U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-E-C-

DATE: OCT. 25, 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 a music director. *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 of the California Service Center denied the petition, concluding that the Petitioner had not supplied the required determination letter from the Internal Revenue Service (IRS) establishing that it is exempt from taxation.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and maintains that the Director erred by requiring the IRS letter.

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 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 implementing 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 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.
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> *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.
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> *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 a 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:
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> (i) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization; or
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> (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 Petitioner filed the Form I-29, Petition for a Nonimmigrant Worker, seeking to employ the Beneficiary full time as a music director at its church. On the R-1 Classification Supplement, the Petitioner indicated it was affiliated with the Evangelical Christian denomination.[1] The church's bylaws do not reference an affiliation with a specific denomination. In response to the Director's request for evidence, the Petitioner submitted a new religious denomination certification portion of the R-1 supplement listing the affiliated denomination as the The Petitioner also offered a letter from the General Council of the Assemblies of God (GCAG) addressed to the advising that the center is a subordinate unit of GCAG. Finally, the response included an IRS determination letter for GCAG, materials about the which do not reflect that it has affiliated churches, and the Petitioner's business license.

[1] The religious denomination certification was signed by the Petitioner's senior pastor.

[2] The Petitioner did not document or describe the relationship, if any, between the and GCAG, or the Petitioner.

The Director concluded that the IRS determination letter for GCAG was not a group letter and that the Petitioner must show its own determination letter. On appeal, the Petitioner maintains that the IRS does not require churches to obtain a determination letter to be tax-exempt and corroborates that information with a letter from the IRS. The Petitioner presents information from the state of Washington, an accountant's letter, and information about the church's activities. At issue is whether the Petitioner has supplied the requisite initial evidence pertaining to its 501(c)(3) tax exempt status. For the reasons discussed below, it has not.

The IRS letter presented on appeal confirms that it has "no record" that the Petitioner is recognized as tax-exempt under 501(a) of the IRS code. The letter continues that eligible churches "are automatically considered tax exempt under section 501(c)(3) of the Code without applying for formal recognition of such status." The Petitioner maintains that the Director was "erroneously convinced that a letter of determination of the IRS, which is not issued to churches, is what determines whether this organization gets to hire a music director." It continues that the Director treated the Petitioner as if it were a non-profit other than a church. The Petitioner then cites an IRS publication discussing the requirements for a church and explains how it meets those conditions.

The Petitioner's statement that the IRS does not issue determination letters to churches is not correct. While IRS rules do not require churches to apply for determination letters be tax-exempt, the IRS will issue such letters to churches.[3] At issue is not whether the Petitioner meets IRS requirements for a church and is recognized as a non-profit in Washington State; rather, but whether it has supplied the requisite initial evidence pertaining to bona fide non-profit religious organizations, which must be in possession of a currently valid determination letter from the IRS. 8 C.F.R. § 214.2(r)(3) (definition of bona fide non-profit religious organization). Similarly, the regulation at 8 C.F.R. § 214.2(r)(9)(i) plainly requires the submission of a "currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization." The Petitioner has not presented that item.

Alternatively, a religious organization that is recognized as tax-exempt under a group exemption may offer a currently valid determination letter from the IRS establishing that the group is tax-exempt. 8 C.F.R. § 214.2(r)(9)(ii). The Petitioner did supply an IRS determination letter recognizing GCAG for a group exemption for "the subordinates named on the list [GCAG] submitted." While GCAG advised the [redacted] of its subordinate status, the record contains no documentation that the Petitioner is similarly recognized as a subordinate and appears on the list GCAG submitted to the IRS.[4] The group exemption letter, therefore, does not qualify as the initial required evidence under subparagraph (r)(9) in this matter.

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[3] While there is no requirement for churches to seek IRS recognition, many of them do because recognition assures contributors that donations are deductible. *See* https://www.irs.gov/charities-non-profits/charitable-organizations/organizations-not-required-to-file-form-1023; *see also* Tax Guide for Churches & Religious Organizations, IRS Pub. 1828 2 (Rev. 8-2015), available at www.irs.gov.

[4] GCAG does not list the Petitioner as one of its member churches on its website. *See* [redacted] is listed on that website. *Id.*

While not specifically argued on appeal, we further note that the Petitioner has not established its eligibility as a bona fide organization which is affiliated with the denomination. The regulation at 8 C.F.R. § 214.2(r)(9)(iii) specifies that this provision applies to an organization granted tax exemption under section 501(c)(3) "as something other than a religious organization," and subparagraph (A) requires such an organization to possess a currently valid IRS letter establishing that the organization is tax exempt. Even if we accepted that the Petitioner is affiliated with the something it did not indicate initially and which is not reflected in its bylaws, it has not provided the required IRS determination letter.

III. CONCLUSION

The Petitioner has not submitted the required evidence to show that it is a bona fide non-profit religious organization in the United States. Accordingly, the Petitioner has not met its 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).

ORDER: The appeal is dismissed.

Cite as *Matter of S-E-C-*, ID# 10711 (AAO Oct. 25, 2016)