



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

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

MATTER OF T-M-A-Q-O-L-P-F-

DATE: JUNE 8, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a Buddhist spiritual development organization, seeks to classify the Beneficiary as a nonimmigrant religious worker to perform services as a Buddhist missionary. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R). This 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.

The Director, California Service Center, denied the petition. The Director concluded that the petitioning organization did not satisfactorily complete a site inspection because it “could not be verified as a religious organization based on the documents.”

The matter is now before us on appeal. On appeal, the Petitioner argues that the Director made a conclusory statement that the petitioning organization is not a religious organization. The Petitioner states that it submitted sufficient evidence to establish that it is a bona fide religious organization.

Upon *de novo* review, we will sustain the appeal.

I. RELEVANT LAW AND REGULATIONS

Non-profit religious organizations may petition for foreign nationals to work in the United States temporarily to perform religious work. The petitioning organizations, and the foreign nationals who are the beneficiaries of this nonimmigrant visa, must meet certain eligibility criteria.

Section 101(a)(15)(R) of the Act pertains to a foreign national 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).

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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)(16) requires that any pre-approval, on-site inspection be satisfactorily completed and states:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS [U.S. Citizenship and Immigration Services] through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

II. PERTINENT FACTS AND PROCEDURAL HISTORY

On the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner described itself as a "Non-profit, Buddhist, Spiritual Development organization." It indicated it was established in 2011, had no current employees, and consisted of approximately 384 members. It stated it was formed under the spiritual direction of a Buddhist Master in Thailand and that the Beneficiary would be "ultimately responsible to the Master in much the same way as any American Cardinal takes his inspiration and direction from the Pope in the Vatican." According to the Petitioner, the Beneficiary has been a Buddhist for the past 22 years and a Buddhist missionary since 2007. It submitted a religious denomination certificate indicating its affiliation with [REDACTED] in Thailand. The Petitioner also submitted, among other things: a statement from its Vice Chairman, [REDACTED] a copy of its articles of incorporation and bylaws; brochures; an employment contract; articles from the Internet; documents from its Board of Directors; an Internal Revenue

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Service (IRS) tax-exemption determination letter; financial documents; and the Beneficiary's resume.

The Director issued a request for evidence (RFE) seeking, in part, additional documentation to establish the religious nature and purpose of the organization, and evidence of religious activity at the Petitioner's location. The Petitioner responded to the RFE with additional documents including, but not limited to: a copy of its business license; three certificates signed by a Buddhist Master in Thailand; documentation of the Beneficiary's qualifications and experience as a Buddhist monk; and copies of photographs of the Beneficiary in various Buddhist activities abroad and at the Petitioner's location.

The Director denied the petition. She found that a site visit of the Petitioner's facility showed "a Buddhist type of worship on site; one visiting monk living at the facility; photos of religious events and Buddhist books on display; and the [B]eneficiary performing his duties with non-salaried compensation." Nonetheless, the Director concluded that "the [P]etitioner could not be verified as a religious organization based on the documents." Specifically, the Director indicated that the petitioning organization "was incorporated as a nonprofit public benefit corporation organized for public and charitable purposes." She noted that although the organization was registered with the State of California, it was later registered with the [REDACTED] California, listing different individuals' names and without filing an amended certificate of incorporation. She also cited the IRS tax determination letter, noting that it classified the Petitioner as a public charity. In addition, the Director stated that the Petitioner's articles of incorporation and bylaws indicated that it was organized "exclusively for public and charitable purposes . . . and not as a religious organization." With respect to the religious denomination certificate, the Director stated that the Petitioner was affiliated with a religious denomination "based abroad and not in the United States." She concluded that based on the documents, the petitioning organization could not be verified as a religious organization and, therefore, found that it did not satisfactorily complete the site inspection. The Director denied the petition accordingly.

