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

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

MATTER OF G-O-D-O-T-W-C-

DATE: JULY 21, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner is a Christian church that seeks to employ the Beneficiary as a minister at its location in [REDACTED] Ohio. This nonimmigrant religious worker classification allows non-profit religious organizations, or their affiliates, to temporarily employ foreign nationals as ministers or in other religious occupations or vocations in the United States. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R).

The Director of the California Service Center initially granted the petition, but subsequently revoked its approval after conducting a site visit and finding that the Beneficiary was not performing the job duties listed on the petition. In addition, the Director found that the Beneficiary was not being compensated as stated on the petition, but rather, served as a volunteer.

The matter is now before us on appeal. The Petitioner explains that the Beneficiary is performing her ministerial duties as required. Regarding compensation, it states that it lost a large number of parishioners which has led to financial strain. It contends it will compensate the Beneficiary when it is in a better position financially and that, in any event, volunteer work is permitted under this visa category.

Upon *de novo* review, we will dismiss the appeal. As discussed below, we agree with the Director's revocation of the petition and we further find that the Petitioner has not established it is a bona fide non-profit organization.

I. RELEVANT LAW AND REGULATIONS

Non-profit religious organizations may petition for foreign nationals to work in the United States for up to five years to perform religious work as ministers, in religious vocations, or in other religious occupations. The petitioning organization must establish that the foreign national beneficiary has been a member of a religious denomination for at least the two-year period before the date the petition is filed. *See generally* section 101(a)(15)(R) of the Act, 8 U.S.C. § 1101(a)(15)(R).

The regulation at 8 C.F.R. § 214.2(r)(9) addresses the evidence required to establish an organization's tax-exempt status and states:

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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 [Internal Revenue Service] 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

The regulation at 8 C.F.R. § 214.2(r)(18)(iii) permits the revocation of an approved petition as follows, in pertinent part:

(A) *Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:

- (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;
- (2) The statement of facts contained in the petition was not true and correct;
- (3) The petitioner violated terms and conditions of the approved petition;
- (4) The petitioner violated requirements of section 101(a)(15)(R) of the Act or paragraph (r) of this section; or
- (5) The approval of the petition violated paragraph (r) of this section or involved gross error.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition.

II. PERTINENT FACTS AND PROCEDURAL HISTORY

On November 14, 2013, the Petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking to employ the Beneficiary as a Christian minister from November 1, 2013, to May 1, 2016. In its statement submitted with the petition, the Petitioner indicated it would compensate the Beneficiary \$15,510 per year to "work solely as a Christian minister . . . , performing duties usually performed by clergy." In support of the petition, the Petitioner submitted a letter from [REDACTED] the District Superintendent of the church, who stated that the Beneficiary had been a member of the [REDACTED] for almost 30 years and a minister at the church in Colombia since 1994. He indicated that the

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Beneficiary's job duties for the proffered position would include, but were not limited to: conducting Bible studies; counseling; providing pastoral care; organizing retreats; preparing and presenting sermons; administering the sacraments; performing marriages and funerals; and overseeing the administration of the church. The Petitioner also submitted, among other things, a copy of a letter from the IRS and the petitioning organization's 2014 budget. The letter from the IRS indicated that the [REDACTED] in [REDACTED] Indiana, was granted group tax exemption for the corporation and its subordinates.

The petition was approved on January 21, 2014, granting the Beneficiary R-1 status from January 21, 2014, until May 1, 2016. However, on August 22, 2015, the Director issued a notice of intent to revoke (NOIR) the petition. The Director stated that a site visit had been conducted which found that the Beneficiary was not being paid, but was instead a volunteer. The Beneficiary, through a translator, indicated during the site visit that her job duties consisted of "working in the day care, [doing] church outreach, and [praying] in parishioner's home."

The Petitioner did not respond to the contentions made in the NOIR, but instead, stated that the Beneficiary has had difficulty with her previous attorney and sought an extension to work with a new attorney. The Director revoked the petition, noting that USCIS is barred from extending the time in which to respond and concluding that the Petitioner did not overcome the grounds for revocation.¹

On appeal, the Petitioner submits a letter, contending that the Beneficiary's duties are ministerial in nature as she conducts prayers in parishioners' homes and church outreach. In addition, it explains that it has lost a large number of parishioners and the church was flooded, causing financial strain. The church states that some of its employees were no longer able to be paid and others took major cuts to their compensation. It claims that once it is in a better financial position, it will surely compensate the Beneficiary for her work. The Petitioner also contends that volunteer work is not a basis to deny or revoke the Beneficiary's R-1 visa as it is allowed under this visa category.

III. ANALYSIS

A. Revocation

We agree with the Director that the Petitioner has not sufficiently rebutted the Director's grounds for revocation as specified in the NOIR. On appeal, the Petitioner does not address the Director's finding that the Beneficiary works in the day care. Rather, the Petitioner merely states that the Beneficiary's duties are ministerial in nature because she reportedly guides and teaches parishioners in religious matters, leads prayer meetings on a regular basis, and works with new and potential members of the church. However, the Petitioner has not submitted any documentary evidence to support this contention. For instance, there are no letters from congregants, pamphlets, newsletters, or brochures to

¹ The Director cited 8 C.F.R. § 103.2(b)(8) for the proposition that USCIS may not extend the time in which a Petitioner may respond to a request for evidence. The Director should have cited 8 C.F.R. § 214.2(r)(18)(iii)(B) which permits a petitioner 30 days to respond to a notice of intent to revoke.

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show that the Beneficiary regularly leads prayer meetings or teaches parishioners in religious matters. 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)).

In addition, the Petitioner concedes that it has not compensated the Beneficiary as it claimed it would. The Petitioner's argument that volunteer work is permitted in the R-1 visa category is inapplicable in this case as the Petitioner affirmed in its petition that it would compensate the Beneficiary \$15,510 per year. It may not now change the terms of the petition to justify violating the amount of compensation promised to the Beneficiary. *See generally Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm. 1998) (a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements). In any event, the record does not contain the required documentation to satisfy all of the requirements for beneficiaries who will be financially self-supportive. *See* 8 C.F.R. § 214.2(r)(11)(ii) (specifying numerous requirements for beneficiaries who will be self-supporting, including documentation establishing that the proffered position is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination). Therefore, we agree with the Director's revocation of the petition under 8 C.F.R. § 214.2(r)(18)(iii).

B. Tax-Exempt Status

Although not addressed by the Director, we further find that the Petitioner has not established it is a bona fide non-profit organization. The record contains an IRS determination letter confirming that [REDACTED] was granted tax-exempt status in December of 1981. The letter states that named subordinates are covered under the group ruling.

There is no evidence in the record that the petitioning organization is a subordinate organization that is covered under the group ruling. The Petitioner asserts on the petition that it is a "regional branch" of the [REDACTED]. However, the record does not contain any documents to corroborate this assertion. Accordingly, beyond the Director's decision, we find that the Petitioner has not established its tax-exempt status tax as required under 8 C.F.R. § 214.2(r)(9).

IV. CONCLUSION

The Petitioner has not sufficiently rebutted the grounds for revocation nor has it established that it is a bona fide non-profit religious organization.

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.

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ORDER: The appeal is dismissed.

Cite as *Matter of G-O-D-O-T-W-C-*, ID# 17100 (AAO July 21, 2016)