



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

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

MATTER OF C-R-C-

DATE: SEPT. 16, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a nondenominational church, seeks to classify the Beneficiary as a nonimmigrant religious worker to perform services as a women's ministry 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 of the California Service Center denied the petition finding that the Petitioner did not submit the required evidence to show that it is a bona fide non-profit religious organization in the United States. The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and requests approval of the petition.

Upon *de novo* review, we will withdraw the Director's decision. Because the record, as it now stands, does not support the petition's approval, we will remand the matter to the Director for further action and consideration.

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 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)(8) requires a petitioner to attest that it is a bona fide non-profit religious organization in the United States, or a bona fide organization which is affiliated with the religious denomination in the United States, and that it is tax exempt. 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.

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

Prior to denying the petition, the Director issued a request for evidence relating to multiple eligibility requirements, including the Petitioner's tax-exempt status. While the Petitioner's response did not address any of the other noted deficiencies, the Director denied the petition on the sole ground that the Petitioner had not provided the required IRS determination letter to show its exemption under section 501(c)(3) of the Internal Revenue Code.

A. Bona-fide Non-profit Religious Organization

As stated above, a bona fide non-profit religious organization must possess an IRS determination letter confirming its tax-exemption under section 501(1)(c)(3) of the Internal Revenue Code. The Petitioner initially offered an IRS letter assigning the organization an Employer Identification Number, rather than a determination letter pertaining to its tax-exempt status. On appeal, the Petitioner submits a copy of its IRS determination letter as required by the regulation at 8 C.F.R. § 214.2(r)(9)(i). As the Petitioner has provided the required documentation, the sole stated ground for denial cannot stand, and we must therefore withdraw the Director's decision. Nevertheless, because a review of the record indicates additional grounds of eligibility that have not been established, we will remand the matter to the Director for further consideration.

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B. Considerations on Remand

1. Denominational Membership

Pertaining to the Beneficiary's denominational membership during the two years immediately preceding the petition filing, the Petitioner must establish the membership was in the same type of religious denomination as the Petitioner. See 8 C.F.R. § 214.2(r)(3) (defining denominational membership and religious denomination).

When it filed the petition in August 2015, the Petitioner indicated that it is a nondenominational institution and that the Beneficiary attained her two years of membership abroad at the Petitioner's "sister" church in Tanzania. The Petitioner offered a photocopy of the Beneficiary's identity card from the [REDACTED] valid from 2014 - 2017. First, this material does not cover the full two-year period. Additionally, the record does not include evidence demonstrating that the Petitioner is of the same type of denomination as the Assemblies of God.

2. Qualifying Position

The Petitioner initially listed the Beneficiary's title as women's ministry pastor and indicated her duties were related to providing seminars for women in order to enhance their productivity. On appeal the Petitioner consistently describes the prospective position as "youth worker." The Petitioner has not sufficiently identified the capacity in which the Beneficiary will work or demonstrated that the position satisfies the regulatory definition of a minister or of a religious occupation. See 8 C.F.R. § 214.2(r)(3).

3. Compensation

Finally, the Petitioner is required to submit documentation to establish how it intends to compensate the Beneficiary according to the regulation at 8 C.F.R. § 214.2(r)(11). The current record does not contain documentation from the IRS, nor did the Petitioner offer an explanation for its absence along with comparable and verifiable evidence.

III. CONCLUSION

The matter will be remanded for consideration of the above issues, and issuance of a new decision. The Director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. 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.

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ORDER: The decision of the Director, California Service Center is withdrawn. The matter is remanded to the Director, California Service Center for further proceedings consistent with the foregoing opinion and issuance of a new decision which, if adverse, shall be certified to us for review.

Cite as *Matter of C-R-C-*, ID# 18092 (AAO Sept. 16, 2016)