



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

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

MATTER OF T-R-C-C-O-G-I-, G-, NC

DATE: SEPT. 13, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner is a church that seeks to employ the Beneficiary as a pastor. 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 denied the petition, finding that the Petitioner did not establish that it is a bona fide non-profit organization or its intent to compensate the Beneficiary. She further found that the Beneficiary was not qualified for the proffered position.

The matter is now before us on appeal. The Petitioner argues that it continues to be a tax-exempt religious organization even though its letter from the Internal Revenue Service (IRS) listed its previous address. It further contends that it can adequately pay the Beneficiary, who qualifies as a minister, as shown by his ordination papers.

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

#### 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, among other things, 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)(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.

....

*Minister* means an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and
- (D) Works solely as a minister in the United States which may include administrative duties incidental to the duties of a minister.

....

*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.

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 . . . .

The regulation at 8 C.F.R. § 214.2(r)(10) addresses the evidence required to establish a beneficiary is qualified to be a minister and states that a petitioner must submit the following:

- (i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and

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- (ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological education is accredited by the denomination, or
- (iii) For denominations that do not require a prescribed theological education, evidence of:
  - (A) The denomination's requirements for ordination to minister;
  - (B) The duties allowed to be performed by virtue of ordination;
  - (C) The denomination's levels of ordination, if any; and
  - (D) The alien's completion of the denomination's requirements for ordination.

The regulation at 8 C.F.R. § 214.2(r)(11) addresses the specific evidence required to establish the Petitioner's intent to compensate the Beneficiary and 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 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.

## II. PERTINENT FACTS AND PROCEDURAL HISTORY

On the religious worker petition, the Petitioner identified itself as [REDACTED] described itself as a church, and listed its address as [REDACTED] in [REDACTED] North Carolina. It indicated that the Beneficiary was an ordained minister with over ten years of experience. A letter from [REDACTED] submitted with the petition stated that the petitioning organization would compensate the Beneficiary \$15,000 per year, plus room and board. [REDACTED] indicated

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that as a pastor, among other things, the Beneficiary would preach and teach the word of God, oversee and plant new churches throughout the United States, and officiate at marriage ceremonies, baptisms, communions, ordinations, and funerals.

In support of the petition, the Petitioner submitted a letter from the IRS, dated May 30, 2003, granting federal income tax exemption to [REDACTED] NC,” listing the address as [REDACTED] in [REDACTED] North Carolina. The Petitioner also submitted documents including, but not limited to: its articles of incorporation, a “Certificate of Stewardship” showing the Beneficiary was ordained a deacon, a letter of ordination as deacon, copies of bank account statements, and a description of the church’s ministries. The Director issued a request for evidence (RFE) seeking, in part, additional documents addressing the petitioning entity’s name, its tax-exempt status, the Beneficiary’s qualifications, and compensation.

The Petitioner responded to the RFE with an amended religious worker petition, a new letter from [REDACTED] and additional evidence. The amended petition listed the Petitioner’s name as [REDACTED] NC” and its address as [REDACTED] in [REDACTED] North Carolina. In addition, the Petitioner submitted a “Statement of Change of Registered Office and/or Registered Agent” from the North Carolina Department of the Secretary of State, indicating that [REDACTED] changed its address from [REDACTED] in [REDACTED] North Carolina, to [REDACTED] in [REDACTED] North Carolina, effective November 18, 2015. The Petitioner also included a copy of the Beneficiary’s identification badge showing his title as deacon as well as a letter from [REDACTED] from [REDACTED] in Nigeria confirming the Beneficiary’s membership and work at the church in Nigeria. In addition, it submitted the “Church Constitution for [REDACTED] and printouts of bank account details. Regarding its tax exemption, it submitted a page that stated:

Print out confirming that a request has been made to receive an updated IRS letter, and that the change of address has been requested. [REDACTED] is still awaiting an official letter from the IRS.

