at 8 C.F.R. § 214.2(r)(16) reads:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

#### B. Facts and Analysis

The record does not indicate that USCIS has conducted a compliance review inspection with regard to the instant petition. On remand, the director shall determine whether the petitioner has satisfied the regulation at 8 C.F.R. § 214.2(r)(16) and whether a compliance review, onsite inspection or other verification of the petitioner's claims is appropriate in the instant petition.

#### IV. CONCLUSION

As discussed above, the petitioner has overcome the stated basis for the denial decision, but the petition is being remanded for the director to consider whether the petitioner has established that the beneficiary will be working in a qualifying ministerial position or religious occupation and whether the petitioner has satisfied the regulatory requirements at 8 C.F.R. § 214.2(r)(16).

The matter will be remanded for a new decision. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. 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).

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.