



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF N-F-, INC.

DATE: FEB. 4, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a private foundation, seeks to employ the Beneficiary as a nonimmigrant religious worker to perform services as a priest. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R). The Director, California Service Center, denied the petition because the petitioning organization did not establish itself as a bona fide non-profit religious organization. The matter is now before us on appeal. The appeal will be dismissed.

I. RELEVANT LAW AND REGULATIONS

Section 101(a)(15)(R) of the Act, 8 U.S.C. § 1101(a)(15)(R), 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).

According to subclause (I), (II), or (III) of paragraph (27)(C)(ii), a nonimmigrant may seek 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, in pertinent part, 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 it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendments or equivalent sections of prior enactments of the Internal Revenue Code.

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The regulation at 8 C.F.R. § 214.2(r)(9) states:

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 showing 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), 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 statement certifying that the petitioning organization is affiliated with the religious denomination. The statement must be submitted by the petitioner along with the petition.

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, on January 15, 2013, seeking to employ the Beneficiary as a priest from February 1, 2013, until January 30, 2016. The Petitioner identified itself as [REDACTED] and stated its type of business as “Hindu Temple – Non-Profit.” It specified that the Beneficiary would work in its New York location

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two days per week, and in its New Jersey location three days per week. In support of the petition, the petitioning organization submitted, among other things: an offer of employment; a letter from [REDACTED] a copy of [REDACTED] certificate of incorporation; a letter from the IRS; a copy of the Beneficiary's résumé and letters of support; a copy of [REDACTED] quarterly newsletter; documents from [REDACTED] website; and documents from the [REDACTED] website.

The Director issued a request for evidence (RFE), requesting, among other things, additional documentation pertaining to the Petitioner's nonprofit status. In response, the Petitioner submitted documents including, but not limited to: additional letters from the IRS; state tax exemption certificates; and copies of tax returns, checks, and other financial records.

The Director denied the petition, concluding that the Petitioner did not establish it is a bona fide non-profit religious organization. On appeal, the Petitioner contends that it submitted sufficient evidence to establish that it is a bona fide non-profit religious organization and that it is affiliated with the Hindu religion.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. 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). As explained below, we find that the Petitioner has not overcome the Director's ground for denial.

The record includes documentation for [REDACTED] as well as for [REDACTED] and the [REDACTED]. An IRS determination letter, dated August 27, 1999, indicates that [REDACTED] is a private foundation within the meaning of section 509(a) of the Internal Revenue Code (IRC) and is exempt from federal income tax under section 501(c)(3) of the IRC. The letter recognized the Petitioner as a private foundation but specifically stated the IRS made no determination that the Petitioner was an operating foundation under section 4942(j)(3) of the IRC. In a March 15, 2006, letter, however, the IRS stated that based on additional information submitted, the Petitioner is classified as an operating foundation under section 4942(j)(3) of the IRC and remains tax-exempt under section 501(c)(3). The letter also advised the Petitioner that it should notify the IRS of any name changes.

The record also includes a copy of [REDACTED] certificate of incorporation, dated May 1998. It states that its purpose is:

To promote, further and advance education and educational excellence through grants, funding and financial assistance to students, institutions and other organizations; to aid, encourage, stimulate, foster and promote artistic and cultural activities through grants, bequests, gifts or otherwise to individuals, groups, institutions and organization; . . . [and to] use and apply [funds] exclusively for charitable, scientific, religious and educational purposes either directly or by funding

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programs or projects that accomplish such charitable, cultural, religious and educational purposes on a world wide basis. . . .

In response to the RFE, the Petitioner submitted documentation from [REDACTED] website which states that the foundation was created in 1998 by [REDACTED] a renowned physician and oncologist, and his wife, [REDACTED] “as a token of gesture to perpetuate the memories of his parents. The charitable trust serves the needs in the fields of medical relief, education, and community services.” It indicates that “in addition to community service, [REDACTED] also promotes harmony among all cultures, promotes human values and provides sanctum for everyone.” The website further states that the foundation “established [REDACTED] in 2002, and the ‘[REDACTED]’ in 2008. Tax documents in the record show that in 2011, [REDACTED] gave grants totaling \$14,553 to four entities: [REDACTED] [REDACTED] For the first three grants, it stated that the purpose of the contributions was “cultural,” and that for the [REDACTED] the purpose was listed as “medical service.”¹

Based on this evidence, we find that [REDACTED] is not a religious organization. The record shows that it was created as a charitable trust for “all cultures” to provide “sanctum for everyone.” Its tax records indicate it provides grants for cultural and medical service purposes, contributions that further its stated mission of fostering cultural activities and providing financial assistance for medical relief. In addition, the foundation was created four years before it established [REDACTED] and ten years before the [REDACTED]. We do not find sufficient evidence that [REDACTED] is religious in nature or was created for a religious purpose.

The fact that the Petitioner identifies itself on the Form I-129 as doing business as [REDACTED] does not alter our outcome. There is no evidence showing that its purpose has changed such that now its primary focus is religious in nature rather than to “advance education and educational excellence.”

Regarding its affiliation with the Hindu religion, the Petitioner has not established it is a bona fide organization that is affiliated with a religious denomination under 8 C.F.R. § 214.2(r)(9)(iii). We agree with the Director that the Petitioner has met the requirements of subparagraph (A) by submitting a currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization. However, we find that the Petitioner has not established subsections (B), (C), and (D). Beginning with subsection (D), which requires a religious denomination certificate certifying that the petitioning organization is affiliated with the religious denomination, the religious denomination certificate in this case was signed by [REDACTED] rather than an official or representative of the religious denomination, Hinduism. Although the Petitioner asserts that [REDACTED] affirmation of affiliation with Hinduism is sufficient proof because Hinduism is not an organized religious and has “no central doctrinal authority,” the Petitioner has not shown that there is no other organization or association

¹ We note that the copy of [REDACTED] IRS Form 990-PF, Return of Private Foundation, for 2011 in the record is unsigned and uncertified.

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that could confirm its affiliation with the Hindu religion. 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)).

Even if we were to accept the religious denomination certificate signed by that [REDACTED] the petitioning organization has not provided sufficient documentation or organizational literature describing the religious nature and purpose of [REDACTED]. As discussed above, the record does not show that the petitioning organization was established for a religious purpose and the Petitioner has not submitted sufficient organizational literature describing the religious nature of the activities of the organization. As such, it has not met the requirements of 8 C.F.R. § 214.2(r)(9)(iii)(B) or (C).

Regarding the Petitioner's contention that it has previously had other Form I-129 petitions approved, U.S. Citizenship and Immigration Services (USCIS) is not required to approve 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); *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988) (USCIS need not treat acknowledged errors as binding precedent). In sum, although the evidence shows that the Petitioner is a tax-exempt organization, the record does not establish it is a bona fide religious organization. Considering all of the evidence in its totality, we find that the Petitioner has not met the statutory and regulatory requirements to establish it is a bona fide non-profit religious organization.

IV. CONCLUSION

The Petitioner has not established it is a bona fide non-profit religious organization. The appeal is, therefore, dismissed.

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.

Cite as *Matter of N-F-, Inc.*, ID# 13545 (AAO Feb. 4, 2016)