The Director denied the petition, finding that the Petitioner did not submit a currently valid IRS determination letter confirming its tax-exempt status or documentation showing it contacted the IRS regarding its current address. The Director also concluded that the petitioning organization did not sufficiently establish its intent to compensate the Beneficiary. Among other things, the Director specified that the Petitioner did not submit any IRS documentation or an explanation for its absence, and did not submit evidence of the proposed non-salaried compensation of room and board. Finally, the Director found that the Petitioner did not establish that the Beneficiary qualifies as a minister because the documentation it submitted showed that he was ordained as a deacon, not as an assistant pastor, much less a pastor.

Currently, on appeal, the Petitioner argues that it remains a tax-exempt religious organization and although its “address needed to be corrected on the IRS letter[,] [s]uch a harmless error should not result in a denial . . . .” It also argues that it has the intent and ability to compensate the Beneficiary,

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as shown by its bank account statements. In addition, the Petitioner contends the Beneficiary's ordination papers and other documents confirm he is qualified as a minister. It submits a letter from [REDACTED] attesting to the Beneficiary's qualifications as a minister and stating that he "spoke with IRS" about getting an updated letter. According to [REDACTED] the Petitioner will forward the IRS letter as soon as it receives the letter.

### III. ANALYSIS

#### A. Bona Fide Non-Profit Organization

After a careful review of the entire record, we agree with the Director that the Petitioner has not sufficiently established it is a bona fide non-profit organization. The Petitioner initially identified itself as [REDACTED] on the petition and indicated it was established in 1952. On page 36 of the petition, it stated, [REDACTED] parent company was first established in 1952. [REDACTED] now has branches worldwide."

In response to the RFE, the Petitioner submitted an amended petition, changing its name to [REDACTED] NC" and indicated it was established in 2002. On page 36 of the petition, it stated, [REDACTED] NC is a branch of the parent headquarters, [REDACTED] Therefore, [t]hey are affiliated."

The record remains unclear regarding the Petitioner's name and identity. The record does not have any documentation showing that [REDACTED] legally changed its name to [REDACTED] NC. The Petitioner has not addressed whether [REDACTED] is the same entity as [REDACTED] NC, or whether one of the organizations is a parent organization to the other. It is also unknown whether the Petitioner was established in 1952 or 2002, whether one of those dates applies to [REDACTED] or whether [REDACTED] is the parent organization.

Both the initial petition and the amended petition list [REDACTED] as the Petitioner's address. However, the IRS determination letter in the record, dated May 30, 2003, grants tax exemption to The [REDACTED] NC, and lists an address of [REDACTED]. Even assuming that it is the amended petition that accurately identifies the Petitioner's name, the regulation at 8 C.F.R. § 214.2(r)(9)(i) requires a currently valid determination letter from the IRS showing that the petitioning organization is exempt from federal income tax. In this case, there is no currently valid IRS letter, but rather, an outdated letter that is more than 16 years old, listing an address that does not match other documents in the record. [REDACTED] NC's articles of incorporation, dated August 5, 2002, indicates its street and mailing address as [REDACTED]. The statement from the North Carolina Department of the Secretary of State indicates that it changed its address from [REDACTED] to [REDACTED]. The Petitioner has not discussed, and the evidence does not show, when, if ever, it was located on [REDACTED] the address listed on the IRS determination letter.

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The IRS determination letter explicitly states, “you should inform us of all changes in your name or address.” This the Petitioner has not done. As the Petitioner itself concedes, it is “still awaiting an official letter from the IRS.” Accordingly, we find that the Petitioner has not established by a preponderance of the evidence that it is a bona fide non-profit religious organization.

**B. Compensation**

As required by 8 C.F.R. § 214.2(r)(11)(i), and as requested by the Director in the RFE, the Petitioner must submit IRS documentation, such as certified tax returns, if available. In this case, the Petitioner has not submitted any IRS tax documentation or addressed the absence of such documentation. Although it has submitted copies of its bank account statements, the record remains insufficient to establish how it intends to provide the non-salaried compensation of room and board that it claims it will pay. For instance, there is no deed in the record showing that the Petitioner owns property where it could provide housing to the Beneficiary, or that it will pay the Beneficiary’s rent or provide him with a housing allowance . There is no evidence that its net annual income is \$180,000, as claimed on the petition. There is no budget in the record. Considering the record in its totality, the Petitioner has not met its burden of meeting the regulatory requirements of 8 C.F.R. § 214.2(r)(11) relating to compensation.

