



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

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

MATTER OF I-D-D-C-D-S-

DATE: FEB. 19, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a church, seeks to employ the Beneficiary as a nonimmigrant religious worker to perform services as a church planter. *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 that it is a bona fide non-profit religious organization or how it intends to compensate the Beneficiary. The matter is now before us on appeal. The appeal will be sustained.

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.

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.

The regulation at 8 C.F.R. § 214.2(r)(11) provides, in pertinent part:

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

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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 [U.S. Citizenship and Immigration Services]. IRS documentation, such as IRS Form W-2 [Wage and Tax Statement] 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.

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, on July 24, 2014, seeking to employ the Beneficiary as a church planter from October 1, 2014, until October 1, 2016. In support of the petition, the petitioning organization submitted, among other things: a letter from [REDACTED] the Petitioner's senior pastor and chief executive officer; an offer of employment; copies of bank account statements; a letter from the IRS; and the Beneficiary's résumé. The letter from the IRS, dated February 23, 2009, stated that the petitioning organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code and that this "advance ruling" would end on December 31, 2012.

The Director issued a request for evidence (RFE), requesting, among other things, additional documentation pertaining to the Petitioner's nonprofit status and compensation. In response, the Petitioner submitted documents including, but not limited to: letters from [REDACTED] a copy of the church's lease agreement; a letter from the IRS confirming receipt of the Petitioner's application for tax exemption; copies of what the Petitioner identifies as photographs of the church and members of the congregation; and additional bank account statements. According to [REDACTED] the church's tax exemption had been revoked due to an unintentional failure to file an IRS Form 990, Return of Organization Exempt from Income Tax, and the organization was taking steps to get its nonprofit status back.

The Director denied the petition, concluding that the Petitioner did not to establish itself as a bona fide nonprofit religious organization. Moreover, the Director determined that the Petitioner did not establish how it intends to compensate the Beneficiary because it did not show how it would provide for the reasonable expenses of relocation, including airfare, as it claimed it would. The Director also stated that the Petitioner did not address compensation for similar positions, the organization's financial budget, or provide IRS documentation. On appeal, the Petitioner submits new evidence, including a letter from the IRS, tax documentation, and the petitioning organization's budget.

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III. ANALYSIS

We conduct appellate review on a *de novo* basis. As explained below, the Petitioner has sufficiently established it is a bona fide non-profit religious organization and its intent to compensate the Beneficiary as claimed.

A. Bona Fide Non-Profit Religious Organization

The Petitioner submits on appeal a letter from the IRS, dated November 18, 2014, 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 15, 1986.

In this case, the Petitioner filed the Form I-129 on July 24, 2014, after the effective date of tax exemption. If the Petitioner had not been tax-exempt as of the petition’s filing date, and only later took steps to qualify for the exemption, the petition would be subject to denial because the Petitioner was not eligible for the benefit sought until after the filing date. *See* 8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve a petition 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 qualified for tax-exempt status at the time of filing.

Although the Petitioner’s submission of the IRS letter was not without procedural flaws, we must now take the IRS letter into account when considering the totality of the evidence. When we take that letter into consideration, this ground for denial cannot stand. We find that the Petitioner meets the definition of a bona fide non-profit religious organization under 8 C.F.R. § 214.2(r)(3), and has satisfied the evidentiary requirements of 8 C.F.R. § 214.2(r)(9)(i). We withdraw the Director’s finding to the contrary.

B. Compensation

On the Form I-129, the petitioning organization stated it would compensate the Beneficiary \$550 per week and provide \$1,200 per month as a housing allowance. In the offer of employment submitted with the petition, the Petitioner indicated that it would also reimburse the Beneficiary for the reasonable expenses of relocation, including airline tickets. On appeal, the Petitioner submits additional evidence to establish how it intends to compensate the Beneficiary.

The record includes copies of the Petitioner’s bank account statement for five months, showing a balance of more than \$51,000 each month. In addition, a copy of its certificate of deposit indicates a balance of over \$374,000. On appeal, the Petitioner submits a copy of its budget for 2015 which includes monies set aside for the Beneficiary’s salary. In addition, a letter from [REDACTED] submitted on appeal affirms that the petitioning organization is a well-financed organization that will reimburse the Beneficiary the reasonable expenses of his relocation, including airline tickets, after the petition is approved. Moreover, the Petitioner submits its IRS Form 990-EZ, Short Form Return of Organization Exempt from Income Tax, for 2013 and 2014. Both tax returns indicate that the Petitioner had over

\$189,000 in revenue. The 2014 return also indicates net assets of \$82,000. Although we note that the tax forms are unsigned and undated, considering the record in its entirety, we find that the evidence submitted on appeal, in addition to copies of the Petitioner's bank account statements and its certificate of deposit, sufficiently establishes by a preponderance of the evidence how the Petitioner intends to compensate the Beneficiary, as required under 8 C.F.R. § 214.2(r)(11). We withdraw the Director's finding to the contrary.

IV. CONCLUSION

The Petitioner has established it is a bona fide non-profit religious organization and how it intends to compensate the Beneficiary. The appeal is, therefore, sustained.

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 been met.

ORDER: The appeal is sustained.

Cite as *Matter of I-D-D-C-D-S-*, ID# 15467 (AAO Feb. 19, 2016)