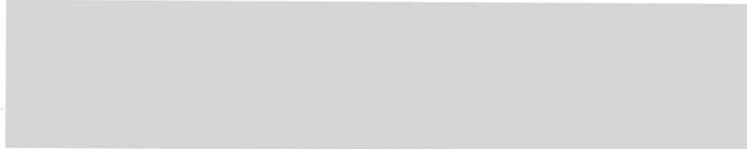




U.S. Citizenship
and Immigration
Services

(b)(6)

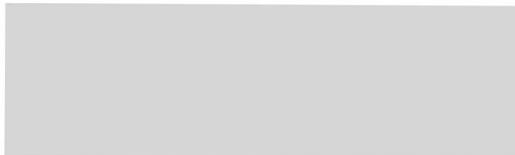


DATE: **MAY 13 2015** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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

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 on appeal. The appeal will be sustained and the petition will be approved.

The petitioner describes itself as a non-profit religious organization. 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 “Team Lead of Humanistic Culture Team.” 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 religious denomination.

On appeal, the petitioner submits a brief and additional evidence.

RELEVANT LAW AND REGULATIONS

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 [IRC] 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.

PERTINENT FACTS AND PROCEDURAL HISTORY

The instructions on the Petition for a Nonimmigrant Worker (Form I-129) also list these identical evidentiary requirements. The petition was filed on March 12, 2014. The petitioner included with the Form I-129 a determination letter from the IRS stating that the [REDACTED] was tax exempt under section 501(c)(3) of the IRC as an organization described in section 509(a)(1) and 170(b)(1)(A)(i) of the IRC.

The director issued a Request for Evidence (RFE) on April 3, 2014 stating, in part, that the petitioner “must provide its own IRS tax-exempt determination letter; or if the petitioning organization is claiming that it falls under the auspices of the National Headquarters, it must submit an IRS tax-exempt determination letter from the National Headquarters that establishes that the group is tax exempt.”

The petitioner stated in response to the RFE that the petitioner is a chapter of the [REDACTED] not a separate legal entity, and that it operates under the same federal employer identification number [REDACTED]. In support of that assertion, the petitioner submitted:

- Letter from [REDACTED] Director of Human Resources dated June 2, 2014 which states that the petitioner falls under the auspices of [REDACTED], a 501(c)(3) tax exempt organization. The human resource director stated that [REDACTED] headquarters is in California and the petitioner is part of that organization with the same federal employer tax identification number. The human resource director further noted that the petitioner is not a separate entity, does not have a separate tax-exempt determination letter, and that the tax-exempt determination letter of [REDACTED] applies to all of its chapters, including the petitioner.
- 2013 IRS Form W-2, Wage and Tax Statement, issued to the beneficiary by [REDACTED]. The beneficiary was working for the petitioner in [REDACTED] Texas during 2013 and her residence address is listed on the wage and tax statement as [REDACTED].
- Paystubs for the beneficiary issued while the beneficiary was employed by the petitioner in [REDACTED] Texas. The paystubs were issued by [REDACTED].
- Printout from the [REDACTED] website ([REDACTED]) of donation Frequently Asked Questions (FAQs), specifically question 11:

Are the [REDACTED] National Headquarters and the local Chapters of the [REDACTED] separate legal entities?

No. [REDACTED] National Headquarters and its local chapters are considered one legal entity. It is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code. The federal tax identification number is [REDACTED].

- [REDACTED] audited financial statement for the year ended December 31, 2012. In the notes to the financial statements, page 9, the auditors state that [REDACTED] is a nonprofit public benefit corporation established in 1984 under the laws of the State of California. It has nine regional constituents which includes the Central Region (the petitioner). The regions were established to carry out [REDACTED] purpose and to provide program services on a regional level. On page 20 the auditor notes that [REDACTED] occupies approximately 5,875 square feet of office space and facilities located in the City of [REDACTED] Texas which is used for preschool and kindergarten programs. [REDACTED] also leases an additional 96,000 square feet of office space and facilities in [REDACTED] Texas (page 22, auditor's notes). The petitioner's offices are located in [REDACTED] Texas.

The director denied the petition on September 11, 2014 stating that “[t]he petitioner has not established that it qualifies as a bona fide organization under 501(c)(3).”

The petitioner states on appeal that it is not a separate legal entity or subordinate organization of [REDACTED], nor is [REDACTED] a parent organization of an affiliated organization that includes the petitioner. The petitioner asserts that it is not an independent organization requiring registration with the IRS and does not require a group exemption letter. The petitioner resubmitted the following documents in support of its assertions:

- IRS determination letter stating that [REDACTED] is tax-exempt;
- [REDACTED] amended and restated by-laws;
- Letter from the Texas Comptroller stating that [REDACTED] is registered in Texas as a tax-exempt organization; and
- Fact sheet from [REDACTED] website stating that it currently has 60 offices in the United States located in 27 states and identifying its 9 regional service areas with the Central Region headquarters located in [REDACTED] Texas.

ANALYSIS

The petitioner has established that it is a bona fide non-profit religious organization exempt from taxation as described in section 501(c)(3) of the IRC and as defined in the regulation at 8 C.F.R. § 214.2(r)(3). [REDACTED] is a non-profit religious organization under section 501(c)(3) of the IRC and the petitioner submitted a currently valid determination letter from the IRS in that regard as required by the regulation at 8 C.F.R. § 214.2(r)(9). The petitioner has submitted sufficient evidence to establish that it is a regional office/subchapter of [REDACTED] and not a separate legal entity affiliated with that organization.

The petitioner submitted a June 2, 2014 letter from its director of Human Resources which states that it is a part of [REDACTED] and operates under the same federal employer tax identification number as do all of [REDACTED] chapters. Pay stubs and a 2013 IRS Form W-2 issued by [REDACTED] establish that the beneficiary lived and worked in Texas, where the petitioner is located, during 2013 and 2014 and that she was paid by [REDACTED] from its corporate offices located at [REDACTED] CA. While the petitioner operates 60 offices in the United States in 27 states and nine regional service areas, its website ([REDACTED]) states that [REDACTED] and its chapters form one legal entity. Finally, [REDACTED] audited financial statement for the year ended December 31, 2012 identifies property leased by [REDACTED] at its Central Region in [REDACTED] Texas. The evidence of record, considered in its totality, establishes by a preponderance of the evidence that the petitioner is not a separate and distinct chapter of [REDACTED] but rather the organization is a single unit with chapters in different areas and that the organization has a currently valid determination letter from the IRS stating that it is tax-exempt under section 501(c)(3) as a religious organization.

(b)(6)



NON-PRECEDENT DECISION

Page 7

CONCLUSION

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). The petitioner has met that burden. The director's denial decision shall be withdrawn and the petition approved.

ORDER: The appeal is sustained and the petition is approved.