**C. The Beneficiary’s Qualifications**

The record shows that the petitioning organization distinguishes between deacons and pastors, and in this instance, the Beneficiary has been ordained as a deacon, but not as a pastor, the proffered position. According to [REDACTED] response to the RFE, the petitioning “organization is set up with the following hierarchy: Pastors; De[a]acons; Workers; Members.” He provided specific details regarding the requirements to be a deacon/deaconess, an assistant pastor, and a pastor. For instance, he explained that to be a deacon/deaconess, the aspiring brethren must have been a worker at the petitioning organization for at least five years. In order to be an assistant pastor, proof of ordination as a deacon/deaconess is required and the individual must be pastoring a parish. To be a pastor, among other things, the individual “must produce evidence of ordination as an Assistant Pastor at . . . [REDACTED] for at least five years.”

The Petitioner’s constitution in the record also distinguishes between the different officers of the church which it identifies as: Pastor/Director, Treasurer/Ministers of Finances, Trustees, and Deacons and Deaconesses/Ministries of the Church. Article V, section 1 of the constitution states that the Senior Pastor/Pastor has general oversight of the church, supervises all staff, and has the authority to buy and sell things for the operation and upkeep of the church. In contrast, section 5 of the constitution specifies that deacons and deaconesses “assist the Pastor, in such a manner as he may request . . . .”

In this case, a letter signed by [REDACTED] and a certificate of stewardship confirmed that the Beneficiary was ordained as a deacon on August 4, 2014. The certificate specified that as a deacon, the Beneficiary has the authority to preach the gospel, lay hands on the sick and pray for them, act as ambassador, and “lead the workers.” However, there is no mention that he is authorized to officiate

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at weddings, baptisms, communion, or ordinations, as the Petitioner contends would be part of the Beneficiary's job duties as a pastor.

On appeal, [REDACTED] maintains that the Beneficiary is qualified to function as a minister, as shown by the certificate of ordination. He states that according to the church's standard operating procedures:

a dedicated and tested ordained Parish Worker from within the congregation can become the Pastor-in-charge of a new Parish or Fellowship within the organization. . . . The Chairman . . . or Parish Pastors of existing Parishes may with the guidance of the Holy Spirit appoint an already ordained Pastor or a dedicated and tested Parish Worker from within the congregation to become the Parish Pastor of a new Parish.

We find [REDACTED] contentions on appeal to be of limited probative value for several reasons. First, by its express language, "a dedicated and tested Parish Worker" may become a pastor of "a new Parish." Here, the petitioning organization's articles of incorporation were filed in August of 2002. Therefore, it is not a "new Parish." Second, the Petitioner has not submitted for the record the standard operating procedures cited by [REDACTED]. As such, these procedures cannot be compared to other documentation in the record which describes the requirements of becoming a pastor, such as the petitioning organization's constitution. Third, [REDACTED] uses the terms "deacon" and "minister" interchangeably. However, the Petitioner seeks to hire the Beneficiary as a pastor, not a deacon. Although he has been ordained as a deacon, based on the Petitioner's own requirements, the Beneficiary has not completed the requirements to be a pastor and has not yet been ordained a pastor. Considering the record in its totality, we find that the Petitioner has not established that the Beneficiary is qualified for the proffered position.

#### IV. CONCLUSION

The Petitioner has not established that it is a bona fide non-profit religious organization, that it has the ability and intent to compensate the Beneficiary as it claims it would, or that the Beneficiary is qualified for the proffered position.

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.

**ORDER:** The appeal is dismissed.

Cite as *Matter of T-R-C-C-O-G-I-, G-, NC*, ID# 18155 (AAO Sept. 13, 2016)