



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

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

MATTER OF A-L-C-

DATE: JUNE 9, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a church, seeks to classify the Beneficiary as a nonimmigrant religious worker to perform services as an assistant pastor. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R). This nonimmigrant classification allows non-profit religious organizations, or their affiliates, to temporarily employ foreign nationals as ministers, in religious vocations, or in other religious occupations in the United States.

The Director, California Service Center, denied the petition concluding the record lacked evidence pertaining to the Petitioner's non-profit status as well as how it intended to compensate the Beneficiary.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and argues that the Director erred in determining the previously submitted material was not sufficient. Upon *de novo* review, we will dismiss the appeal.

I. LAW

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)(1) requires that, to be approved for temporary admission to the United States, or extension of status, a foreign national 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 Petitioner is required to submit evidence to establish how it intends to compensate the Beneficiary. The regulation at 8 C.F.R. § 214.2(r)(11) provides in 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 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 [Internal Revenue Service] 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.

The Petitioner must establish whether it qualifies as a bona fide nonprofit religious organization or a bona fide organization which is affiliated with the religious denomination. The regulation at 8 C.F.R. § 214.2(r)(3) provides 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 that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the Internal Revenue Code . . .

Regarding evidence of the Petitioner's tax-exempt status, the regulation at 8 C.F.R. § 214.2(r)(9) requires the following:

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 establishing 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) of the Internal Revenue Code of 1986, 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 religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

II. ANALYSIS

The issues within this appeal relate to the Petitioner's non-profit status and how it will compensate the Beneficiary. The Director issued a request for evidence (RFE) seeking documentation on these two issues as well as other issues that the Petitioner resolved in response to the request. The Director denied the petition finding the Petitioner did not prove that it qualified as "a bona fide organization that is affiliated with the religious denomination," and that it did not document how it intends to compensate the Beneficiary.

As part of our *de novo* authority, we have reviewed the entire record of proceedings before us. For the reasons discussed below, we agree that the Petitioner has not established it is a qualifying organization, although for an alternate reasoning from the Director. We also agree with the Director that that the Petitioner has not met the regulatory requirements surrounding compensation.

A. Qualifying Organization

We note that the Petitioner did not indicate that it qualifies as a bona fide organization that is affiliated with the religious denomination as discussed by the Director, but as a bona fide non-profit religious organization that is covered under a group tax-exemption. The Petitioner initially offered an IRS determination letter recognizing [REDACTED] as tax-exempt under section 501(c)(3) of the Internal Revenue Code. The Petitioner also provided a letter from [REDACTED] stating that it grants the Petitioner authorization to be covered under its tax-exempt status. However, the IRS determination letter for [REDACTED] does not specify that the exemption applies to subordinate and affiliated organizations, and the letter does not bear a specific group number that subordinate and affiliated entities may utilize to show they are covered under the group exemption.

The Director did not discuss this deficiency within her decision. Instead, she indicated that [REDACTED] was not included on the IRS's online verification tool titled Exempt Organizations Select Check Tool.¹ While we agree that the Petitioner has not demonstrated it meets the definition of a bona fide non-profit religious organization, we come to this conclusion based on the fact that [REDACTED] IRS determination letter is not a group letter and therefore cannot establish the Petitioner's tax-exempt status. The Petitioner's January 5, 2016, appellate brief indicates it is applying for its own non-profit recognition that it will provide when available. As the Petitioner has not, to date, provided an IRS determination letter confirming its tax-exempt status, it has not demonstrated that it qualifies as a bona fide nonprofit religious organization or affiliated organization under the regulation.

B. Compensation

When it filed the petition, the Petitioner indicated it would compensate the Beneficiary with \$18,000 annually in addition to transportation costs during outreach to other churches. It provided Net Cash

¹ See <https://apps.irs.gov/app/eos/>.

Flow statements for 2011 through 2013. The Director's RFE sought more recent information as well as documentation that mirrored the regulatory requirements listed at 8 C.F.R. § 214.2(r)(11). The RFE further indicated that the Net Cash Flow statements were not materials that would satisfy the Petitioner's burden of proof relating to compensation. The Petitioner responded with its 2014 Net Cash Flow statement and noted within the response cover letter that it would pay the Beneficiary from the church's 2015 mission budget and would then utilize its 2014 cash reserves to support its 2015 mission budget. The Director determined that the record lacked evidence to support the information within the Net Cash Flow statements, which she found to be "only one segment of actual financial statements," and that the record did not contain verifiable documentation to substantiate how it intended to compensate the Beneficiary.

In response, the Petitioner maintains that non-profit churches do not normally prepare the type of financial statements the Director discussed in her denial decision and that it previously offered sufficient evidence relating to compensation. The Petitioner's appellate submission consists of documents it characterizes as bank statements for the 2015 calendar year.

We do not agree with the Petitioner that it has submitted the types of material mandated by the regulation. Specifically, the regulation at 8 C.F.R. § 214.2(r)(11) first requires IRS documentation or, in the alternative, an explanation for its absence accompanied by comparable and verifiable items. The Petitioner has not provided IRS documentation and has not furnished an explanation for its absence. Nor has it offered comparable and verifiable proof in its stead. The compensation related evidence on appeal comprises multiple pages of a spreadsheet. Although the Petitioner describes this material as one year of the Petitioner's bank statements, the material does not bear any markings to substantiate this statement. The Petitioner has not offered verifiable evidence comparable to tax documentation explaining how it will compensate the Beneficiary. Therefore, it has not met the regulatory requirements for evidence relating to compensation.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established it qualifies as a bona fide non-profit religious organization or an affiliated organization. In addition, the Petitioner has not demonstrated how it intends to compensate the Beneficiary in accordance with the regulation.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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 not met that burden. Accordingly, we will dismiss the appeal.

ORDER: The appeal is dismissed.