



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

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

MATTER OF I-S-O-P- INC.

DATE: JAN. 5, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an Islamic school, seeks to employ the Beneficiary as a nonimmigrant religious worker to perform services as a resident scholar/Imam. *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 nonprofit religious organization or that it is affiliated with one. 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 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, 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.

(b)(6)

*Matter of I-S-O-P- Inc.*

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 31, 2014, seeking to employ the Beneficiary as a resident scholar/Imam from May 1, 2014, until October 30, 2016. In support of its petition, the petitioning organization submitted, among other things: a copy of its articles of incorporation and bylaws; a letter from the IRS confirming receipt of its application for exemption from federal income tax; a letter from the [REDACTED] and a copy of [REDACTED] IRS tax-exemption letter; articles, newsletters, and brochures of the school; financial documents; and copies of photographs. The Petitioner explained that it has provided Islamic

*Matter of I-S-O-P- Inc.*

education for over thirty years and in July of 2013, decided to incorporate as a religious organization with the Indiana Secretary of State and apply for its own IRS tax exemption. It described itself as a school that serves as an Islamic center or mosque. In addition, it stated that it is affiliated with [REDACTED] and is a member of [REDACTED]

The Director issued a request for evidence (RFE), in part requesting additional evidence regarding [REDACTED]. In response, the Petitioner submitted documents including, but not limited to: a letter from [REDACTED] articles of incorporation; a list of [REDACTED] member organizations; articles and brochures; financial documents; copies of photographs; and copies of bills. The Petitioner stated that due to a backlog of applications at the IRS, their application for tax exemption was still pending. After it submitted its response to the Director, the Petitioner submitted an IRS determination letter, dated August 11, 2014, granting it tax exempt status, effective July 11, 2013.

The Director denied the petition. The Director stated that upon further review, whether or not the petitioning organization is affiliated with [REDACTED] is irrelevant because the IRS determined [REDACTED] was a bona fide nonprofit organization under section 170(b)(1)(A)(vi), rather than section 170(b)(1)(A)(i), of the Internal Revenue Code. According to the Director, a petitioning organization must be affiliated with a nonprofit organization that the IRS has been determined to be a religious organization under section 170(b)(1)(A)(i) of the Internal Revenue Code. The Director also found that the Petitioner's own tax-exempt status was insufficient because the IRS classified it under section 170(b)(1)(A)(ii), rather than a religious organization under section 170(b)(1)(A)(i), of the Internal Revenue Code. The Director denied the petition accordingly.

On appeal, the Petitioner contends that it has submitted sufficient evidence to establish that it is a bona fide nonprofit religious organization and that the [REDACTED] is a religious organization.

### 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 overcome the Director's ground for denial. We withdraw the Director's decision and approve the petition.

#### Bona Fide Nonprofit Religious Organization

We agree with the Petitioner that the evidence establishes that it is a bona fide nonprofit religious organization. The IRS letter in the record shows the Petitioner has been granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code. The record includes a copy of an August 11, 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 July 11, 2013.

In this case, the Petitioner filed the Form I-129 on January 31, 2014, after the effective date of tax exemption. If the Petitioner had not been tax-exempt as of the filing date, and only later took steps to

*Matter of I-S-O-P- Inc.*

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 held the qualifying tax-exempt status at the time of filing.

Although the IRS letter classified the petitioning organization as an educational organization under section 170(b)(1)(A)(ii) of the Internal Revenue Code, classification as a religious organization under section 170(b)(1)(A)(i) is only one method of determining whether the Petitioner is a bona fide nonprofit religious organization under the regulations. The record shows that the petitioning organization was created and organized for religious purposes. As the Petitioner explains, it was initially established in the 1980s to provide Islamic education to the children of the employees of the [REDACTED] and evolved until 2013 when it became independent, seeking its own section 501(c)(3) tax-exempt status and obtaining a new facility. In this new facility, the petitioning organization offers daily prayers five times a day, an Islamic education for pre-kindergarten students through the fourth grade, a Sunday school, weekly Friday congregational prayer, Quranic education classes including Quran memorization, adult and youth religious education courses, Quranic Arabic classes, and an Islamic library and community center.

Documentation in the record corroborates the Petitioner's contention and describes the religious nature, purpose, and services of the petitioning organization. Its articles of incorporation and bylaws indicate it was organized exclusively for religious, educational, charitable, and scientific purposes. Its newsletter and brochures indicate it is the only full-time Islamic School and Sunday school in the county. The record also shows that all of the school's elementary students participate in Quran and Islamic Studies and learn to read and write in Arabic. In addition, its insurance policy specifies that the petitioning organization is a religious school.

Considering the record in its entirety, we find the record sufficiently establishes the Petitioner's religious nature and purpose. Therefore, the Petitioner has established it is a bona fide nonprofit religious organization. Furthermore, because we find that the Petitioner has established that it is a nonprofit organization pursuant to 8 C.F.R. § 214.2(r)(9)(i), and has established its religious purpose and nature, the issues regarding the Petitioner's affiliation with [REDACTED] are moot.

In sum, 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, the Director's sole stated ground for denial cannot stand. We find that the record establishes that the Petitioner is a religious organization and that it possesses a currently valid determination letter from the IRS confirming its 501(c)(3) tax-exempt status. Therefore, the Petitioner meets the definition of a bona fide nonprofit 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.

#### IV. CONCLUSION

The Petitioner has established it is a bona fide nonprofit religious organization. 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-S-O-P- Inc.*, ID# 12580 (AAO Jan. 5, 2016)