Currently, on appeal, the Petitioner states that it is a Buddhist religious organization legally formed in California in 2011. It explains that "wat" means "Buddhist temple" and that the documents it submitted repeatedly refer to the petitioning organization as a wat or Buddhist temple. According to the Petitioner, it sufficiently established that the petitioning organization is affiliated with a Buddhist temple in Thailand. It argues that both the temple in Thailand and the petitioning organization are religious organizations.

III. ANALYSIS

We find that the Petitioner has established by a preponderance of the evidence that it is a religious organization. As the petitioning organization contends, the record shows that it was established in 2011 as a Buddhist temple. According to a statement from its Vice Chairman, [REDACTED] a decision was made in 2010 in Thailand to establish a new Buddhist temple in the United States in order to extend the Buddhist Master's growing ministry. [REDACTED] explained that the Beneficiary was selected by the "Master" to help establish the organization in the United States. Certificates in the record support this contention and show that in May of 2010, the Master of a Buddhist temple in

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Thailand appointed the Beneficiary to “implement” a “temple USA branch.” A separate certificate signed by “the Master” certifies that the petitioning organization “is a branch temple” of the temple in Thailand. The record also includes minutes from the petitioning organization’s first Board of Directors’ meeting in May of 2011, which listed the Beneficiary as a board member.

In addition, a copy of the petitioning organization’s articles of incorporation explicitly states that “[t]he specific purpose of this corporation is to promote Buddhist principles and practices through community outreach programs.” Therefore, the Director erred in stating the articles of incorporation indicated that it was not organized as a religious organization. The record also contains articles from the Internet describing Buddhism, Buddhist clergy, and the life of ordained Buddhist monks, such as the Beneficiary. Furthermore, Internet printouts in the record indicate that the petitioning organization is a Buddhist organization. Brochures describe the Petitioner’s mission as providing spiritual guidance and instruction in Buddhist principles and practices. A copy of the employment contract describes the Beneficiary’s duties as including, but not limited to: acting as a Buddhist monk at all times, having taken a sacred vow to the Buddhist monastic community; preparing and delivering sermons; promoting Buddhist principles; and supervising the duties and ordination of other monks.

Furthermore, the record shows the Petitioner was granted tax-exempt status by the IRS effective April 28, 2011. Although the IRS classified the petitioning organization as a public charity under section 170(b)(1)(A)(vi) 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, and conducts activities to carry out those religious purposes.

To the extent the Director noted that the Petitioner was affiliated with a religious denomination that was based abroad and not in the United States, 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 nature, purpose, and activities. Therefore, it need not submit a religious denomination certificate to establish its affiliation with any other religious organization, whether abroad or in the United States, under 8 C.F.R. § 214.2(r)(9)(iii)(D).

Likewise, there is no requirement that the Petitioner needed to submit an amended certificate of incorporation as the Director suggested. The record shows that the Petitioner registered with the State of California as a nonprofit corporation in September of 2011. It also shows that the Petitioner registered with [REDACTED] California, effective February of 2013. Although the same individual was listed as the chief executive officer on the State of California registration, and subsequently listed as an owner on the [REDACTED] registration, we do not find these documents to conflict with one other such that the Petitioner was required to provide evidence of an amended certificate of incorporation. As indicated in the minutes of the organization’s first Board of Director’s meeting, the Petitioner has three Board members, including the Beneficiary. These are the individuals listed on the registrations before the State of California and [REDACTED]

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Considering the record in its entirety, including the Director's observations during the site visit of religious activity, we find the record sufficiently establishes the Petitioner's religious nature, purpose, and activities. Therefore, the Petitioner has established it is religious organization and, accordingly, has overcome the findings of the failed site visit. The Director's decision to the contrary is withdrawn.

IV. CONCLUSION

For the reasons discussed above, the Petitioner has established it is a religious organization and has overcome the findings of the failed site visit. 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, the Petitioner has met that burden. Accordingly, we will sustain the appeal.

ORDER: The appeal is sustained.

Cite as *Matter of T-M-A-Q-O-L-P-F-*, ID# 11158 (AAO June 8, 2016)